

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 19875 of 2014

DATE OF DECISION :- December 10, 2015

Rajni Bala

...Petitioner

Versus

Union of India and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. Namit Gautam, Advocate for the petitioner.

Mr. RTPS Tulsi, Advocate for the respondent.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. Petitioner Rajni Bala is the widow of Subhash Chand, who died in harness on 14.5.1980 while working as Technician Grade-III in Northern Railway workshop, leaving behind the petitioner and his minor son Kamal Kishore. In terms of Railway Services (Pension) Rules, 1993, the petitioner was sanctioned pension and other dues. She married the brother of the deceased

on 19.6.1981 and made a request to the department to stop family pension issued in her name and grant it to her minor son born from her 1st husband Subhash Chand. The department acted as per the request made by the petitioner. Kamal Kishore, the minor son of the deceased, who was receiving pension after the petitioner re-married was given compassionate employment w.e.f. 30.7.1997. Thereafter as per the pension Rules, the pension granted to Kamal Kishore was stopped. Referring to Rule 13 and 14 of the Railway Services (Extraordinary Pension) Rules, 1993, the petitioner, who re-married deceased husband's brother, made a claim for family pension. The Tribunal chose to dismiss it on the ground that she was not entitled to pension under the above Rules as pension was originally granted to her at the first instance and thereafter to her own son as per her request till he secured compassionate appointment in the Railways under Rule 75 of the Railway Services (Pension) Rules, 1993.

2. The learned counsel appearing for the petitioner vehemently argued referring to Rule 13 and 14 of Railway Services (Extraordinary Pension) Rules, 1993 that the petitioner who has married her deceased husband's brother is entitled to family pension. He also referred to the decision rendered by a coordinate Bench of this Court in **Kiran Kumar versus State of Haryana and others 2004 (2) SLR 694**, wherein it has been held that the

widow of the deceased who has re-married the brother of her deceased husband is entitled to family pension.

3. We also heard the submissions made by learned counsel appearing for the contesting respondents.

4. There is no averment in the petition that the husband of the petitioner had died due to an accident in the work place or due to violence in the office premises to attract the application of Railway Services (Extraordinary Pension) Rules, 1993. Therefore, the department has rightly awarded family pension to her originally and, thereafter, to her son on her request under the Railway Services (Pension) Rules, 1993. Rule 13 and 14 of the Railway Services (Extraordinary Pension) Rules, 1993 would operate only in a case of such a calamity which culminated in the death of an employee while in service. Rule 75 of the Railway Services (Pension Rules) 1993 is applicable to the petitioner. As per Rule 75(6) of the above Rules, family pension is payable in the case of a widow only upto her death or re-marriage, whichever is earlier. The above Rule does not contemplate sanction of family pension to the widow who happens to re-marry the brother of the deceased husband. Therefore, the petitioner who is re-married to the brother of the deceased husband is not entitled to any family pension. Even otherwise, the son Kamal Kishore, who has been left behind by the deceased has got compassionate appointment in Railways

and as a result of which he is no longer a burden either to her mother or to her mother's second husband. Therefore, the petitioner is not entitled to claim family pension under the Railway Service (Extraordinary Pension) Rules, 1993.

5. In Kiran Kumar (supra), the coordinate Bench observed as follows :-

“Firstly there is no rule which prohibits grant of family pension to the widow of the deceased who has remarried and particularly in the same family. The object of the rule is not to deny benefit of family pension to the dependent of the deceased, but, obviously provides an exception to that concept by postulating a situation where the widow remarried independently and her economic dependence upon the deceased is disintegrated, from the need of the family. In the present case, both such situations exists. Admittedly, the daughter of the deceased is living with the petitioner, who has remarried with the younger brother of the deceased. The economic dependence of the family, thus, continues in its entirety and ingredient of an exception seems to be satisfied in the present case.”

6. The above decision will not apply to the facts and circumstances of this case, where there is a prohibition found

under Rule 75(5) for the widow to claim pension after her re-marriage and Kamal Kishore who was the only son of the deceased had become independent by securing compassionate appointment from the Railways.

7. We do not find any illegality in the order passed by the Tribunal. The Writ Petition merits no consideration and, therefore, it stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(DARSHAN SINGH)
JUDGE**

December 10, 2015

p.singh