

THE HIGH COURT

JUDICIAL REVIEW

No. 62 of 1987

BETWEEN:

NORAH McDERMOTT

Applicant

and

THE MINISTER FOR SOCIAL WELFARE  
AND THE ATTORNEY GENERAL

Respondents

JUDGMENT

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Judgment of the President of the High Court delivered on the  
10th day of June 1988

The Applicant herein is a married woman and resides with her husband and two children, Darren born on the 20th day of January 1972, and Tania, born on the 23rd day of September 1976, at Kellystown, Leixlip in the County of Dublin.

Her husband is in full time employment and is not dependent on the Applicant in the financial sense.

In these proceedings, the Applicant claims, inter alia, that:-

- (1) A declaration that she is entitled to be paid unemployment benefit from the 23rd day of December 1984 until the 12th day of March 1985 at the appropriate personal rate then applicable to a married man in similar circumstances.
- (2) A declaration that she is entitled to be paid an increase in the appropriate personal rate of unemployment benefit in respect of an adult dependant and two child dependants at the appropriate rate then applicable for the period 23rd day of December 1984 to 12th day of March 1985.

- (3) That she is entitled to be paid disability benefit from the 12th day of March 1985 until the 13th day of March 1986 at the appropriate personal rate then applicable to a married man in similar circumstances.
- (4) A declaration that she is entitled to an increase on the appropriate personal rate of disability benefit in respect of an adult dependant and two child dependants at the appropriate rate then applicable for the period 12th day of March 1985 to the 13th day of March 1986.
- (5) A declaration that she is entitled to be paid unemployment assistance from the 25th day of July 1986 until the 26th day of September 1986 at the appropriate rate then applicable in regard to a married man in similar circumstances.
- (6) A declaration that she is entitled to an increase on the appropriate personal rate of unemployment assistance in respect of an adult dependant and two child dependants at the appropriate rate then applicable for the period 25th July 1986 to the 25th day of September 1986.

The application is grounded on the affidavit of the Applicant sworn on the 19th day of February 1987, the application of Sally Keogh sworn on the 23rd day of February 1987 and the Statement of Grounds delivered on her behalf in accordance with the provisions of the Rules of the Superior Courts.

The Statement of Opposition and the affidavits verifying same were delivered on behalf of the first-named Respondent on the 11th day of May 1987.

For the reasons stated by me in the course of my judgment in the case of Ann Cotter, Applicant, and the Minister for Social Welfare

and the Attorney General, Respondents, delivered on this day, I am satisfied that the Applicant is entitled to a declaration that she is entitled to be paid unemployment benefit from the 23rd day of December 1984 until the 12th day of March 1985 at the appropriate personal rate then applicable to a married man in similar circumstances, taking into account the contribution record of the Applicant.

With regard to her claim for unemployment assistance in respect of the period 25th day of July 1986 until the 26th day of September 1986, a similar situation exists as existed in Ann Cotter's case and for the reasons therein set forth, I will not grant her any relief in respect of this claim.

The entitlement to and payment of disability benefit is governed by the provisions of Sections 18 to 23 of the Social Welfare (Consolidation) Act, 1981.

Section 20 provides that:-

" Subject to this Act, the weekly rates of disability benefit shall be as set out in Column (2) of Part 1 of the Second Schedule".

The rates therein set forth are discriminatory against married women.

Section 21 which provides for increases for adult and child dependants is in the same terms as Section 32 which deals with increases for adult and child dependants in unemployment benefit.

For the reasons set forth by me in the course of Mrs. Cotter's case, I have held that the terms of Article 5 of the Social Welfare (Normal Residence) Regulations, 1974 (S.I. No 211 of 1974) are not in any way discriminatory on the grounds of sex and inconsistent

with the provisions of Article 4(1) of the Council Directive 79/7/EEC of 19th December 1978.

Because of this, I am satisfied that the Applicant herein is not entitled to an increase in her disability benefit in respect of the two children.

For the reasons set forth by me in Mrs. Cotter's case, I consider that it would be unjust and inequitable to grant the Applicant any relief in respect of her claim for an increase in Disability Benefit in respect of an adult dependant, viz. her husband, who is not financially dependent on her.

She is entitled to a Declaration that she is entitled to be paid in respect of the period from the 12th day of March 1985 to the 13th day of March 1986 disability benefit at the same rate as that paid to a married man, taking into account the contribution record of the Applicant.

*Approved  
W. Hamilton*