IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10518 of 2012
Date of Decision:- 28.08.2015.

Malkiat Kaur

......Petitioner

Versus

State of Punjab and others

.......Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. **Whether Reporters of local papers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. Surinder Garg, Advocate for the petitioner.

Mr. Vaibhav Sharma, DAG, Punjab.

Mr. S.S. Behl, Advocate for respondent No.4.

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P.B. BAJANTHRI, J.

1.) The petitioner is wife of one Sh. Kaka Singh. Sh. Kaka Singh, deceased employee joined service as a Clerk in the Stationary Department, State of Punjab on 8.12.1965. On 25.6.1976, his services were absorbed in the Punjab School Education Board, Mohali. He has earned promotions to the cadre of Senior Assistant. He was on deputation to Text Book Sales Depot, Ferozepur as a Deputy Manager. While working as such, on 13.8.1987, he died. Petitioner was under the impression that her late husband who was working in the Punjab School Education Board and the post held by him was non-pensionable post. Therefore, she did not claim any pensionary benefits. On the advice of well-wishers, she has approached the authorities seeking family pension and other benefits. On 5.10.2012 some admissible amount was paid to the petitioner to the extent of ₹ 9,540/- + ₹ 945/- Thereafter petitioner claimed family pension with reference to Rule 5.3 of the Punjab Civil Services Rules, Volume-II. The same was not granted. Hence, the present writ petition has been filed.

2.) Learned counsel for the petitioner submitted that petitioner is entitled to family pension as her husband was holding a pensionable post between 1965 to 1976. For the purpose of claim of family pension, it is relevant to read Rule 5.3 of the Punjab Civil Services Rules, Volume-II which reads as follows:-

> *"5.3 (1) When a Government employee is transferred from pensionable Government service to a non-pensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.*
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> *(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by Government or in or under a body controlled or financed by government or municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Govt. to be*

in the public interest, be deemed to have retired from Government service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from the date of such absorption or the date of his voluntary retirement, whichever is later. Each such government employee is required to exercise an option within six months of his absorption for either of the alternatives indicated below:

(a) receiving the monthly pension and death-cum-retirement gratuity under the usual Government arrangements, or

(b) receiving the death-cum-retirement grautuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.

(3) where no option is exercised within the specified period, the employee will be automatically governed by alternative (b). An employee opting for alternative (a) is entitled to commutation of an absorption of the pension admissible to him in accordance with the provisions of rules contained in a chapter XI.

Provided that Government shall have no liability for the payment of family pension in such a case.

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such Corporation, Company, Municipality, Panchayat Samiti or Zila

> *Parishad shall be required in respect of a Government employee whom Government may; by order, declared to be a scientific employee."*

3.) Reading the aforesaid Rule, one of the criterion is that an employee who was transferred from pensionable service to non-pensionable service for the purpose of pension, must actually retire in the non-pensionable post. Whereas in the present case the deceased employee died on 13.8.1987 while he was in service. Therefore, Rule 5.3 (1) do not assist the claim of the petitioner. That apart, shifting of an employee from pensionable post to non-pensionable post are not entitled for family pension as per proviso to Rule 5.3 (3). In view of the aforesaid provision, the petitioner's claim for family pension is not permissible.

4.) Accordingly, the writ petition is dismissed insofar as grant of family pension is concerned. Insofar as interest on the belated settlement of a sum of ₹ 9,540/- + ₹ 945/- is concerned, the respondents should have settled the said amount in the month of November 1987 itself. However, there is inordinate delay in settling the dues of the deceased employee. It may be due to lack of communication between the Government and respondent No.4. Respondent No.4 should have intimated the death of the deceased employee in the year 1987. Therefore, there is inordinate delay in settling the dues of the deceased employee. The first respondent i.e. State of Punjab is liable to pay interest @ 9 % per annum on the amount of ₹ 9,540/- + ₹ 945/- which was disbursed on 5.10.2012 reserving liberty to the first respondent to claim interest amount from the fourth respondent.

5.) Accordingly, the petition is disposed of.

(P.B. BAJANTHRI)
JUDGE

August 28, 2015.
sandeep sethi