

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15601 of 2011

Date of decision : 05.01.2015

Gurbax Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ajay Singla, Advocate
for the petitioner.

Mr. L. S. Virk, Addl. Advocate General, Punjab

AMOL RATTAN SINGH, J.(Oral)

The petitioner in this case seeks family pension to be released to her after the death of her husband on 24.06.2009, he having retired as an Assistant Sub Inspector of Police on 30.06.2006.

2. It is not disputed that the petitioners' late husband, ASI Mehnga Singh, had served for about 36 years in the Punjab Police and upon his retirement, he himself was drawing pension for his service.

3. The petitioner has been denied the benefit vide the impugned letter dated 23.05.2011 (Annexure P-8), on the ground that the late Mehnga Singh had dis-inherited his entire family and had, in fact, filed an affidavit alongwith his pension papers, stating that the person that he would appoint, would be the heir to his movable and immovable properties.

Therefore, despite numerous representations made by the petitioner to respondents no.1 to 3 and even after a legal notice was served upon respondent no.2, family pension has been denied to her, on the above ground.

(Initially, respondent no.5, i.e. the Accountant General (A & E), (Pension Payment Order Branch), Punjab, had sought a clarification from respondent no.3 (Senior Superintendent of Police, Khanna), as to what is to be done in the matter, in view of the affidavit of the late ASI (Retired) Mehnga Singh, received alongwith his pension papers).

4. In the reply filed by respondents, the same stand as has been taken in the impugned letter, has been reiterated, further stating that the decision was taken on the basis of advice sought from the District Attorney.

In the reply, it has also been stated that the death certificate of the late Mehnga Singh, as submitted by the petitioner, alongwith her application seeking grant of family pension, does not seem to be genuine, because there is no application number, date and page number of the register (meaning the Register of Births and Deaths) and further it does not have the signature or designation of the certificate preparing authority. Though a copy of the said death certificate has been annexed alongwith the reply, the original thereof was not produced in Court.

5. Other than the above, a copy of a clipping in a vernacular newspaper, "Ajit", published from Jalandhar, dated 02.02.1997, has been annexed with the reply, a perusal of which shows that the late Mehnga Singh had had published the following item in the newspaper:-

“DISOWNING INFORMATION

“My wife Gurbux Kaur, daughters Manjit Kaur, Narinder Kaur, Nirmal Kaur, son Gurwinder Singh, are out of my control. I disown all of them from my movable and immovable properties. I will not be responsible for any act of them.”

Mehnga Singh son of Surain Singh,
Village Kangniwal, Jalandhar.”

6. After the abovesaid reply was filed, thereafter, in response to the order dated 09.09.2014, passed by this Court (co-ordinate Bench), an additional affidavit was filed on behalf of the respondents, stating therein that after scrutiny of record it had been found that Mehnga Singh had been enlisted as a Constable on 15.09.1970 and that in his nomination form, in terms of Rule 13.7(3) and 14.5(3) of the Punjab Civil Services Rules, Volume II, (wrongly given as 14.3(3) in the reply), Mehnga Singh had nominated the following persons to receive the amount due from his provident fund:-

1. Smt. Harbux Kaur, village Kangniwal, Post Office Hazara, District Jalandhar, showing her to be his wife, aged 18 years.
2. Smt. Kartar Kaur (his mother), further stating below the column referring to his mother, that the nomination in favour of the above named person shall become invalid on addition of another member to his family.

This form, stated to have been signed in the presence of two witnesses, is dated 14.09.1970, i.e. about a month after Mehnga Singhs' enlistment as a Constable.

The additional affidavit further states that since there was a difference in the name of the petitioner and in the name of the nominee, the

petitioner was asked whether she had ever changed her name, to which she replied that she had never done so, either before her marriage or after her marriage. She also stated that Smt. Kartar Kaur, mother of the late Mehnga Singh, had died in the year 1974. This fact, of the death of Smt. Kartar Kaur, was verified from residents of the village also, by the respondents.

7. Thus, it is also the stand of the respondents before this Court, though not in the impugned letter, that the name of the first nominee who would be the beneficiary of the late Mehnga Singhs' provident fund account, also being different to that of the petitioner, the petitioner cannot be treated as his nominee for family pension. It is the admitted stand, however, that the said form containing the name of Harbux Kaur, is only in respect of Mehnga Singhs' provident fund account.

8. Addressing arguments, Mr. Ajay Singla, learned counsel for the petitioner, submitted that the entire stand of the respondents is wholly misplaced, in view of the fact that unless the employee/pensioner actually changed the name of the nominee for family pension, in the proforma to be filled in, simply his filing an affidavit stating that he has disowned his family, could not disentitle the petitioner to family pension, even in terms of the family pension scheme, which is contained in Rules 6.17 to 6.19 of the Punjab Civil Services Rules, Volume II.

As per Rule 6.17(3), family has been defined as follows:-

- “(a) wife in the case of a male Government employee and husband in the case of a female Government employee;
- (b) a judicially separated wife or husband, such separation not being granted on the ground of adultery; provided the marriage took place before the retirement of the Government employee and the person surviving was not held guilty of

committing adultery; and

(c) sons up to the age of twenty-five years.

(d) unmarried daughters up to the age of twenty-five years.

Note 1.-(c) and (d) will include Children adopted legally before retirement.

Note 2.- Marriage after retirement will be recognised for the purpose of this Scheme.”

9. As regards the difference in the name of “Harbux Kaur” and “Gurbax Kaur”, learned counsel submitted that, firstly, the said discrepancy occurs in the nomination form pertaining to the provident fund account and not the family pension account and secondly, obviously it is a typographical error, given the admitted fact that the petitioner was married to the late Mehnga Singh in the year 1968 and had a daughter in the year 1969, after which Mehnga Singh joined service in 1970 and thereafter they had three more children between the years 1972 to 1983. Further, learned counsel submitted, that no other person by the name of Harbux Kaur has ever made a claim to any family pension, or even the GPF account, of the late Mehnga Singh.

10. On the other hand, Mr. L.S. Virk, learned Additional Advocate General, Punjab, supported the stand of the respondents on the ground of both, a different name being given as a nominee in the GPF account of late Mehnga Singh, as also the fact that Mehnga Singh had by overt action disowned his family, including the petitioner. Learned State counsel, therefore, submitted that since family pension would only be admissible to the petitioner on account of the service of her late husband and her late husband having disowned her and even his children, she cannot claim such

benefit.

On query, however, Mr. Virk stated that there had been no change in the nomination papers that the late Mehnga Singh had filled in, with regard to grant of family pension to his wife.

11. Having heard learned counsel for the parties and having gone through the pleadings before this Court, I find the stand of the respondents to be wholly unsustainable, unless of course, they have proof that the death certificate of Mehnga Singh is forged as suggested, though not specifically stated, in the reply dated 14.05.2012.

With that rider, the reasoning given by the respondents is found to be untenable, for the reasons hereinafter given.

12. Firstly, as submitted by the learned counsel for the petitioner, and as admitted by learned State counsel, on query, that despite the affidavit submitted by the late Mehnga Singh alongwith his pension papers, stating that he had disowned his family, the name of the petitioner as a nominee for family pension, has not been either changed or withdrawn.

Therefore, despite the affidavit submitted, as also the public proclamation made by Mehnga Singh, vide publication in a newspaper on 02.02.1997, that he had disowned his family, the legal right of the petitioner, to receive family pension after the death of Mehnga Singh, does not get extinguished. A perusal of Rule 6.17 of the Punjab Civil Services Rules, Volume II, the essential part of which has already been reproduced hereinabove, indeed shows that even a judicially separated husband or wife is entitled to family pension, unless such separation is on the ground of

adultery.

In that regard, firstly, there is nothing on record, whatsoever, to show that there was even an initiation of proceedings for legal separation. Secondly, the charge of adultery obviously does not exist and has not been even remotely suggested. Therefore, in terms of Rule 6.17 (3)(a) as also Rule 6.17(4), the petitioner is very much entitled to receive family pension upon the death of her husband. The relevant clause of Rule 6.17 (4), is reproduced hereinunder:-

“(4) The pension will be admissible:-

(i)(a) in the case of a widow or widower up to the date of death or remarriage whichever is earlier.”

13. I also agree with the learned counsel for the petitioner that simply because the name given in the list of nominees, who would receive the amounts due from the GPF account of Mehnga Singh, is “Harbux Kaur in stead of “Gurbax Kaur”, that would not take away the petitioners' right to receive family pension from the respondents, upon the death of Mehnga Singh.

It also needs mention here, that the petitioner is not, by this petition, seeking release of any amount from the GPF account of her late husband, in which case, of course, it may have been necessary to verify beyond doubt that “Harbux Kaur” and “Gurbax Kaur” is in fact, the same person and as to whether or not the former name has been inserted only on account of a typographical error. However, the petitioner is not seeking any amount from provident fund account of her late husband, which obviously must have been disbursed to him at the time of his retirement, three years prior to his death. Therefore, this issue does not at all arise in the present case.

14. Learned counsel for the petitioner also relied upon a judgment of the Supreme Court in Jodh Singh vs. Union of India (AIR) 1980 SC 2081, wherein it was held that special family pension sanctioned to the widow of an Air Force officer cannot be subject matter of testamentary disposition by the husband.

It was also held in the said judgment that “it is irrelevant whether the deceased had shown his wife as his dependent or not” and that if the President is satisfied that she is the widow, she would be eligible to receive special family pension. It was specifically held in the said judgment, that special family pension is admissible on account of “the status of a widow and not on account of the fact that there was some estate of the deceased that devolved on his death to the widow”.

15. Similarly, it was held in Smt. Violet Issac and others vs. Union of India and others (1991 (1) PLR 542), that the widow of a deceased railway employee is entitled to receive family pension, notwithstanding the will alleged to have been executed by the deceased.

16. Hence, keeping in view the entire discussion hereinabove, this petition is allowed and the impugned letter/order dated 23.05.2011 (Annexure P-8) is quashed. The respondents are directed to release family pension to the petitioner within a period of two months from the date of receipt of a certified copy of this order, alongwith arrears running from one day after the death of the late ASI Mehnga Singh, husband of the petitioner, till the date that payment of such arrears is made to the petitioner. The said arrears would also carry an interest of 12% per annum. The interest however, shall run from 01.08.2009 till the date of actual payment of

arrears, in view of the fact that after ASI (Retd.) Mohnga Singhs' death on 24.06.2009; it would normally have taken that long to process the papers etc. for granting family pension to the petitioner.

No order as to costs.

05.01.2015

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**(AMOL RATTAN SINGH)
JUDGE**