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KANTA DEVI
v.
UNION OF INDIA AND ORS.

SEPTEMBER 20, 1994

B

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

Service Law :

C *Army Instructions No. 51 of 1980—Para 6—Note(2)—Family—Not recognising marriages after retirement of army personnel—Consequent denial of family pension to widow of ex-serviceman—Held : Harsh and heartless provision and hence Note(2) struck down.*

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The petitioner, a widow of an ex-serviceman, was denied family pension because Para 6 of the Army Instructions No. 51 of 1980 which defined "family", though includes wife, said in Note (2) that marriage after retirement would not be recognised. This was challenged by the petitioner in this Writ Petition.

Allowing the writ petition, this Court

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HELD : 1. It cannot be said that marriages after retirement from army are performed with an eye on getting family pension. This thinking is rally abhorrent. As persons retire early from armed services, they remain of marriageable age in many cases and do not company of a consort to be with them in times of distress. As family pension becomes due on the death of the incumbent, the rider contained in Note(2) of Para 6 of the Army Instructions No. 51 of 1980 is indeed a harsh and heartless provision, as it denies family pension to those who shared the difficulties of the ex-servicemen faced after their retirement, and is, therefore, struck down. [711-D, E]

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2. The respondents are directed to pay family pension to the petitioner, as if Para 6 of the Army Instructions No.51 of 1980 had not contained Note (2). [711-F]

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CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 294 of 1990.

(Under Article 32 of the Constitution of India.)

A.P. Mohanty and S.K. Sabbarwal for the Petitioner.

V.C. Mahajan, Ms. Shashi Kiran and Anil Katiyar for the Respondents.

The Judgment of the Court was delivered by

HANSARIA, J. The petitioner, a widow of an ex-serviceman, has made a grievance, and rightly, that she is not being paid family pension only because she was married to the ex-serviceman after his retirement from active service. This has come to happen because Para 6 of the Army Instructions No. 51 of 1980 which has defined "Family", though includes wife, says in Note (2) that marriage after retirement will not be recognised.

2. The petitioner has assailed the reasonableness of this provision and we have no difficulty in agreeing with the petitioner inasmuch we cannot countenance the stand and submission that marriages after retirement are performed with an eye to get family pension. This thinking is really abhorrent. As persons retire early from armed services, they remain of marriageable age in many cases and do need company of a consort to be with them in times of distress. As family pension becomes due on the death of the incumbent, the rider contained in the Note is indeed a harsh and heartless provision, as it denies family pension to those who shared the difficulties of the ex-servicemen faced after their retirement.

3. In view of the above, we strike down Note (2) because of its irrationality and direct the respondents to pay family pension to the petitioner, as if the aforementioned Army Instructions had not contained Note (2). All the required actions shall be taken within three months from today.

4. The petition is allowed accordingly. Cost assessed at Rs. 5,000.

G.N.

Petition allowed.