



2026:CGHC:7568-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5822 of 2023

Filisita Lakra Wd/o Late Shri Lobin Lakra Aged About 68 Years R/o House No.28, Ward No.02, Koyla Kachhar, Goriya, Tehsil Kunkuri, Jashpur, District : Jashpur, Chhattisgarh

... **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through Secretary, Department Of Finance, Government Of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District : Raipur, Chhattisgarh

2 - Director Directorate Of Treasury, Accounts And Pension, Department Of Finance, Government Of Chhattisgarh, Indravati Bhawan, Sector 19 Kotara Bhantha, Atal Nagar Nava Raipur, Chhattisgarh 492101.

3 - The Inspector General Of Police Surguja Range, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

4 - The Commandant 10th Battalion Chhattisgarh Armed Force, Surajpur, Kanakpur Silfili, District : Surajpur, Chhattisgarh

5 - Divisional Joint Director Treasury, Account And Pension, Surguja Division Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

6 - The Treasury Officer Surguja, Ambikapur, District : Surguja (Ambikapur), Chhattisgarh

7 - The Treasury Officer Jashpur, Jashpur Nagar, District : Jashpur, Chhattisgarh

... **Respondent(s)**

For Petitioner(s) : Mr. Ashish Beck, Advocate.

For Respondent(s) : Mr. Prasun Kumar Bhaduri, Deputy Advocate
General

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Ravindra Kumar Agrawal, Judge

Order on Board**Per Ramesh Sinha, Chief Justice****11/02/2026**

1. Heard Mr. Ashish Beck, learned counsel for the petitioner. Also heard Mr. Prasun Kumar Bhaduri, learned Deputy Advocate General for the State/respondents.
2. By this petition under Article 226 of the Constitution of India, the petitioner seeks for the following relief(s):

“10.1 That, the Hon'ble Court may kindly be pleased to pass order/direction holding that the Chhattisgarh Police Karmchari Varg Asadharan Parivar Nirvritti Vetan Niyam 1965 is ultra vires qua the discrimination it makes to the mother of the deceased police personnel in respect of grant of extraordinary family Pension after the death of the father of the deceased.

10.2 That, the Hon'ble Court may kindly quash the impugned orders dated 13-12-2021 (ANNEXURE-P/2) and 20-12-2021 (ANNEXURE-P/3)

10.3 That the Hon'ble Court may kindly pass order in nature of mandamus to the respondent State and concerned authorities directing them to reform the discriminatory law against the mother of the deceased police personnel vis a vis the mother of non-police government employees.

10.4 That the Hon'ble Court may kindly direct the respondent authorities to grant family pension to the petitioner along with arrears and interest at the existing Bank interest rates.

10.5 That, the Hon'ble Court may kindly be pleased to pass any other order/direction granting any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case.”

3. The facts, as projected by the petitioner are that the petitioner is the mother of Late Ignatius Lakra who was a Police Constable (Constable No. 450) in the 10 Battalion of Chhattisgarh Armed Force, at Surajpur. On 11.12.2002 petitioner's son was martyred as a result of encounter between Police Force and Naxals, at a young age of 21 years and left behind his father Lobin Lakra, his mother i.e. the petitioner and an elder brother and two sisters. Lobin Lakra, the father of martyr Ignatius Lakra was receiving family pension after the death of his son. But Lobin Lakra also expired on 23-08-2020. Before his death, Lobin Lakra was receiving pension from Treasury Office, District-Jashpur through the State Bank of India, Branch- Kunkuri.
4. According to Mr. Beck, learned counsel for the petitioner, after the death of Lobin Lakra, the petitioner, who is the mother of martyr Ignatius Lakra is eligible to receive the family pension. The petitioner informed the authorities about the death of Lobin Lakra and requested that the family pension be given to her. On 27.11.2020, respondent No. 2 ie. the Commandant, 10th Battalion, CGAP, Surajpur sent a letter to respondent No. 5 i.e. the Treasury Officer, District Jashpur informing about the death of Lobin Lakra and asked the Treasury officer to take necessary steps for disbursement of pension to the petitioner. When the petitioner contacted the office of respondent No. 5, she was informed that the necessary direction has to come from respondent No. 4-the Treasury Officer, Surguja, Ambikapur. Therefore on 21.01.2021 the petitioner again sent a representation with regard to grant of pension to the Joint Treasury Officer, Ambikapur and a copy to the Commandant, 10th Battalion, CGAF, Surajpur. Subsequently the petitioner received a letter dated 06.02.2021 issued by the respondent No. 4, the Treasury Officer, Ambikapur, District Surguja stating that the Pension Payment Order

Account (P.P.O. Account) does not mention the name of the petitioner as nominee and advised the petitioner to contact the office of the respondent No. 2, the Commandant, 10th Battalion, CGAF, Surajpur in this regard. The petitioner contacted the office of Commandant, 10th Battalion, CGAF, Surajpur with regard to her pension and she was informed that the office has already sent the concerned information and documents to the office of Treasury Officer, Ambikapur District- Surguja.

5. Mr. Beck submits that the petitioner is an old lady and she was being made to run from pillar to post to receive rightful pension due to her on account of death of her son who martyred while on duty. Therefore the petitioner filed writ petition before Hon'ble High Court registered as W.P. (S) No. 5895/2021, Filisita Lakra v. State of Chhattisgarh Ors. The Hon'ble High Court, vide order dated 27.10.2021 passed order and directed the respondents to scrutinize and decide the application of the petitioner at the earliest preferably within a period of 60 days from the date of receipt of copy of the order. After the receipt of the copy of the order of Hon'ble High Court dated 27.10.2021 the impugned order dated 13.12.2021 (ANNEXURE-P/2) was passed by the respondent No. 4 which states that after the death of family pensioner there is no direction under the Chhattisgarh Police Karmchari Varg Asadharan Parivar Nirvritti Vetan Niyam 1965 to provide Family Pension to his/her successor. Subsequently, by letter dated 20.12.2021 (ANNEXURE-P/3) the respondent No. 2 communicated the decision taken by the respondent No. 4 to the petitioner. After the death of person receiving Family Pension there is no direction under the Chhattisgarh Police Karmchari Varg Asadharan Parivar Nirvritti Vetan Niyam 1965 to provide Family Pension to his/her successor. Thus the respondent No. 2 further declared that the petitioner is not eligible for payment of Family Pension

6. Mr. Beck submits that the Chhattisgarh Police Karmchari Varg Asadharan Parivar Nirvritti Vetan Niyam 1965 is discriminatory, because the Chhattisgarh Civil Services (Extraordinary Pension) Rules of 1963 (*for short, the Rules of 1963*) provides that the pension sanctioned to the father (of deceased employee) will, after his death, be payable to mother. Note 6 of Schedule III of the Rules of 1963 states that subject to the provisions of Note 5, pension sanctioned to the father under these rules will, after his death, be payable to mother. The Rules of 1965 are supposed to follow the earlier Rules of 1963, but with respect to the family pension to be received by the mother of the deceased employee (after the death of father) the Rules of 1965 are arbitrary, unreasonable and discriminatory. The notification dated 10.09.965 as issued by the Finance Department of the erstwhile Government of Madhya Pradesh state that the Rules of 1965 are being made in compliance of or following the Rules of 1963. The Rules of 1965 have been made in compliance of or following the Rules of 1963. So any deviation from the Rules of 1965 which is unreasonable and discriminatory is illegal and unconstitutional. The petitioner is the mother and legal heir of Late Martyr Ignatius Lakra who died when on duty and denial of pension to her is illegal and arbitrary.
7. In response, relying on the return filed, Mr. Bhaduri submits that the grievance of the petitioner is that the respondent Department vide order dated 13.12.2021 and 20.12.2021 rejected the claim of the petitioner for grant of family pension after the death of the father of the deceased employee. It has been stated in the impugned order that the provision for grant of family pension is Governed the Pension Rules, 1965, in which there is no such provision for extending benefit of family pension to the successor of the family pensioner. In present case after martyr of the son

of the petitioner, the husband of the petitioner was receiving the family pension and after her husband expired, the petitioner being mother of the martyr Late Ignatius Lakra, claimed for continuity of family pension to be paid to her. The petitioner had prayed for declaring the Pension Rules 1965 to be ultra vires on the ground that the same is violative of Article 14 and inconsistent with the provisions of Rules of 1963. It is a settled principle laid down by catena of Judgments passed by the Hon'ble Supreme Court, that the Rules can be framed under the proviso to Article 309 of the Constitution of India being legislative in character cannot be struck down merely because the Courts think that they are not reasonable, they can be struck down only on the grounds upon which a legislative measure can be struck down. The only test that that such Rule has to pass is that of Articles 14 and 16 of the Constitution of India. Further, it has been held that in a situation of manifest arbitrariness, then a Rule can be held to be ultra vires.

8. Mr. Bhaduri submits that in exercise of powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of then the Madhya Pradesh (Now Chhattisgarh) framed the Pension Rules 1965 which is the special rule applicable to the members of police force who got martyred in the encounter with dacoit and naxal during their duty which regulates the payment of family pension to the family members of those members of police force. Undisputedly, the Pension Rules 1965 is a special rule framed for special category of class. Rule 5(5)(iv) of Pension Rules 1965 provides that if the deceased employee not survived with widow then the pension will be distributed amongst the family member as provided therein. There is no provision to extend the benefit of family pension to another member of the family if the first receiver of family pension expired. Therefore the claim of the petitioner is rightly

rejected on the ground that after the death of the father of the deceased employee the mother of the deceased employee cannot be entitle for the family pension and there is no illegality in passing the impugned orders. So far the contention of the petitioner is that provision of Pension Rules 1965 is inconsistent to the Pension Rules 1963, it is submitted that the Rules of 1963 has been framed in exercise of the powers conferred by the proviso to Article 309 of Constitution of India which is applicable to all persons paid from civil estimates and other than those to whom the Workmen's Compensation Act 1923 applies. It is clear from nature of applicability that the Pension Rules of 1963 is a general rule applicable all members of civil services within the State. Moreover Note-6 of Schedule-III of pension rules 1963 inserted through amendment notification NO 2525-IV-N-11-70 dated 30/11/1970 which is subsequent to the Pension Rules of 1965. The Note-6 provides for grant of family pension to mother after the death of father of deceased employee. The Pension Rules of 1963 is a general rule which deals with payment of family pension, whereas the Pension Rules of 1965 came into existence later on as a special rules deals with payment of family pension to special category of members of police force. It is settled principle that the subsequent special rule always prevail over the earlier general rule otherwise what would be the intention of the legislature to frame special rule knowing very well about existence of the general rule governing the same field. As such, he prays for dismissal of this petition.

9. In response, placing reliance on the rejoinder filed, Mr. Beck submits that the act of the respondent authorities in denying pension to the mother of a martyr is unjust and illegal.
10. Mr. Bhaduri, learned Deputy Advocate General submits that in case this Court is of the view that Rule 3 of the 1965 Rules are ultra vires the

Constitution, then a middle path may be adopted and instead of declaring the Rules of 1965 as ultra vires, this Court may interpret the same in a manner which makes it harmonious with the Rules of 1963. In support of his contentions, he places reliance on the judgment of the Apex Court in ***Pandurang Ganpati Chaugule v. Vishwasrao Patil Murgud Sahakari Bank Ltd.*** {Civil Appeal No. 5674/2009, decided on 05.05.2020} reported in **(2020) 9 SCC 215**.

11. We have heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.
12. The dispute involved in this petition, in short is that after the death of the son of the petitioner, the husband of the petitioner i.e. the father of the martyr was getting pension but after his death, the mother is not being granted any pension as there is no provision in the existing Rules of 1965 to grant pension to the mother of the deceased employee. Admittedly, the martyr was unmarried while he laid his life in a naxal attack while performing his duties. The husband of the petitioner was earlier getting the pension but after his death, the petitioner is not being given the pension because of the absence of any provision as is available in the Rules of 1963.
13. In the Rules of 1963, there was an amendment in the year 1970 by which a note, being Note 6 was added which states that subject to the provisions of Note 5, pension sanctioned to father under these rules will, after his death, be payable to mother. Had similar amendment being made to the Rules of 1963, the petitioner would have been entitled to get the pension after the death of her husband.
14. The Rules of 1965 were made in compliance of the Rules of 1963 as is evident from the Notification dated 10.09.1965 (Annexure P/1) and as

such, it can safely be held that the State Government ought to have made similarly amendments as has been done in the Rules of 1963. If an unmarried employee dies then either the mother or the father of the said employee is entitled to receive the pension. The Rules of 1965 were made specially for the police personnel keeping in view their high risk duties especially in the naxal affected areas. When the Rules of 1965 have taken care of the situation that when the father of the deceased employee is getting the pension, then after his death, the mother of the deceased employee shall be given pension, there is no manner of doubt that the Rules of 1963 should also contain similar provisions and as such, this Court can very well interpret the same in a manner which makes the provisions of Rules of 1965 harmonious with the Rules of 1963, in light of the observations made by the Apex Court in ***Pandurang Ganpati Chaugule*** (supra). It would be beneficial to quote the relevant paragraphs for ready reference, which reads as under:

“IN REFERENCE QUESTION NO.2:

103. *The next question is of the effect of Section 56(a) on the definition of “banking company” as defined in Section 5(1)(b) of the BR Act, 1949. It is necessary to consider the definition of “banking” as contained in the SARFAESI Act. The term “bank” has been defined in Section 2(1)(c) to mean “banking company”, a corresponding new bank, a subsidiary bank or a multi-State cooperative bank or such other bank which the Central Government may by notification specify for the Act. The term “banking company” under Section 2(d) shall have the meaning assigned to it in Section 5(c) of the BR Act, 1949. Thus, the definition of “banking company” stands incorporated in Section 2(1)(d) of the SARFAESI Act, which came into force on 21-6-2002. Section 56(a) was incorporated in the BR Act, 1949 by Act 23 of 1965, w.e.f. 1-3-1966. On that date, Section 56(a) became part of the statute. Section 5(c) of the BR Act, 1949 defines “banking company” to mean any company which transacts the business of banking. By virtue of Section 56(a), a reference to a “banking company” or “the company” or “such company” shall be construed as references to a*

cooperative bank for the application of the Act to the cooperative banks. Section 5(c) was not amended, and other provisions were also not amended where they were placed. However, amendments were incorporated by a different Chapter V by way of various provisions incorporated in Section 56 as it was necessary to retain certain provisions in the existing form as they applied to other banks and companies considering that the amendments and certain modifications which were necessary and were extensively required. The provisions in amended form in their application to the cooperative banks were separately provided. When the BR Act, 1949 was applied to the cooperative bank, all the provisions under the Act concerning "incorporation, regulation and winding up" were omitted insofar as the 1949 Act is applied to cooperative banks, though they continue to exist in the Act for other entities but not concerning cooperative banks. It was mentioned in the advice given to the President under Article 117 that these matters were specifically not covered under Schedule VII List I Entry 45 and formed the subject-matter of List II Entry 32. Thus, when we apply the provisions of the 1949 Act to a cooperative bank, the definition of "banking company" has to be read to include a cooperative bank. Section 56(a) becomes part of Section 5(c), although it is located in a separate place. As only Part V of the Act applies to the cooperative banks, Section 56(a) amends the definition of the "banking company", and it becomes an integral part of Section 5(c), as the full effect is required to be given.

104. *The aspect of incorporation by reference of earlier Act into later has been dealt with in Principles of Statutory Interpretation, 12th Edn. 2010 by Justice G.P. Singh at pp. 318-320 thus:*

"Incorporation of an earlier Act into a later Act is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. [Mary Roy v. State of Kerala, (1986) 2 SCC 209, 216 : AIR 1986 SC 1011; Nagpur Improvement Trust v. Vasantrao, (2002) 7 SCC 657, 677 : AIR 2002 SC 3499, 3512.] When an earlier Act or certain of its provisions are incorporated by reference into a later Act, the provisions so incorporated become part and parcel of the later Act as if they had been "bodily transposed into it". [Ram Sarup v. Munshi, AIR 1963 SC 553, 558 : (1963) 3 SCR 858; Nagpur Improvement Trust v.

Vasantrao, (2002) 7 SCC 657, 677 : AIR 2002 SC 3499, 3512.] The effect of incorporation is admirably stated by Lord Esher, M.R.: "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed in it." [Wood's Estate, *In re*, (1886) LR 31 Ch D 607, 615 (CA); *Ram Kirpal Bhagat v. State of Bihar*, (1969) 3 SCC 471, 478 : 1970 SCC (Cri) 154 : AIR 1970 SC 951, 957; *Bolani Ores Ltd. v. State of Orissa*, (1974) 2 SCC 777, 794 : AIR 1975 SC 17, 29 : (1975) 2 SCR 138; *Mahindra & Mahindra Ltd. v. Union of India*, (1979) 2 SCC 529, 548 : AIR 1979 SC 798, 810-811; *Onkarlal Nandlal v. State of Rajasthan*, (1985) 4 SCC 404, 415 : 1986 SCC (Tax) 34 : AIR 1986 SC 2146; *Surana Steels (P) Ltd. v. CIT*, (1999) 4 SCC 306, 313 : AIR 1999 SC 1455, 1459 (p. 233 of 7th edition of this book is approvingly quoted).] The result is to constitute the later Act along with the incorporated provisions of the earlier Act, an independent legislation which is not modified or repealed by a modification or repeal of the earlier Act. [*Narottamdas v. State of M.P.*, AIR 1964 SC 1667, 1670 : (1964) 7 SCR 820; *Bolani Ores Ltd. v. State of Orissa*, (1974) 2 SCC 777 : AIR 1975 SC 17 : (1975) 2 SCR 138; *Mahindra & Mahindra Ltd. v. Union of India*, (1979) 2 SCC 529 : AIR 1979 SC 798; *Nagpur Improvement Trust v. Vasantrao*, (2002) 7 SCC 657 : AIR 2002 SC 3499; *Sneh Enterprises v. Commr. of Customs*, (2006) 7 SCC 714, para 13 : (2006) 7 SLT 615 (passage from 10th edition of this book is approvingly quoted).] As observed by Brett, J.: "Where a statute is incorporated, by reference, into a second statute, the repeal of the first statute by a third does not affect the second". [*Clarke v. Bradlaugh*, (1881) LR 8 QBD 63, 69 (CA) referred to in *Ram Sarup v. Munshi*, AIR 1963 SC 553, 558 : (1963) 3 SCR 858; *Collector of Customs v. Nathella Sampathu Chetty*, AIR 1962 SC 316, 334 : (1962) 1 Cri LJ 364 : (1962) 3 SCR 786. See further *Jethanand Betab v. State of Delhi*, AIR 1960 SC 89, 91-92 : 1960 Cri LJ 160 : (1960) 1 SCR 755; *Bolani Ores Ltd. v. State of Orissa*, (1974) 2 SCC 777 : AIR 1975 SC 17 : (1975) 2 SCR 138; *Mahindra & Mahindra Ltd. v. Union of India*, (1979) 2 SCC 529 : AIR 1979 SC 798; *Nagpur*

Improvement Trust v. Vasantrao, (2002) 7 SCC 657 : AIR 2002 SC 3499] To the same effect is the statement by Sir George Lowndes: "It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function, effectually without the addition. [Secy. of State for India in Council v. Hindusthan Cooperative Insurance Society Ltd., 1931 SCC OnLine PC 37 : (1930-31) 58 IA 259 : AIR 1931 PC 149, 152. Referred to in Municipal Commr. of Howrah v. Shalimar Wood Products (P) Ltd., AIR 1962 SC 1691, 1694 : (1962) 2 Cri LJ 636 : (1963) 1 SCR 47; Bolani Ores Ltd. v. State of Orissa, (1974) 2 SCC 777 : AIR 1975 SC 17, 29 : (1975) 2 SCR 138; Mahindra & Mahindra Ltd. v. Union of India, (1979) 2 SCC 529, 548 : AIR 1979 SC 798, 810-811.] Ordinarily if an Act is incorporated in a later Act, the intention is to incorporate the earlier Act, with all the amendments made in it up to the date of incorporation. [State of Maharashtra v. Madhavrao Damodar Patil, AIR 1968 SC 1395, 1400 : (1968) 3 SCR 712] The rule that the repeal or amendment of the Act which is incorporated by reference in a later Act is not applicable for purposes of the later Act is subject to qualifications and exceptions. [See text and notes 9-41, pp. 324-332 [G.P. Singh, Principles of Statutory Interpretation, 12th Edn., 2010].] A distinction is in this context drawn between incorporation and mere reference of an earlier Act into a later Act. [See text and notes 14-21, pp. 326-328 [G.P. Singh, Principles of Statutory Interpretation, 12th Edn., 2010].] Further, a distinction is also drawn when what is referred to is not an earlier Act or any provision from it but law on a subject in general. [See text and notes 10-13, pp. 325, 326 [G.P. Singh, Principles of Statutory Interpretation, 12th Edn., 2010].] There is, however, no controversy on the point that when any Act or rules are adopted in any later Act or rules, such adoption normally whether by incorporation or mere reference takes in all the amendments in the earlier Act or rules till the date of adoption. [Rajasthan SRTC v. Poonam Pahwa, (1997) 6 SCC 100, 111-112 : AIR 1997 SC 2951, 2957. Also see text and note 80 [G.P. Singh,

Principles of Statutory Interpretation, 12th Edn., 2010].] ”

105. *The present one is a case of incorporation by reference in the same Act by a subsequent amendment in the application to cooperative banks. When we apply the provisions of Section 5(c) to the cooperative banks, we have to read the cooperative banks as part and parcel of the said definition as mandated statutorily. In case a company is not taken as a reference to the cooperative societies/banks in Section 5(c), several problems as to the interpretation of Section 56 would arise. It would have become necessary to amend all the provisions wherever the words “banking company” occur in the BR Act, 1949 in the application to cooperative banks.*

106. *With respect to legislative device of incorporation by reference in Mary Roy v. State of Kerala [Mary Roy v. State of Kerala, (1986) 2 SCC 209 : AIR 1986 SC 1011] , the Court held: (SCC pp. 216-17, para 7)*

“7. ... The legislative device of incorporation by reference is a well-known device where the legislature instead of repeating the provisions of a particular statute in another statute incorporates such provisions in the latter statute by reference to the earlier statute. It is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of an earlier statute in a later statute. But when the legislature intends to adopt this legislative device the language used by it is entirely distinct and different from the one employed in Section 29 sub-section (2) of the Indian Succession Act, 1925. The opening part of Section 29 sub-section (2) is intended to be a qualificatory or excepting provision and not a provision for incorporation by reference. We have no hesitation in rejecting this contention urged on behalf of the respondents.”

107. *In U.P. Avas Evam Vikas Parishad v. Jainul Islam [U.P. Avas Evam Vikas Parishad v. Jainul Islam, (1998) 2 SCC 467 : AIR 1998 SC 1028] , it was observed: (SCC pp. 478-79, para 13)*

“13. ... The determination if a legislation was by way of incorporation or reference is more a matter of construction by the courts keeping in view the language employed by the Act, the purpose of referring or incorporating provision of an existing Act and the effect of it on the day-to-day working. Reason for it is the courts, prime duty to assume

that any law made by the legislature is enacted to serve public interest.”

108. *In Portsmouth Corpn. v. Smith [Portsmouth Corpn. v. Smith, (1885) LR 10 AC 364 (HL)] , it was opined: (LR p. 371)*

“Where a single section of an Act of Parliament is introduced into another Act, I think, it must be read in the sense which it bore in the original Act from which it is taken, and that consequently it is perfectly legitimate to refer to all the rest of that Act in order to ascertain what the section meant, though those other sections are not incorporated in the new Act.”

Lord Blackburn further observed thus: (Portsmouth Corpn. case [Portsmouth Corpn. v. Smith, (1885) LR 10 AC 364 (HL)] , LR p. 371)

“I do not mean that if there was in the original Act a section not incorporated, which came by way of a proviso or exception on that which is incorporated, that should be referred to, but all others, including the interpretation clause, if there be one, may be referred to. It is a dangerous mode of draftsmanship to incorporate a section from a former Act; for unless the draftsman has a much clearer recollection of the whole of the former Act than can always be expected, there is great risk that something may be expressed which was not intended.”

15. Applying the ratio laid down by the Apex Court in **Pandurang Ganpati Chaugule** (supra), we have no hesitation in holding that the Act of 1965 should also contain similar provision as provided in the Rules of 1963 which was brought into by amendment in the year 1970 so as to provide the benefit of pension to the mother of the deceased employee after the death of father who had been sanctioned pension. Denial of pension to the mother of the deceased employee is highly unjust especially when in the present case, the son of the petitioner laid his life in a naxal attack.
16. Accordingly, we dispose of this petition with an observation that the ‘Note 6’ inserted by way of amendment vide Notification dated 30.11.1970 in the Rules of 1963 be read as a part of the Rules of 1965 also and the

pension sanctioned to father under the Rules of 1965 will, after his death, be payable to the mother. As such, the petitioner would be entitled to grant of pension and the respondent authorities are directed to consider and decide the case of the petitioner in light of the observations made in this petition, within a period of six weeks from today.

17. The writ petition accordingly stands **disposed of**. No order as to costs.

Sd/-
(Ravindra Kumar Agrawal)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

Head Note

Where a later statute or set of rules is framed in compliance with or based upon an earlier statute, and certain beneficial or ancillary provisions are absent in the later enactment, the Court need not necessarily declare the later enactment *ultra vires*. Instead, applying the doctrines of incorporation by reference and harmonious construction, the Court may read the beneficial provisions of the earlier statute into the later one, so as to give full effect to the legislative intent and to avoid injustice or arbitrariness.