

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No. 2563 of 1996
Date of Decision: 14.1.2015**

Baljit Kaur

... Appellant

Versus

Punjab State Government & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. BS Sidhu, Advocate,
for the appellant.

Mr. PK Jain, Addl.A.G., Punjab,
for the respondents.

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

B.S. WALIA, J.(Oral)

The instant regular second appeal has been filed by appellant/plaintiff Baljit Kaur challenging the judgment and decree passed by the Subordinate Court as well as the Lower Appellate Court denying her the relief of family pension, which she had claimed as widow of a government employee.

Brief facts of the case as set out by the appellant/plaintiff are that her husband Jugraj Singh joined service as a Beldar in the department of Soil Conservation, Government of Punjab, w.e.f. 12.11.1974 and absented from duty w.e.f. 24.8.1982. During the period of absence, the plaintiff's husband died on 25.11.1989. However, prior thereto, the department vide letter dated 18.3.1986 (Ex.DX/1) from the Soil Conservation Officer to the Chief Soil Conservation Officer, Punjab while intimating that his period of absence had been treated as leave of the kind due, recommended

the posting of the plaintiff's husband to another Division. It was in the aforementioned background that the plaintiff being widow of the deceased employee filed the suit claiming death-cum-retirement gratuity, provident fund as well as family pension.

On the pleadings of the parties, the following issues were framed:-

- “1. Whether the plaintiff is entitled to declaration as prayed for and for issuance of mandatory injunction directing the defendants to pay all the benefits prayed for in the suit? OPP
2. Whether the Civil Court at Faridkot has got no particular jurisdiction? OPD
3. Whether the suit is pre-matured? OPD
4. Whether the plaint is vague? OPD
5. Relief.”

On the basis of pleadings as well as evidence led by the parties, the Subordinate Court partly decreed the suit to the extent of grant of death-cum-retirement gratuity and provident fund, but denied the claim for family pension by placing reliance upon Rule 3.17-A(2) of the Punjab Civil Services Rules, Volume II, (for short 'the PCS Rules').

Appeal filed by the plaintiff against the denial of family pension was dismissed by the Lower Appellate Court.

I have heard the learned counsel for the parties and with their able assistance have gone through the records of the case.

Counsel for the appellant submitted that the following substantial questions of law arise for consideration in the instant regular second appeal:-

- “1. Whether denial of family pension in terms of Rule 3.17 A(2) of the Punjab Civil Services Rules, Vol-II, by the Courts below was legally unsustainable?
2. Whether the appellant is entitled to family pension in terms of Rule 6.17 (2), of the Punjab Civil Services Rules, Vol-II,?
3. Whether previous services of an employee can be forfeited without holding an inquiry and without passing an order?”

Learned counsel for the appellant by referring to Rule 3.17-A(2) of PCS Rules submitted that the same had no applicability to the facts of the case and that it was in fact Rule 6.17(2) of the PCS Rules, which was applicable. On the basis of the same, learned counsel contended that the plaintiff was entitled to grant of family pension as the conditions stipulated in the rules were fulfilled and there was no lawful basis for the denial of family pension.

Rule 3.17-A(2) and 6.17(2) *ibid* are reproduced as under:-

“3.17-A(2). An interruption in the service of a Government employee caused by willful absence from duty or unauthorized absence without leave, shall entail forfeiture of the past service.”

xxx xxx xxx xxx xxx

“6.17(2). The Scheme will be administered as below:-
 (i) The family pension will be admissible in case of death while in service or after retirement if at the time of death the retired Government employee was in receipt of a

compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government employee should have completed a minimum period of one year of continuous service, without break. The family pension will not be admissible in cases of death after retirement, if the retired employee at the time of death was in receipt of gratuity only.

Provided that the condition of completing a minimum period of one year continuous service will not be applicable in the case of Government employee who has been medically examined and declared fit for entry into Government service.

(ii) The term "One Year Continuous Service" used in Clause (i) is inclusive of permanent and temporary service in a Pensionable establishment and any period of leave including Extraordinary leave but does not include Boy Service and suspension period unless that is regularized by the competent authority."

Rule 3.17-A(2) of Chapter-III of the PCS Rules, which deals with service qualifying for pension envisages passing of an order of forfeiture of past service in the case of willful absence from duty or unauthorized absence without leave only after compliance with the principles of natural justice. However, non-compliance with the principles of natural justice is conspicuously noticable in the instant case since learned counsel for the State of Punjab has very fairly conceded that no inquiry was conducted on account of the alleged willful absence etc. of the plaintiff's husband from duty nor was any order of forfeiture of past service passed.

Learned counsel for the appellant contends that the

appellant was entitled to family pension in terms of Rule 6.17(2) *ibid* as the conditions stipulated therein namely of one year of continuous service without break stood fulfilled, thus, there was no impediment in the grant of family pension

Learned counsel for the appellant contends that the Subordinate Court had rightly granted the benefits of death-cum-retirement gratuity as well as provident fund to the appellant, yet erroneously it declined the grant of family pension despite observing that no inquiry had been conducted nor was any order of termination passed. Learned counsel contends that once the plaintiff's husband had completed one year of continuous service without break and no departmental proceedings had been conducted for arriving at a finding w.r.t. willful absence nor had any order of forfeiture of service been passed, then in terms of Rule 6.17(2)(i) of the PCS Rules, the appellant-plaintiff would be entitled to grant of family pension.

In support of his submission, learned counsel for the appellant has relied upon the decision of a Single Bench of this Court in the case of Channo Devi and others Vs. The State of Haryana & another, 1992(2, *Recent Services Judgments* 476, which lays down that Rule 6.17(2)(i) of the PCS Rules, envisages that family of a Government employee, who dies in harness after having rendered more than one year's service, is entitled to the benefit of family pension.

Learned counsel for the State, on the other hand, submits that although death-cum-retirement gratuity was granted to the plaintiff, it would necessarily be for the period between 12.11.1974 to

24.08.1982 i.e. the date of joining as well as date from which the plaintiff's husband absented from duty and in any case not beyond 18.3.1986 i.e. the date of Ex. DX/1 vide which the period of absence of the plaintiff's husband had been treated as leave of the kind due and he had been recommended for posting in another Division by the Divisional Soil Conservation Officer.

Learned counsel for the respondent further argued that although admittedly no disciplinary proceedings had been conducted for holding the plaintiff's husband as willfully absent or for being unauthorizedly absent without leave, yet the same would amount to abandonment of service and, therefore, the same would automatically result in forfeiture of the past service. In the circumstances, learned counsel for the respondent submitted that the Courts below rightly dismissed the claim of the appellant/plaintiff for grant of family pension in terms of Rule 3.17-A(2) of the PCS Rules.

I am afraid that the aforesaid contention of the counsel for the State cannot be accepted for the reason that a finding of willful absence from duty or unauthorized absence without leave could only be recorded on the basis of disciplinary proceedings and compliance of the principles of natural justice. The same admittedly is missing in the instant case. Even otherwise, the entitlement to family pension fructified on the completion of one year's continuous service, which admittedly was much prior to the alleged absence.

Admittedly, no inquiry proceedings were conducted by the department to arrive at a finding that the plaintiff's husband was willfully absent or that the consequences thereof entailed forfeiture of

past service or that an order of forfeiture of service was passed in respect thereto. In paragraph No.10 of its judgment, the Subordinate Court while considering the claim for provident fund & death-cum-retirement gratuity held as under:-

“Thus, keeping in view the entries in the service book, copy Ex.DX/1 he was found serving from 12.11.1974 till the date of his death i.e. 25.11.1989 after excluding the period of his absence from duty. So, all the permissible benefits of Jugraj Singh (deceased), as he was not terminated or dismissed till his death, are required to be paid to the plaintiff including his G.P. Fund amount. So, the plaintiff is certainly entitled to these two benefits.”

A perusal of the position as noted above reveals that the plaintiff's husband had more than one years completed service to his credit at the time of his death. No departmental proceedings had been conducted for arriving at a finding w.r.t. his being willfully absent nor had any order of forfeiture of service or termination of service been passed. Conduct of inquiry and passing of orders in terms of Rule 3.17-A(2) of the PCS Rules are essential requirements in keeping with the principles of natural justice. Thus, previous service of the plaintiff's husband could not be treated to have been forfeited in the absence of an inquiry holding him guilty of willful absence from duty/unauthorized absence without leave and passing of an order forfeiting past service. Accordingly, it is held that in the circumstances, Rule 3.17-A(2) of the PCS Rules, could not have been made the basis for denying family pension and the plaintiff is entitled to family pension under Rule 6.17(2) (ii) of the PCS Rules, on

account of plaintiff's deceased husband having completed more than one year of continuous service without break.

In the circumstances, all the substantial questions of law noticed above are answered in favour of the appellant/plaintiff and against the respondent/defendants. In the circumstances, I am of the considered opinion that the plaintiff would be entitled to grant of family pension.

Resultantly, the appeal is allowed. The judgments and decrees of the Courts below declining grant of family pension to the appellant are set aside and the suit filed by the appellant/plaintiff is decreed to include grant of family pension also. However, the appellant/plaintiff shall be entitled to grant of family pension w.e.f. the date of death of her husband i.e. 25.11.1989 since the civil suit was filed on 11.03.1992/04.05.1993. The arrears of family pension payable shall be released within a period of three months from today along with interest @ 6% per annum from the date of entitlement till the same is paid. In case, the payment is not made within the aforesaid period of time, then the appellant/plaintiff would be entitled to interest @ 9% per annum on the arrears of family pension w.e.f. the date of entitlement till date of payment. No order as to costs.

14.1.2015
monika

(B.S. WALIA)
JUDGE