

*Before G.S. Sandhawalia & Vikas Suri, JJ.*

**RAJ BALA**—*Petitioner*

*versus*

**STATE OF HARYANA AND OTHERS**—*Respondents*

**CWP No.15387 of 2017**

May 11, 2022

***Constitution of India, 1950—Arts.14, 226 and 227—Family Pension Scheme, 1964 applicable to State of Haryana—Note 1 of Clause(d) of Sub Rule 2 of Rule 4—Striking down of said Rule—Adoption of child after retirement—Entitlement of retiral benefits to child adopted after retirement—The said note/Rule enhances discrimination inter-se children adopted before and after retirement—It excludes the ones adopted after retirement out of the ambit of family—No ground to exclude such children of the right to family pension merely because the adoption is post retirement—Held, Rule struck down being arbitrary and discriminatory.***

*Held that*, it is, thus, contended and argued that fixing the date of retirement as the cut-off date would not be legally sustainable and is violative of Article 14 of the Constitution of India since a child adopted after retirement is not entitled for the benefit for retiral benefits.

(Para 2)

*Further held that*, another factor which is to be seen, which also emanates from the present case, is that a child-less employee may adopt a child after retirement. Merely because the adoption is post retirement which is mainly for the purpose of providing dependency and also some light in the evening of the life of the couple. The same would not as such be good enough to deny the said child the benefit of the family pension merely on account of the fact that the decision as such to adopt was taken at a belated stage. *Further held that*, It is not disputed that the right to receive pension is on account of the service rendered by the government employee and it is governed by the relevant Rules and is not a bounty. The same is for maintaining oneself after giving the best of the youth of the employee to service and it is an economic security as such for the service rendered not only to the government employee but to the dependents, who are entitled for the same.

(Para 8 and 9)

*Further held that*, we are of the considered opinion that the above said judgments are fully applicable to the facts and circumstances of the present case and the said Note suffers from the vice of discrimination and arbitrariness.

(Para 12)

*Further held that*, In the present case, there is no such dispute regarding the validity of the adoption and that it is a registered adoption deed. The succession certificate has been duly issued in favour of the petitioner by a Court of competent jurisdiction. It is apparent that the State has also become wiser when it notified Rules of 2016 wherein, it has done away with the discriminatory provisions as such and granted the benefit to the legally adopted children irrespective of the fact that whether the adoption was before or after retirement.

(Para 13)

*Further held that*, accordingly, the writ petition is allowed. Note-1 of Clause (d) of Sub-rule (ii) of Rule 4 of the Family Pension Scheme, 1964 (as applicable to the State of Haryana) is read down in as much as it qualifies the adoption with period of time and the order dated 30.03.2017 is quashed.

(Para 14)

Inderjit Singh, Advocate, *for the petitioner*.

Hitesh Pandit, Addl. A.G., Haryana.

### **G.S. SANDHAWALIA, J.**

(1) Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the striking down of Note-1 of Clause (d) of Sub-rule (ii) of Rule 4 of the Family Pension Scheme, 1964 (as applicable to the State of Haryana) being discriminatory and arbitrary and offending Article 14 of the Constitution of India. Challenge is primarily raised on the ground it has been provided that under the said offending note that children adopted legally before retirement would fall under the definition of family.

(2) It is, thus, contended and argued that fixing the date of retirement as the cut off date would not be legally sustainable and is violative of Article 14 of the Constitution of India since a child adopted after retirement is not entitled for the benefit for retiral benefits. Resultantly, writ in the nature of certiorari for quashing of order dated 30.03.2017 (Annexure P-11), which rejected the case of the petitioner for the claim of family pension on account of the fact that

she was adopted on 07.04.1995 whereas, her adoptive father Guggu Ram had retired from government service on 31.07.1993 has been filed. It is not disputed that the right for family pension was governed under the Family Pension Scheme, 1964 and the definition of family provided in the same reads thus:-

[ii] "Family" for the purposes of this scheme includes the following relatives of the officer.-

- (a) wife, in the case of a male officer;
- (b) husband, in the case of a female officer;
- (c) minor sons;
- (d) unmarried minor daughters;
- (e) widowed/legally divorced daughters; and
- (f) the parents of an unmarried officer.

**Note 1.-** Clauses (c) and (d) include children adopted legally before retirement.

**Note 2.-** A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefit of the Family Pension Scheme, 1964.

[(iii)] The pension is admissible-

- (a) in the case of widow/widower upto the date of death or remarriage, whichever is earlier;
- (b) in the case of son/daughter upto he/she attains the age of twenty five years;
- (c) in the case of parents who were wholly dependent on the Government employee when he/she was alive, upto the date of death provided the deceased employee had left behind neither a widow nor a child;
- (d) in the case of children in the order of their birth and younger of them will not be eligible for family pension unless the elder next above him/her has become ineligible for grant of family pension;
- (e) in the case of divorced/widowed daughter till they are alive:

Provided that an unmarried daughter including widowed/divorced daughter will become ineligible for pension from the date of her marriage/remarriage.

Provided further that the son/unmarried daughter including widowed/divorced daughter shall become ineligible for pension if he or she starts earning livelihood.

The income criteria in respect of parents and widowed/divorced daughter shall be that their earning is not more than Rs. 2550/- per month. Provided also that parents and widowed/divorced daughter shall produce an annual certificate to the effect that their earning is not more than Rs. 2550/- per month. The upper ceiling of family pension shall be 30% of basic pay of the deceased employee, subject to a minimum of Rs. 1913/- per month.”

(3) The pleaded case of the petitioner is that she is unmarried adopted daughter, aged about 22 years, of the deceased government employee namely Guggu Ram, who retired as Beldar from PWD Department on 31.07.1993. With the consent of his wife Smt. Mansi Devi, Guggu Ram adopted the petitioner when she was 5 months old vide the registered adoption deed dated 07.04.1995 (Annexure P-1A). The proof of adoption is the said registered adoption deed, which would show that Guggu Ram and his wife had no son or daughter and he was 61 years of age and his wife was 51 years old. On account of having no hope of conceiving the child, they had adopted the petitioner, whose real name was Manpreet Kaur and was daughter of the first party. They had, thus, named her Raj Bala and all the necessary formalities are stated to have been done. The proof of the fact of adoption had also been shown by attaching middle examination certificate (Annexure P-2) and the ration card along with the adhaar card (Annexures P-3 and P-4). The succession certificate in favour of the petitioner issued by the Court of the Civil Judge (Sr. Divn.), Jagadhari filed under Section 372 of the Indian Succession Act, has been appended as Annexure P-4A, wherein, the requisite benefits as such are liable to be paid to her on attaining the age of majority. The death certificates of the adoptive father and mother have also been placed on record as Annexure P-5 (colly).

(4) After attaching the necessary succession certificate, representation was given to sanction family pension to her and on the strength of the same, the claim was made before respondent No.3, the Accountant General (A & E), Haryana on 09.04.2016 (Annexure P-6).

The same was followed by another representation on 07.11.2016 (Annexure P-7) and the matter was processed vide communication dated 21.11.2016 by the said respondent (Annexure P-8). The necessary certificates were furnished on 31.01.2017 (Annexure P-9). The Executive Engineer of the Department as such, vide communication dated 27.02.2017, forwarded the same to respondent No.3 for taking necessary action in case it was permissible, which as noticed, has met the legal hurdle of the fact that the petitioner was adopted after the date of retirement.

(5) In such circumstances, writ petition has been filed and reliance has also been placed upon the Haryana Civil Service (Pension) Rules, 2016 wherein, Rule 10 has been relied upon which provides that sons and daughters including legally adopted children/widow /divorced daughters would fall within the definition of 'family'. It is submitted that the claim of family pension is admissible as such to the unmarried eldest dependent daughter upto the age of 25 years or upto the date of marriage. It is further submitted that Note 3 provides that son/daughter would include children legally adopted under the Hindu Law or personal law of the government employee residing with and wholly dependent upon his/her parent but does not include step children.

(6) The stand of the State is that Guggu Ram never disclosed the name of the petitioner as his adopted daughter till the date of his retirement. His wife had died on 23.06.2003. The claim was made in the year 2017, which has been rejected on 30.03.2017 (Annexure R-3) by the respondent No.3 on the ground that the adoption was after the retirement. The action is, thus, defended on the fact that the scheme as such bars the persons adopted after retirement. Reliance has also been placed upon the notification dated 26.08.2004 (Annexure R-4) issued under the Punjab Civil Services(Haryana Second Amendment) Rules, 2004, which also substituted the definition of family under the Punjab Civil Services Rules, Volume-II in Appendix I in the Family Pension Scheme to the extent that the legal adoption was to be done before the date of retirement.

(7) In our considered opinion, the argument which has been raised as such by counsel for the petitioner is well justified that the said Note enhances the discrimination *inter se* children adopted before and after retirement and keep the ones adopted after retirement out of the ambit of family. They are, thus, excluded from the right of family pension, which is a beneficial provision to ensure that children of a

retired government employee do not face any vagrancy. The Rule as such is thus liable to be quashed on the ground of being violative of Article 14 of the Constitution of India as it does not serve any purpose and discriminates against children legally adopted after retirement. The State seems to have become wiser in as much as while providing for family pension in the Haryana Civil Services Pension Rules, 2016, the right to be represented or recognized as a person belonging to the family has been recognized for a legally adopted child without any cut off date of disqualification after retirement. Rule 10, which defines family, reads as under”-

“(10) -family means-

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**1(c). sons and daughters including legally adopted children,widowed/divorced daughter(s).**

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**“Note 3.—Son/daughter includes children legally adopted under the Hindu Law or personal law of the Government employee residing with and wholly dependent upon his/her parent but does not include step children.**

(B) for the purpose of family pension means-

(i)(a) widow (widows wherever permissible under personal law) or widower, upto the date of re-marriage or death, whichever is earlier;

(i)(b) judicial separated wife or husband of a deceased Government employee, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery; (i)(c) childless widow of a deceased Government employee who has got remarried provided her independent income from all other sources is less than the minimum family pension prescribed by the State Government from time to time plus dearness relief thereon. In all such cases, she shall be required to give a declaration regarding her income from all other sources to the Pension Disbursing Authority once in a year in the month of March;

(ii) failing (i) above, the eldest unmarried and dependent

son(s) or daughter(s) upto the age of 25 years;

(iii) failing (i) and (ii) above, the dependent eldest divorced or widowed daughter(s) upto the age of 25 years, upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is the earliest provided she should have been widowed or divorced before the date of expiry of eligibility of other existing family member for family pension;”

(8) Another factor which is to be seen, which also emanates from the present case, is that a child-less employee may adopt a child after retirement. Merely because the adoption is post retirement which is mainly for the purpose of providing dependency and also some light in the evening of the life of the couple. The same would not as such be good enough to deny the said child the benefit of the family pension merely on account of the fact that the decision as such to adopt was taken at a belated stage.

(9) It is not disputed that the right to receive pension is on account of the service rendered by the government employee and it is governed by the relevant Rules and is not a bounty. The same is for maintaining oneself after giving the best of the youth of the employee to service and it is an economic security as such for the service rendered not only to the government employee but to the dependents who are entitled for the same. The Apex Court, while dealing with the issue of grant of family pension in *Smt. Bhagwanti versus Union of India*<sup>1</sup> set aside the provision wherein, the wife who had married after retirement had been denied the same. Resultantly, it was held that the limitation incorporated in the definition of family suffers from the vice, arbitrariness and discrimination and is not sustainable by any nexus or reasonable classification and has been thus held to be *ultra vires* of Article 14 of the Constitution of India.

(10) The issue in question was Rule 54(14)(b) of the Central Civil Services (Pension) Rules, 1972 and the definition of family was that marriage had to take place before the retirement of the government servant. Similarly, the issue was also whether sons and daughters adopted legally before retirement and the exclusion of the similarly placed children born after retirement while striking down the said provisions. Relevant portion in *Bhagwanti's (supra)* reads thus:-

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<sup>1</sup> (1989) 4 SCC 397

“9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he had retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on account of the fact that the spouse contributed to the efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition of 'family' by keeping the postretiral spouse out of it.

10. Government Servants Conduct Rules prohibit marriage during the life-time of a spouse. Section 494 of the Indian Penal Code makes second marriage void and makes it a criminal offence. Thereafter, both before retirement and even after retirement there is no scope for a person to have a second wife or a husband. as the case may be, during the life-time of an existing spouse.

11. Reliance has been placed on the recommendations of the Third Pay Commission on the basis of which the amendment in the Pension Rules is said to have been made. Apart from referring to the recommendations, no attempt has been made at the hearing by counsel for the Union of India to derive support from the recommendations. We really see no justification as to why post-retirement marriages should have been kept out of the purview of the definition.

12. In clause (ii) of the definition son or daughter born after



retirement even out of wedlock prior to retirement have been excluded from the definition. No plausible explanation has been placed for our consideration for this exclusion. The purpose for which family pension is provided, as indicated in Smt. Poonamal's case, is frustrated if children born after retirement are excluded from the benefit of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as in the absence thereof, in the event of death of the Government servant such minor children would go without support. The social purpose which was noticed in some pension cases by this Court would not justify the stand taken by the Union of India in the counter-affidavit. It is not the case of the Union Government that as a matter of public policy to contain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the Government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children upto two, the only child born after superannuation should not be denied family pension.

13. Considered from any angle, we are of the view that the two limitations incorporated in the definition of 'family' suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. The Words 'provided the marriage took place before retirement of the Government servant' in clause (i) and 'but shall not include son or daughter born after retirement' in clause

(ii) are thus ultra vires Article 14 of the Constitution and cannot be sustained.

14. The writ petitions are allowed. The respondent Union of India shall have a direction to extend to each of the petitioners in the two writ petitions family pension as admissible under the respective schemes from the date the husband of each of petitioners died.”

(11) In similar circumstances, learned Single Judge of this Court

in *Gurdial Singh versus State of Haryana*<sup>2</sup> struck down Note 2 to Rule 1.27 Sub-Rule 3 of the Punjab Family Pension Rules of Punjab Civil Service Rules Vol. II which did not recognize marriage after retirement while placing reliance upon the judgment in *Bhagwanti (supra)* and the judgment of the Apex Court in *Smt. Lakshmi Kunwar versus State of Rajasthan*<sup>3</sup> and *Kanta Devi versus UOI*<sup>4</sup>.

(12) We are of the considered opinion that the above said judgments are fully applicable to the facts and circumstances of the present case and the said Note suffers from the vice of discrimination and arbitrariness.

(13) In the present case, there is no such dispute regarding the validity of the adoption and that it is a registered adoption deed. The succession certificate has been duly issued in favour of the petitioner by a Court of competent jurisdiction. It is apparent that the State has also become wiser when it notified Rules of 2016 wherein, it has done away with the discriminatory provisions as such and granted the benefit to the legally adopted children irrespective of the fact that whether the adoption was before or after retirement.

(14) Accordingly, the writ petition is allowed. Note-1 of Clause (d) of Sub-rule (ii) of Rule 4 of the Family Pension Scheme, 1964 (as applicable to the State of Haryana) is read down in as much as it qualifies the adoption with period of time and the order dated 30.03.2017 is quashed.

(15) Directions are issued to the respondents to consider the case of the petitioner further for grant of family pension, which she is entitled to from the date her father died i.e. 20.02.2006. Since the claim was only made in the year 2017 and there was a legal hitch, we do not consider it appropriate as such to grant the benefit of interest on the payment which has been delayed. However, the case be processed and family pension alongwith the arrears as such be paid to the petitioner within a period of 3 months from the date of receipt of certified copy of the judgment. In case the needful is not done, the respondents will be liable to pay interest @6% per annum from the date of entitlement till the date of payment.

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*Dr. Payel Mehta*

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<sup>2</sup> (2000) 1 SCT 1072

<sup>3</sup> 1993 (8) SLR 427

<sup>4</sup> 1994 (5) SLR 279