

was granted to the petitioner and the remaining 50% to Mahesh Kumar. On Mahesh Kumar, having joined Government service, his share of family pension was then allocated to his sister Veena Kumari. Veena Kumari got married on 30.01.2006. Thereafter, the petitioner, being the only surviving widow of late Om Parkash, on 31.05.2006, moved a representation to the respondents for transfer of Veena Kumari's share also in her favour, which was rejected through order dated 01.06.2011, giving her a cause to approach this Court through the present petition.

Learned counsel for the parties are ad idem that the case of the petitioner is fully covered in her favour by a Division Bench judgment of this Court in **Ram Dulari vs. State of Haryana and others – 2010 (1) SLR 403**, wherein it has been held as under :-

“8. A perusal of the definition of expression 'family' shows that it would include wife, husband, minor sons and unmarried minor daughters. It is further evident from the perusal of clause 4(iii) that the pension is admissible to a widow/widower upto the date of his/her death or remarriage whichever is earlier. According to sub-para (b) of sub-clause (iii) of clause 4 in the case of minor son/unmarried daughter the pension would remain admissible until he/she attains the age of 25 years. An unmarried

daughter would become ineligible for pension from the date she gets married and a son/unmarried daughter would be rendered ineligible for pension if he or she starts earning livelihood.

9. *The 'Pension Scheme' has further clarified that in case there are more than one widow, the pension has to be paid to both of them in equal share. On the death of one of the widow, her share of pension is to be payable to her eligible minor children and if there are no eligible minor children left, the payment of her share of pension would cease. Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme' further clarifies that where an officer is survived by a widow but who has left behind an eligible minor child from another wife then the eligible minor child would be paid share of pension which his or her mother would have received had she been alive at the time of death of the officer.*

10. *In the present case, family pension has been granted and apportioned in accordance with Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme' because at the time of death of*

Shri Mehar Singh, there were minor children who were born out of his wedlock with Smt. Sona Devi apart from the petitioner who was rendered widow. Note (ii) appended to sub-clause (iii) of Clause 4 of the 'Pension Scheme' is squarely attracted to the facts of the instant case. It postulates a widow surviving the death of her husband and minor child from another wife. It further clarifies that the minor child would become entitled to that share of pension which was payable to her mother had she been alive which obviously according to Note (i) is 50%. Accordingly, 50% share of the family pension was apportioned to the minor children whereas the petitioner continued to get the other 50%. The youngest of the minor children, Shri Braham Singh, attained majority on 13.5.2001 and consequently payment of 50% family pension to them was stopped. The claim of the petitioner is meritorious because had there been no minor child then at the first place she would have got 100% family pension. The same stage has now been set in May 2001 when the minor children have stopped getting their 50% share of the family

pension on account of the fact that every one of them had attained majority. In any case we would interpret the provision of 'Pension Scheme' liberally as it is a piece of social welfare legislation. The State cannot appropriate that amount which would have come to the petitioner. Therefore, the petitioner, who is widow, has rightly claimed that State cannot appropriate 50% of the family pension, which she is entitled to get during her life time. Accordingly, we are of the view that the petitioner would be entitled to the payment of remaining 50% family pension from the date the youngest of the minor children have attained majority and stopped availing the same i.e. 13.5.2001.

11. *The argument of the respondents is wholly misconceived when they argued that according to Note (i) of sub-clause (iii) of clause 4 of the 'Pension Scheme' once the minor children have stopped getting their share on account of attaining majority then the 50% share would cease. A perusal of Note (i) would show that the aforesaid provision is applicable only in a case where an employee is survived by more than one*

widow. In the present case there was only one widow on the date of death of Shri Mehar Singh. It has come on record that Shri Mehar Singh died on 27.8.1980 and his earlier wife Smt. Sona Devi had predeceased him in the year 1976 leaving behind three children, namely, Raj Singh, Manju Rani and Braham Singh, who were born on 5.1.1972, 20.3.1974 and 13.5.1974 respectively. Then he married the petitioner. It is further appropriate to mention that the petitioner also had a minor child, namely, Megh Raj, who was born on 8.12.1980. Therefore, Note (i) would have no application in the absence of at least two widows. The present is a case of one widow who had a minor child of her own and three minor children of her husband, born out of his wedlock with Smt. Sona Devi, who had predeceased him. The respondents have totally misdirected themselves in applying Note (i) to the case of the petitioner whereas the matter is covered by Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme', which does not contemplate ceasing of pension. Therefore, there is no substance in the argument of the respondents and the same is

rejected.

12. For the reasons aforementioned, this petition succeeds. Order dated 17.7.2007 (P-7) passed by the Director General of Police-respondent No. 2 is set aside. The respondents are directed to release 50% share of the family pension to the petitioner, which was being paid to the minor children of deceased wife of Shri Mehar Singh, namely, Smt. Sona Devi, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner shall also be entitled to all the arrears with effect from May 2001 till date alongwith interest at the rate of nine percent per annum. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.”

As per the above quoted judgment, the only surviving widow, on the acquiring of ineligibility of the children of the first wife, is entitled to 100% of the family pension, as is the position in the present case.

Resultantly, the present petition is allowed. The order dated 01.06.2011 (Annexure P-12) is quashed and the respondents are directed to release 50% of the family pension, which was earlier being given to Veena Kumari, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner is also held entitled to the arrears

along with interest @ 9% per annum.

The needful be done within three months from the date of receipt of a certified copy of this order.

(DEEPAK SIBAL)
JUDGE

December 22, 2015
monika