

ITEM NO.34

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s).16315/2017

(Arising out of impugned final judgment and order dated 11-04-2017 in DBSAW No. 41/2015 passed by the High Court of Rajasthan at Jodhpur)

SMT. PREMLATA ACHARYA

Petitioner(s)

VERSUS

SUMAN ACHARYA & ORS.

Respondent(s)

Date : 28-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE DEEPAK GUPTA

Mr. Dushyant Dave, Sr. Adv. (A.C.)

Ms. Priyanka Gladson, Adv.

For Petitioner(s)

Mr. Kumar Kartikay, Adv.

Ms. Neelu Sharma, Adv.

Mr. Himanshu Singh Dhillon, Adv.

Mr. Vishal, Adv.

Mr. Merusagar Samantaray, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

We have heard learned counsel for the petitioner and learned *amicus curiae*.

The petitioner was given compassionate appointment on the death of her husband. She has now remarried and left her children under the care of her father, the maternal grandfather of the children. The High Court directed that the family pension due to her be given to the maternal grandfather for the benefit of her children as

also 50% of her salary. Hence the present petition.

Learned *amicus curiae* assisting us on the legal issues has placed before us the relevant extracts of the Family Pension Rules as applicable to the Government of Rajasthan.

A perusal of the Rules indicates that in the event the widow gets remarried, she will not be entitled to family pension. In the present case, the widow upon remarriage and obtaining compassionate appointment left her five children to the care of her father. Under the circumstances, the High Court, on an interpretation of the Rules, came to the conclusion that it would be appropriate if the family pension is given to the maternal grandfather of the children so that the children can be looked after.

Our attention has also been drawn to the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servants Rule, 1996, which reads as follows:

"Appointment subject to certain conditions.-2

[1] When a government Servant dies while in service one of his/her dependants may be considered for appointment in Government Service subject to the condition that employment under these rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government servant is already employed on regular basis under the Central/any State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government at the time of death of the Government Servant.

Provided that this condition shall not apply where the widow seeks employment for herself.

[2] Appointment under these rules shall be given on the condition that the person appointed on compassionate ground shall maintain properly the other family members who were dependant on the deceased Government servant and on furnishing an undertaking in writing that he/she shall maintain properly the other family members who were dependant on the deceased Government servant. If subsequently, at any time, it is proved that such dependant family members are being neglected or are not being maintained properly by him, the appointment may be terminated by the Appointing Authority after providing an opportunity to the compassionate appointees by way issue of show-cause notice asking him to explain why his services should not be terminated."

A perusal of the aforesaid Rule indicates that the compassionate appointment of the petitioner could in fact have been terminated, but instead of doing so, the High Court found it appropriate to direct that 50% of her salary should be paid over to her children for their sustenance.

A similar view was expressed by a learned Single Judge of the Jammu and Kashmir High Court in Rehana Azeem Vs. State and Ors. [2007 (2) JKJ 575]. Paragraph 5 of the Report reads as follows:

"5. On consideration I find that perhaps there was no alternative available to the authorities other than directing deductions of 50% of petitioner's salary for payment to respondents 8 and 9 who admittedly are widow and minor child of deceased employee and as such duly entitled to be maintained from out of the salary of petitioner that she gets in lieu of her appointment essentially ordered for maintaining her and the respondents. That the petitioner has given up such maintenance simply speaks of

callousness which she should not have exhibited particularly in case of the minor son of her deceased brother who has a long way to go before he gets anywhere near self sustenance."

Under the circumstances, after hearing learned counsel for the petitioner and learned *amicus curiae*, on an overall consideration of the facts of the case, we are of the view that the family pension should continue to be paid to the grandfather of the children for the benefit of the children as per the Rules and 50% of the salary of the petitioner should continue to be paid for the children until the last of them attains the age of 25 years, which is the age at which family pension ceases in accordance with the Rules.

With the above directions, the special leave petition stands disposed of.

We express our gratitude to learned *amicus curiae* for taking the trouble and assisting us and more particularly to Ms. Priyanka Gladson, learned counsel for the efforts that have been put in.

The Supreme Court Legal Services Committee should give remuneration of Rs.10,000/- to Ms. Priyanka Gladson, learned counsel.

(SANJAY KUMAR-I)
AR-CUM-PS

(SHARDA KAPOOR)
ASSISTANT REGISTRAR