

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.717 of 2013 (O&M)
Date of Decision:- 04.08.2015.

Kala Devi

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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

Present: Mr. Anil Rathee, Advocate for the appellant.

Mr. Saurabh Girdhar, AAG, Haryana.

SURYA KANT, J. (ORAL)

1.) The appellant's claim to grant her family pension under the provisions of Family Pension Scheme, 1964 (for short '1964 Scheme') having been turned down by learned Single Judge vide order dated 17.01.2013, she has preferred the instant intra-court appeal.

2.) The facts may be noticed briefly. The husband of appellant (Mohinder Singh Phor) was appointed as a Lecturer-in-Political Science on 06.10.1971 in a private college known as

Haryana War Heroes Memorial College at Gohana, District Sonapat. The above stated college was taken over by the State of Haryana on 18.08.1980. Some of the members of staff of the college including the husband of appellant were also taken into Government service though they were issued fresh appointment orders.

3.) The appellant's husband joined the Government service on 12.02.1981. Unfortunately, he was murdered on 27.03.1981.

4.) The appellant earlier approached this Court in CWP No.15574 of 1997 seeking family pension but her writ petition was dismissed by this Court on 11.03.1998.

5.) She made a second attempt for the grant of family pension, this time on the basis of memo dated 23.04.2010 which clarifies Note -I, Para 4 (i) of the 1964 Scheme.

6.) Learned Single Judge has turned down the renewed claim on the plea that as per the aforesaid provision, the deceased was required to render "continuous one year of service" and then only the appellant could become eligible to seek 'family pension'.

7.) On the previous date of hearing, we heard learned counsel for the parties and taking into consideration the spirit and object of Note 1 given under Para 4 (i) of the 1964 Scheme, we directed learned State counsel to explain whether 'medical examination' of the appellant's husband was held before he entered the Government service, and if so, the record be produced.

8.) In deference thereto, Dr. Sunandan Sharma, Principal,

Government College, Gohana has filed his affidavit dated 03.08.2015 which is taken on record. It is explained in the affidavit that after the College was taken over by Government of Haryana on 12.02.1981, the Director General, Higher Education, Haryana vide letter dated 26.04.1982 asked the Director Health Services, Haryana to provide Medical Fitness Certificate after medical check up by the Medical Board of the taken over staff of Government College, Gohana as well as some other college.

9.) The Director Health Services, Haryana then vide his letter dated 27.07.1982 directed the taken over staff of Government College, Gohana to appear before the Medical Board in the office of Chief Medical Officer, Rohtak on 06.08.1982 or 20.08.1982 at 8.00 A.M for physical fitness examination.

10.) The name of the deceased husband of appellant did not find mention in the above mentioned communications dated 26.04.1982 or 27.07.1982, for the obvious reason that meanwhile he had unfortunately died on 27.03.1981. The affidavit of the Principal thus rightly concludes as follows:-

“That as Sh. M.S. Phor deceased husband of the appellant has expired on 27.03.1981 and letter for physical fitness/medical examination were issued by the Director General Higher Education Haryana, Chandigarh & Director Health Services Haryana, Chandigarh on 26/04/82 & 27/07/82 respectively i.e. after the death of

Sh. M.S. Phor deceased husband of the appellant, therefore physical fitness/medical examination of appellant's husband did not take place.

11.) At this stage, we need to advert to para 4 (i) of the 1964 Scheme along with Note-I which is to the following effect:-

“(i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at that time of death, the retired officer was in receipt of a compensation, invalid retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.”

Note 1. The term one year continuous service used in para-4(i) above is inclusive of permanent/temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased Government employee concerned immediately prior to his recruitment to the service or post

was examined by the appropriate Medical Authority and declared fit by that authority for Government service.”

12.) In our understanding, Note 1 illustratively clarifies as to how the period of one year of continuous service as mentioned in Para 4 (i), is to be counted. The latter part of the Note-1 further says that if an employee dies **“before completion of one year of continuous service.....xx.....xx.....”** provided that **“the deceased Government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.”**

13.) Thus, the Rule contemplates a situation where the employee did not render one year of continuous service due to his unfortunate demise but by fiction he shall be deemed to have rendered such service if he was declared medically fit before joining the Government service.

14.) In the instant case, the deceased was not declared fit by the Medical Authority before his appointment to the Government service but was it a fault of the deceased employee or it so happened due to non-compliance of a mandatory condition by the then Appointing Authority or the inordinate delay caused in compliance of such condition?

15.) Ordinarily, the medical fitness report is obtained before appointment in Government service. The Competent Authority could

insist for medical examination of the deceased before he was taken over into Government service on 12.02.1981. Further, if an exception was to be carved out in favour of the staff as they were already working in the College, then the post-appointment medical examination ought not have been inordinately delayed.

16.) The other eventuality could be to ask the taken over staff to get itself medically examined within a stipulated period. Unfortunately, no such procedure was followed before the demise of appellant's husband on 27.03.1981.

17.) The affidavit filed by the Principal of the Government College, Gohana discloses that the first step for medical examination was taken after more than a year of taking over of the College i.e. on 26.04.1982 only. The appellant's husband was no more there. An impossible situation arose which was beyond the appellant's control.

18.) It goes without saying that if there were a medical examination of the deceased before he entered the Government service or soon thereafter, Note 1 to Para 4 (i) would have come to the rescue of appellant and she would have got the family pension on the deemed fiction that the deceased had completed one year continuous service. However, medical examination did not actually happen. Should the appellant be made to suffer for this lapse?

19.) We are of the considered view that the appellant ought not to be penalized for want of timely action by the then Authorities and in such like situation where it is difficult to to reopen an old and

stale matter to fix responsibility of someone who failed to take timely action, it would be more appropriate and expedient for the State Government to reconsider the appellant's claim sympathetically and, if need be, to relax / exempt the condition of requirement of medical fitness certificate in terms of Note 1 below Rule 4 (i) *ibid*.

20.) We have no reason to doubt that in the light of the observations made hereinabove, the Competent Authority will show its compassion and relax the above mentioned condition so that the appellant can be granted family pension prospectively.

21.) For the reasons aforesaid, the appeal is allowed in the above terms. The order passed by learned Single Judge is set aside and the writ petition also stands disposed of as directed above.

22.) The Competent Authority shall do the needful within two months from the date of receipt of certified copy of this order.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

August 04, 2015.

sandeep sethi