

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.1079 of 2015 (O&M)

Date of Decision: July 23, 2015

State of Haryana and othersAppellants

versus

Patouri DeviRespondent

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

Present: Mr.Naveen Kaushik, Additional AG, Haryana,
for the appellants.

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

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 19.11.2014 whereby learned Single Judge has accepted the respondent's claim for the grant of family pension due to unfortunate demise of her son who was serving as EASI in Railway Police, Haryana.

[2] The solitary question that arises for consideration is whether the respondent falls within the category eligible for pension under the Punjab Civil Services Rules, Vol.II read with Family Pension Scheme 1964?

[3] The facts may be noticed briefly.

[4] EASI Ved Parkash was working in Haryana Railway Police when he unfortunately passed away on 15.12.2009 while on duty. Ved Parkash's father Telu Ram had died on 20.11.2003 and the wife of Ved Parkash also expired in November, 2008. At the time of his death, he left behind two

children, one son and one daughter who were admittedly 'major' and his mother, namely, the respondent. The son and daughter of the deceased being major were not entitled to monthly assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short, '2006 Rules'). Both of them gave no objection certificate in writing if such assistance was granted to their grand-mother, namely, the respondent.

[5] The authorities turned down the claim of respondent on the ground that as per the Punjab Civil Services Rules, Vol.II (amended in the year 2006) read with Family Pension Scheme, 1964 as well as in the light of the Finance Department Notification dated 21.07.2006 (R-1), the mother of the deceased-Government employee is not entitled to monthly assistance.

[6] Learned Single Judge has turned down the State's plea and has accepted the claim of respondent.

[7] It is in this backdrop that the question formulated in para No.2 of the order arises for re-consideration.

[8] Since the purported embargo on the right to claim monthly assistance (family pension) by a mother as a result of death of her son/daughter who was in government service, has been caused vide notification dated 21.07.2006 issued under proviso to Article 309 of the Constitution notifying the Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules 2006, it would be relevant to extract Rule 2 thereof whereby the Punjab Civil Services Rules, Vol.II (Appendix-I) and Family Pension Scheme, 1964 have been substituted/amended. It thus reads as follows:-

“....2. In the Punjab Civil Services Rules, Vol.II, in

Appendix-I, Family Pension Scheme 1964, in para-4, for sub-para (iii), the following sub-para shall be substituted, namely:-

- (iii) The pension is admissible:-
 - (a) in the case of widow/widower upto the date of death or remarriage, whichever is earlier.
 - (b) in the case of son/unmarried daughter until he/she attains the age of twenty five years.
 - (c) in the case of parents who were wholly dependent on the Government employee when he/she was alive, upto the date of death provided the deceased employee had left behind neither a widow nor a child.
 - (d) in the case of children in the order of their birth and younger of them will not eligible for family pension unless the elder next above him/her has become ineligible for grant of family pension.
 - (e) in the case of divorced/widowed daughter till they are alive.

Provided that an unmarried daughter including widowed/divorced daughter will become ineligible for pension from the date of her marriage/remarriage.

Provided further that the son/unmarried daughter including widowed/divorced daughter shall become ineligible for pension if he or she

starts earning livelihood.

The income criteria in respect of parents and widowed/divorced daughter shall be that their earning is not more than 2550/- per month provided also that parents and widowed/divorced daughter shall produce an annual certificate to the effect that their earning is not more than 2550/- per month. The upper ceiling of family pension shall be 30% of basic pay of the deceased employee, subject to a minimum Rs.1913/- p.m.

Note: (i) Where an officer is survived by more than one widowed, the pension will be paid to them in equal shares. On the death of a widow, her share of pension will be become payable to her eligible minor child if at the time of her death, a widow leaves no eligible minor child, payment of her share of the pension will cease.

(ii) Where an officer is survived by a widow but has left been an eligible minor child from an another wife, the eligible minor child will be paid the share of pension which the mother would have received, if she had been alive at the time of the death of the officer.

(iii) Where the family pension is payable to twin children, it shall be paid to such children in equal shares and when one such child ceases to be eligible his/her share shall revert to the other child and when both cease

to be eligible the family pension shall be payable to the next eligible single child/twin children.....”

[9] Learned Single Judge has construed Rule 2 (iii) (c) of the Rules (ibid) to say that the expression 'child' postulates minor child only who is dependent on the deceased-employee. To say it differently, a child who has attained 'majority' and is self-independent does not fall within the category of 'child' under Clause (c) reproduced above. In the instant case, both the children of the deceased were admittedly major and ineligible for the grant of family pension, hence learned Single judge has viewed that the parents who are/were wholly dependent upon the deceased employee while he was alive, would be entitled to the grant of family pension.

[10] We have heard learned Additional Advocate General, Haryana in support of this appeal, who reiterates that the Rule Making Authority did not draw any distinction between the 'minor' and 'major' child and the deceased-employee having left behind one son and one daughter, even if they were major, the respondent stands excluded from the eligible category under clause (c) of the amended Rules.

[11] The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, as notified on 1.08.2006, expressly stipulates that the object of this rule is to assist the family of the deceased Group-C & D employees and that “an eligible family member” of the deceased-government employee shall be entitled to seek such compassionate financial assistance. Since the expression “eligible family member” has not been defined in the rules, the same is taken to have been supplemented by notification

dated 21.07.2006 (R-1) as vide Rule 8 of the 2006 Rules (P-2), the 2005 Rules have been expressly repealed but the notification dated 21.07.2006 has been kept intact.

[12] Once the notification dated 21.07.2006 is read into the 2006 Rules, it stands crystalized that the 'parents' who were dependent on the government employee are also entitled to family pension if the deceased employee has not left behind a widow or child. Further, the 1964 Family Scheme expressly bars a major child from claiming family pension. The expression 'child' contained in Clause (c) is referable to the eligibility conditions contained in the Family Pension Scheme. Once a major child is excluded from the list of eligible family members and the deceased employee has not left behind a widow, the turn of the parents does come to seek 'family pension' subject to the condition that they were wholly dependent on the deceased employee, i.e., their monthly income does not exceed Rs.2550/-.

[13] In the instant case, learned Single Judge has very categorically held, on the strength of the admitted facts that the respondent used to stay with her son and was fully dependent upon him.

[14] For the reasons afore-stated, we do not find any merit in this appeal.

[15] Dismissed.

[SURYA KANT]
JUDGE

July 23, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE

CM No.2259 of 2015 in
LPANo.1079 of 2015.

State of Haryana and others vs. Patouri Devi.

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Present: Mr.Naveen Kaushik, Additional AG, Haryana,
for the applicant-appellants.

Since the main appeal has been decided on merits, no
separate order is required to be passed in this application for
condonation of 218 days delay in filing the appeal.

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[SURYA KANT]
JUDGE

July 23, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE