IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14199 of 2015
Date of Decision: 10.03.2016

Surjit Kaur Kalkat ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Varinder Shukla, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner's husband was a Member of the Legislative Assembly, Punjab serving in two terms; for the first time from March 13, 1969 to June 13, 1971 and for the second time from March 21, 1972 to March 08, 1976. He died on March 08, 1976. In the following year, the Punjab Government enacted the Punjab State Legislative Members (Pension & Medical Facilities Regulation) Act, 1977 extending the benefit of pension, family pension, medical facilities and ex-gratia grant in respect of MLAs and their spouses. Section 3 (1) of the Act stipulated that from the date of commencement of this Act, there shall be paid to every person who has served as a member for a period of five years, whether continuous or not, a pension of three hundred rupees per mensem. Similarly, the provision granting family pension to the spouse of MLA was governed by section 3

(B) of the Act in the event of his/her death. These provisions are quoted:-

> *"**2. Definitions.**- In this Act unless the context otherwise requires 'member' means a person who, after the commencement of the Constitution of India, has been a member of:-*
>
> *(i) the Punjab Legislative Assembly; or*
>
> *(ii) the Punjab Legislative Council; or*
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> *(iii) the Legislative Assembly of the erstwhile State of Patiala and East Punjab State Union; or*
>
> *(iv) partly as a member of the one and partly as a member of the other.*
>
> ***3. Pension**.- (1) From the date of commencement of this Act, there shall be paid to every person who has served as a member for a period of five years, whether continuous or nor, a pension of three hundred rupees per mensem:*
>
> *Provided that where any person has served as aforesaid for a period exceeding five years, there shall be paid to him an additional pension of fifty rupees per mensem for every year in excess of five, so, however, that in no case the pension payable to such person shall exceed five hundred rupees per mensem.*
>
> *[(1-A) Where a person has served as member for full term of a Legislative Assembly but that term falls short of five years by a period not exceeding three months such person shall, for the purposes of sub-section (1), be deemed to have served as a member for a period of five years:]*
>
> *[(1-B) Notwithstanding anything contained in sub-section (1) and (1-A), there shall be paid to every person who has served as a member a pension of [one thousand rupees] per mensem:*
>
> *Provided that where any person has served as aforesaid for a period exceeding five years, there shall be paid to him an additional pension of one hundred rupees per mensem for every year in excess of five [-];*
>
> ***[3-B. Family Pension**. - In the event of death of a member.-*
>
> *(i) who is getting pension under section 3; or*
>
> *(ii) who is entitled to such pension, but is not getting; or*
>
> *(iii) who would have been entitled to such pension had he*

or she not died,
his or, as the case may be, her spouse shall be entitled to draw family pension at the rate of fifty percent of the pension to which the member would have been entitled had he or she not died].”

2. There is no dispute that the husband of the petitioner qualifies in the five year duration by clubbing the periods. However, he died before the Act came into force. Nothing has been shown which makes the Act retrospective in nature. But the State Government have exercised extraordinary power to give a concession to the petitioner making family pension available to her w.e.f, July 29, 1992. The concession has been granted quite evidently *de hors* the 1977 Act and is a stand-alone benefit made available to the petitioner who is the wife of late Dr. Amir Singh Kalkat, Ex-MLA, Punjab. The petitioner has received a communication from the Punjab Vidhan Sabha Secretariat addressed to the Accountant General (Accounts and Entitlements), Punjab, Chandigarh dated February 26, 2016 with a copy to the petitioner informing her of the grant. Copy of the same is retained on record since it has been produced by the petitioner today in Court. This renders the writ petition infructuous. However, the claims under the 1977 Act are rejected since they are not retrospective. Therefore, the question of limiting grant from July 29, 1992 onwards is not gone into to know why the date has been chosen.

3. This Court has no doubt that the Punjab Vidhan Sabha and the Accountant General will ensure that family pension under the arrangement dated February 26, 2016 will be given to the petitioner without delay so that she has the family pension available to her every month. It is another matter that petitioner herself is a Member of the Legislative Assembly and draws

pension in her own right. Family pension granted by government is a monetary benefit in addition to her personal pension.

4. However, the claim for family pension w.e.f. 1976 is rejected because the husband's death fell before the pension law was enacted by State Assembly, Punjab.

5. Accordingly, the petition stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

10.03.2016
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