

CWP No. 1668 of 2012 (O/M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 1668 of 2012 (O/M)

Date of decision : 19.8.2016

Mohinder Kaur

..... Petitioner (s)

Versus

Union of India and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. G.S. Nahel, Advocate, for the petitioner.

Ms. Neha Jain, Advocate, for,
Mr. Manish Dadwal, Advocate, for respondent No. 1.

Ms. Geeta Sharma, Advocate, for respondents No. 2 and 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH J.

Harbans Singh (deceased husband of the petitioner) retired from the Indian Army on 31.10.1994. After his retirement, he was getting pension from the Army authorities. Thereafter, Harbans Singh joined Punjab State Power Corporation Limited as an Assistant Lineman. Unluckily, Harbans Singh died in harness on 26.3.2008. Thereafter, the petitioner claimed the family pension on account of service rendered by her husband with Punjab State Corporation Limited, which was rejected, vide letter dated 27.5.2011 (Annexure-P-2) on the ground that she is already getting pension from Army authorities.

The respondents have contested the petition on the ground that

CWP No. 1668 of 2012 (O/M)

two pensions are not permissible under the Punjab Civil Services Rules, Part-II. The petitioner is already receiving the family pension from the Army authorities. Therefore, dual pension is not permissible.

I have heard the learned counsels for the parties and have also carefully gone through the file.

The short question arising for consideration is as to whether the dual pension is permissible to the widow of the deceased ex-serviceman, who is already getting pension from the Army authorities ?

In the impugned letter dated 27.5.2011 (Annexure-P-2), the simple ground mentioned is that the petitioner is already getting pension from the Army authorities. Therefore, the dual pension is not permissible. In the written statement, the reference has been made to the Civil Services Rules. However, the exact rule has not been mentioned.

I am of the view that Rule 6.17 of Civil Services Rules, Haryana Civil Services Rules, which is sought to be relied upon by the respondents during the course of arguments talks about the pension. It does not say that the dual family pension to the ex-serviceman or his family is not permissible. Harbans Singh had served in the Indian Army. On account of service rendered by him in the Indian Army, he was getting the pension from Army authorities. Then, he joined Punjab State Power Corporation Limited and there he rendered service. The right to get the pension from the civil services is an independent right and cannot be declined on the ground that he/she is getting pension from the Army. The matter has been considered by the Central Government, which issued Circular No. 504 dated 17.1.2013, wherein the Government of India, Ministry of Defence, took the view that one can draw two pensions; one from the military side and can

CWP No. 1668 of 2012 (O/M)

also draw the other ordinary family pension after re-employment in civil service, subject to fulfillment of other prescribed conditions. Though, there is nothing on file to show that the Punjab State Power Corporation Limited has adopted the said circular, however, the fact remains that the Civil Services Rule 6.17 relied upon by the respondents does not specifically debar dual family pension to the family of the deceased government servant, who had earlier served in the Army and is getting the pension from the Army authorities.

The matter was considered by a Single Bench of this Court in Nanhi Devi Versus State of Haryana and others, 2015 (4) PLR 599, where in a case pertaining to the State of Haryana, it was held that the dual family pension is permissible. The relevant extract is reproduced as under :-

“5. The issue whether dual pensions could be granted to the employees, who put in the requisite number of years of service as members of Armed Forces and then after leaving the Armed Forces, while holding a civil post was considered by both the Government of India as also the Government of Haryana. Through circular dated 4.3.2013 (Annexure-P-12), the Government of India made a specific provision that members of the Armed Forces who got discharged from military service and then served on civil posts would be entitled to the benefit of dual pensions in case they had rendered pensionable service in both in the armed forces as also while serving against a civil post. However, financial benefits were to be granted only w.e.f. 24.9.2012. The relevant portion of the circular issued in this regard is reproduced below :-

“Consequent upon issue of GOI, MOD No. 01(05)/2010-D(pen/Pol) dated 17.1.2013 (copy enclosed as Annexure) family of Armed forces officers who got re-employed in Civil Dept/PSUs/Autonomous bodies/Local funds of central/state govt. after

CWP No. 1668 of 2012 (O/M)

getting retired from military service and were in receipt of military pension till death, shall be allowed to draw family pension from military service in addition to the family pension, if any, authorised from the reemployed civil Dept. subject to fulfillment of other prescribed conditions as hitherto fore.

The provision of above letter are applicable to the Armed Forces Personnel who got discharged/retired/invalided out of service w.e.f. 24.9.2012 or thereafter. Benefit of this provision has also been allowed in past cases. However, the financial benefits shall be granted from 24.9.2012 only.”

In another case titled as Kashmir Chand Versus Punjab State Corporation Limited and others, (arising out of CWP No. 21553 of 2014, decided on 15.7.2016), the dual family pension, which was earlier granted and was reduced, was held to be illegal. This Court observed as under :-

“ I am of the view that as the previous service of the petitioner was in the Army with the Union of India, there are no rules that in case of service under the Union of India, the pension on the second appointment is not to be paid by the Government. If the respondents were to implement the policy of not granting the dual pension then the petitioner would have been not entitled for any pension at all. The reduction of the pension means that the State admit that dual pension is admissible in case of the petitioner. Moreover, the Government, after taking into consideration the pension drawn by the petitioner from Army, apparently reduced the pension of petitioner. I am of the view that same is apparently illegal. Once, the pension is allowed, it cannot be less than the minimum as decided while implementing the 4th and 5th Pay Commission reports.”

CWP No. 1668 of 2012 (O/M)

Consequently, I am of the view that inspite the fact that army man had served in the army and he is getting pension from the Army authorities and thereafter he joined the civil services and puts in requisite years of service or for any other reason, he becomes entitled to the pension/family pension for civil services, the civil authorities cannot decline him his family pension on the ground that he is already getting the pension from the Army authorities. The ex-serviceman is getting the second pension on account of services rendered by him in the civil service and not merely because of his service in the Army. Accordingly, the impugned letter dated 27.5.2011 (Annexure-P-2) is hereby quashed. The respondents are directed to grant family pension to the petitioner. The arrears be paid within three months with interest at the rate of 9% per annum.

(KULDIP SINGH)
JUDGE

19.8.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes