

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.14303 of 2004

Date of Decision:- 26.05.2016

Kela

....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. Zorawar Singh, Advocate
for Mr. N.S. Shekhawat, Advocate
for the petitioner.**

**Mr. Nitin Mittal, Advocate
for Mr. Paras Money Goyal, Advocate
for the respondent (UHBVNL).**

RITU BAHRI, J. (Oral)

Petitioner is seeking quashing of order dated 16.04.2003 (Annexure P-6) whereby his claim for grant of family pension benefit was rejected.

The husband of the petitioner late Sh. Rati Ram was selected and was appointed as T-mate by the respondents on 01.09.1968 on work charge basis. His services were regularized on 08.02.1973 as Assistant Lineman in Kaithal Division (Operation). During the course of his employment he died on 16.03.1977 as per death certificate (Annexure P-1).

Upon notice, written statement has been filed on behalf of the respondents and the stand taken therein is that in terms of the Family Pension Scheme, 1964, the employee should have completed a minimum 5

years of continuous service at the time of his death.

A Co-ordinate Bench of this Court, vide order dated 03.12.2014, has directed the respondents to file an affidavit taking into consideration the work charge service rendered by the deceased employee as T-Mate on work charged basis w.e.f. 01.09.1968.

In compliance of above-said order, affidavit dated 22.12.2014 has been filed by Executive Engineer, Operation Division, UHBVNL, Kaithal. It has been stated in the affidavit that as per record available in this office Sub-urban Division, UHBVN, Panipat and Sub-Divisional Officer, Operation Sub-Division UHBVN, Assandh, the cash books of remaining periods are not traceable, which might have been destroyed by the termites. The periods which are not traceable which are treated as break period are as under: -

Sr. No.	Period from	Period to	Total period
1	01.10.1970	31.10.1970	1 Month
2	01.12.1970	30.06.1971	7 Months
3	01.02.1972	29.02.1972	1 Month
4	01.07.1972	31.07.1972	1 Month

The service rendered by the petitioner cannot be confirmed in view of above chart. There is four breaks from January, 1970 to January, 1973. The service rendered by the deceased employee cannot be called continuous service. Hence, the service rendered by him during his life time on work-charged basis cannot be reckoned towards retirement benefits.

Learned counsel for the petitioner has referred to a judgment of Division Bench of this Court in **Nirmala Devi Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**, 2006(6) SLR 427, whereby the work charge period is held to be included as qualifying service for pension.

In the present case, the respondents are not disputing the fact that the services of the husband of the petitioner were regularized on 07.02.1973 and as per affidavit dated 22.12.2014 it is further shows that the record prior to 01.10.1970 was not traceable, however, from the available record there are four breaks in the period of his service. Even if one year service before 08.01.1973 is to be taken into consideration as work charge service, the petitioner's husband has placed five years of regular service to qualify for grant of family pension as per Family Pension Scheme, 1964 Rules. The petitioner cannot be put on disadvantage of on account of not maintaining of service record of husband of the petitioner.

The stand taken by the respondents in the written statement is that as per the amended provisions, vide notification dated 28.09.1979, the benefit of family pension cannot be extended to the petitioner as her husband had expired on March, 1977. As per the above said notification, under the Family Pension Scheme, 1964, the family pension scheme is admissible to an employee if he has completed minimum period of one year of continuous service without break. However, as per the un-amended provisions, an employee has to complete minimum five years of continuous service without break. The relevant un-amended provision is as under: -

“4. This scheme is administered as below: -

(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 the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government servant should have completed a minimum period of five years of continuous service without break.

“””The family pension will not be admissible in case of death after retirement if the retired officer/official at the time of death was in receipt of gratuity only.

NOTE1 – The term ‘five years’ 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 regularized by the competent authority.”

The respondents as per affidavit dated 22.12.2014, have denied the benefits on the ground that her husband had not completed five years of service i.e. 08.01.1973 to 16.03.1977. The relevant record with regard to the service before regularization was not traceable.

The petitioner cannot be put on disadvantage on account of not maintaining the service record of husband of the petitioner. As per record even if one year service 08.01.1973 is taken into consideration, the husband of the petitioner has completed five years of regular service for grant of family pension. Moreover, the Division Bench of this Court in **Nirmala Devi's case (supra)** had considered this aspect and in paragraph 5, the Bench, has observed as under: -

“5. In the present case, the petitioner's husband was appointed on 17.10.1979/1.6.1984. His services were regularized on 10.3.1995 and he expired on 26.11.1995 which shows that the petitioner has completed more than one year of service if the period before the date of his regularization is taken into consideration. The afore-mentioned interpretation of law on 1964 Scheme is imperative because there is nothing in the Scheme which would suggest the work charge period is to be excluded from qualifying service for pension. We are inclined to include the afore-mentioned period as Rule 3.17 of the Punjab Civil Services Rules which excluded the work charge service from being counted as qualifying service was struck down by a Full Bench of this Court in the case of Kesar Chand V. State of Punjab, 1988(2) PLR 223. It was further held that all work charge service preceding regularization was to be regarded as qualifying service for the purposes of granting pensionary benefits. If the work charge service could be considered as qualifying service for a pensioner we see no reason not to do so when her widow claims family especially when there is nothing in clause 4 prohibiting to consider such service as qualifying service.”

Applying the ratio of above-said judgment to the facts of the present case, the writ petition is allowed. Order dated 16.04.2003 (Annexure

P-6) is set aside and direction to the respondents to release the family pension to the petitioner with effect from the date when she has lost her husband. The respondents have already released the payment of ex-gratia as well as the gratuity in May, 1977. The respondents shall calculate the benefit of family pension which includes leave encashment, within a period of two months, from the date of receipt of certified copy of this order and the petitioner shall also be entitled 9% interest from the date of death of her husband till the payment is made.

May 26, 2016
naresh.k

(RITU BAHRI)
JUDGE