IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16437 of 2013
Date of decision: 09.03.2015.

Sat Pal ..Petitioner

Versus

State of Punjab and others ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. Arun Nehra, Advocate
for the petitioner.

Mr. P.P.S. Thethi, Addl. A.G., Punjab
for the respondents – State.

Daya Chaudhary, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of communication dated 12.01.2010, whereby, family pension has been declined to the petitioner after death of his father. A direction has also been sought to be issued to respondents to sanction and release the family pension to the petitioner being 50% disabled person.

Briefly, the facts of the case are that father of the petitioner, namely, Ram Rattan Gupta, was a permanent government employee and was serving as Clerk in the office of Sub Divisional Magistrate, Bassi Pathana, District Fatehgarh Sahib. On attaining the age of superannuation, he retired as Clerk from service on 14.11.1972 and thereafter, he was granted pension as per Punjab Govt. Rules (P.P.P. No.13768/Pb). The father of petitioner had expired on 06.02.2009. At the time of retirement of father of the petitioner, there was no provision for family pension for disabled children of the deceased government employee under the Pension Rules. The family pension was payable only to the spouse of deceased government employee and the employee had to desire for family pension, and to opt for the same before his retirement. Every employee who opted for family pension, in view of Rule 13.6A, was required to surrender a portion of gratuity equal to his two months' emoluments or pay, which was to be maximum of ₹5000/-. The father of the petitioner did not surrender the portion of his gratuity equal to two months' emoluments and also did not opt for family pension. Thereafter, the State Government issued circular dated 14.04.1978, whereby, provision of surrendering the part of gratuity for grant of family pension to the spouse of deceased employee was withdrawn and family pension was made admissible to the surviving spouse after death of the retired employee. Subsequently, in the year 1990, the scheme was extended to the dependents of the government employee, who were suffering from any disorder or disability of mind or were physically crippled and is unable to earn his/her livelihood after attaining age of twenty-five years.

The claim of the petitioner in the present writ petition is that the petitioner is mentally retarded and is unable to earn his livelihood and is totally dependent upon his brother. A letter was also written by brother of the petitioner requesting respondent No.2 to grant family pension to the petitioner. All required formalities were completed but still the petitioner was not granted family pension.

Learned counsel for the petitioner submits that the petitioner being dependent son and also being mentally retarded is entitled for family pension but his case has been declined only on the ground that his father did not opt for family pension and did not deposit the emoluments as per requirement of the law. Learned counsel further submits that the father of the petitioner was getting pension and petitioner being dependent son is entitled for family pension. The claim cannot be declined on the ground that his father did not opt for family pension at the time of his retirement in the year 1972. Learned counsel for the petitioner also submits that the petitioner is ready to pay a portion of gratuity, which was required to be surrendered by his father in November, 1972. Moreover, there was no provision in the rules regarding grant of family pension in the year 1972.

Learned State counsel has not disputed 50% mentally disability of the petitioner and also the service of father of the petitioner. It has also not been disputed by learned State counsel that father of the petitioner was drawing pension against Pension Payment Order No.13768/Pb after his retirement and that he had died on 06.02.2009. It has also not been disputed by learned State counsel that mother of the petitioner had also died on 19.02.2003 even prior to death of her husband. Learned State counsel opposes the submissions made by learned counsel for the petitioner on the ground that no family pension was opted by father of the petitioner. The father of the petitioner has not opted for family pension, hence, the petitioner is not entitled for the same after death of his father.

Heard arguments of learned counsel for the petitioner as well as learned State counsel.

The factum of service of father of the petitioner as well as his retirement and his death has not been disputed by learned State counsel. It is also not disputed that the petitioner is suffering from 50% mental disability and was dependent earlier upon his father and presently also, he does not have any source of income. The question of giving any option does not arise as at the time of retirement of father of the petitioner i.e., 14.11.1972, there was no provision for grant of family pension to the disabled children of deceased government employee.

Under 1970 Rules, there was no provision for grant of family pension to the disabled children of the deceased government employee and the same was payable only to the spouse of the deceased employee and for that an option was to be given before his retirement.

Under these circumstances, every employee has to opt for family pension and was required to surrender a portion of gratuity equal to two months' emoluments or pay, which is to be maximum of ₹5000/-. State government issued circular dated 14.04.1978, whereby, provision for surrender of part of gratuity for family pension to the spouse of deceased government employee was withdrawn and family pension was made admissible to surviving spouse after the death of retired employee. It was further extended to the dependent family members suffering from any disorder or disability of mind or physically crippled or disabled, who is unable to earn his/her livelihood even after attaining the age of twenty five years. The petitioner is also 50% disabled person and because of this reason, he is not in a position to earn his livelihood.

'Family' has been defined under Family Pension Scheme. It has also been mentioned that, in case, the son or daughter of a government employee is suffering from any disorder or disability of mind or is physically crippled and is not in a position to earn is also entitled for family pension.

Rules 3 and 4 of the Family Pension Scheme is reproduced as under : -

“xxx xxx xxx

(3) "Family" for purpose of this Scheme includes the following relatives of the Government employee:

(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 upto the age of 25; and

(d) unmarried daughters upto the age of 25.

Note 1. *(c) and (d) will include, children adopted legally before retirement.*

Note 2. *As per F.D. Pb. No.1/7/90-1 FP 3/3270 dt.18.4.91- Marriage after retirement is to be recognised for Family Pension.*

(4) The pension will be admissible :-

(a) in the case of widow/widower upto the date of death or remarriage whichever is earlier and

(b) in the case of son and unmarried daughter until he or she attains the age of 25 years till he or she starts earning his/her livelihood whichever is earlier.

Provided that if the son or daughter of a Government employee is suffering from disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years in the case of son and daughter, the family *pension shall be payable to such son or daughter for life subject, to the following conditions, namely: -*

(i) if such son or daughter is one among two or more children of the Government employee, the family pension shall be initially payable to the children in the order set out in sub-rule (3) until the last child attains the age of twenty-five years or until he or she becomes ineligible for family pension under clause (b) whichever is earlier and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him or her, as the case may be, for life.

(ii) If there are more than one such son or daughter suffering from disorder or disability of mind or they are physically crippled or disabled, the family pension shall be paid in the following order, namely: -

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the life time of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the life time of the elder;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or

she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of Civil Surgeon setting out as far as possible, the exact mental or physical condition of the child;

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continued to suffer disorder or disability of mind or continues to be physically crippled or disabled."

Earlier case of the petitioner was processed by the department after moving of representation/request by brother of the petitioner, which is clear from Annexures P-6, P-7 and P-8. All formalities were completed but the claim has not been considered so far. The case was recommended by Deputy Commissioner, Fatehgarh Sahib and the same was sent to Accountant General, Punjab, Chandigarh vide letter dated 11.11.2009. A legal notice was also sent on 18.10.2012 but the same has not been considered and no action has been taken. After completing all the formalities, the case has been declined only on the ground that father of the petitioner did not exercise his option for grant of family pension at the time of his retirement on 14.11.1972.

Admittedly, at the time of retirement of father of the petitioner, there was no provision in the Pension Rules regarding family pension payable to disabled child after death of government employee. Had there been a provision under the Pension Rules, the father of the petitioner would have exercised the option for grant of family pension to his dependent disabled son i.e., the present petitioner. Moreover, as per instructions dated 29.05.1991, the provisions have been made applicable to all the pensioners irrespective of the fact whether they had opted for family pension or not.

It has not been disputed that the petitioner being disabled son of retired pensioner is entitled to family pension as per Govt. Instructions dated 29.05.1991. The purpose of family pension is to give benefit to the spouse or disabled child of the deceased retiree government servant. Moreover, the petitioner is also ready to pay portion of gratuity or its equivalent amount along with interest, which was to be surrendered by his father in November, 1972 at the time of his retirement in order to opt for family pension.

In view of the facts as mentioned above, the present writ petition is allowed and the respondents are directed to consider the claim of family pension in view of instructions dated 29.05.1991 subject to deposit of an amount of gratuity along with interest, which was required to be deposited by his deceased father. The necessary exercise be done within a period of three months from the date of deposit of such amount.

09.03.2015 **(DAYA CHAUDHARY)**
neetu **JUDGE**