

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 20846 of 2014

Date of decision : 11.03.2016

Savitri Devi

...Petitioner

versus

H.V.P.N.L and ors.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. Pardeep Singh Poonia, Advocate
for the respondents.

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

RITU BAHRI , J.

Petitioner has approached this Court by way of instant writ petition filed under Articles 226/227 of the Constitution of India, seeking a writ in the nature of mandamus for quashing the impugned action of the respondents vide which the claim of the petitioner for grant of family pension has been declined orally on the ground that her husband has expired without being regularized.

The husband of the petitioner i.e Hawa Singh was appointed on work charge basis with the then HSEB now respondent No. 4 on 01.07.1974 and on 11.05.1978 he expired. As per information received

under the RTI Act, the husband of the petitioner was paid salary from 07/1974 to 11.05.1978 (P-1). However, the husband of the petitioner was not regularized before the date of his death.

Further as per information received under RTI Act, the then HSEB now respondent No. 4-Nigam regularized the services of 3-4 employees working on work charge basis. Thereafter, as well the respondent-Nigam had regularized the service of many work-charge employees who had worked for 2-3 years.

Learned counsel for the petitioner contends that the husband of the petitioner is also entitled for regularization of his services after completion of 02 years i.e w.e.f 07/1976 when his junior Harish Chander was regularized. The family of a deceased employee is thus entitled for the benefit of family pension according to the provisions of Family Pension Scheme, 1964 given in the Punjab Civil Services Rules Volume-II.

Reference has been made to a judgment passed by this Court in a case of ***Lajwanti vs. HVPNL and others, passed in CWP No. 14080 of 2013, decided on 19.05.2015*** wherein petitioner was widow of late Sh. Kulwant Rai, who was appointed on work charge basis as Mistry on 04.10.1977 and was made work charge shift attendant on 01.07.1987 but unfortunately he expired on 13.11.1988 and after his death, petitioner was given compassionate appointment as Peon but

was denied family pension on the ground that in the service book, the word 'regular' was not mentioned and pension was granted under E.P.F Scheme. This Court while relying upon a case of ***Kamlesh Rani vs. HSEB, passed in CWP No. 419 of 1998, decided on 29.01.1990 and Munshi Ram v. HVPNL and others, passed in CWP No. 9440 of 2010*** allowed the writ petition on 19.05.2015 and direction was given to the respondents to consider the case of the petitioner by keeping in view the deemed date of regularization of her husband and to grant family pension in view of the above mentioned judgment. It is made clear that the petitioner will be entitled for arrears of 38 months prior to date of filing of the petition.

The respondents in their written statement are denying the claim on the ground that the writ petition has been filed after a gap of 34 years.

On this question, the judgment of Hon'ble the Supreme court in a case of ***S.K. Mastan Bee vs. The General Manager, South central Railway, 2002(7) SLR 1*** will come to the rescue of the petitioner. In para 5 and 6, it has been observed as under:-

“5. In this appeal, the appellant questions this restriction on her right to claim family pension w.e.f. 21.11.1969 the date on which her husband died. It is submitted on behalf of the appellant that the Division Bench having agreed with the learned Single Judge on the legal right of the appellant to

receive family pension ought not to have confined the said right to a date much subsequent to the death of her husband, merely because a demand for payment of family pension was made only in the year 1992. Learned counsel for the appellant pointed out from the judgment of the Division Bench itself that it had held that the denial of family pension to the appellant amounted to violation of her fundamental right to life guaranteed under Article 21 of the Constitution and that the Division Bench had also held that in the circumstances of this case the delay in approaching the railway authorities cannot be considered to be fatal for the maintainability of the writ petition. The learned counsel submitted, based on these findings, that the Division Bench could not have restricted the appellant's claim to a date much subsequent to the date of death of her husband. Per contra, the learned counsel for the railways contended that the delay in approaching the court was so large that it was not a fit case for the exercise of the discretionary remedy under Article 226 of the Constitution and that the High Court was in fact very generous to the appellant in granting the relief from the year 1992.

6. *We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or*

without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and

also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992. “

On the other hand, learned counsel for the respondents has referred to a judgment of Hon'ble the Supreme Court in a case of ***U.H.B.V.N.L and others vs. Surji Devi, 2008(1) S.C.T 656*** to contend that the family pension could not be granted to the petitioner on ground of sympathy alone.

After going through the above judgment, it transpires that deceased was a member of non-pensionable establishment and his services had not been regularized, therefore, family pension was not held to be admissible to the respondent.

However, in the present case, it is not in dispute that the husband of the petitioner had worked with respondent-Nigam w.e.f 4 01.07.1974 to 11.05.1978 as work charge. The respondents are not denying that Harish Chander was also appointed on Work Charge Basis on 23.09.1974 and on 20.06.1977 his services were regularized on completion of less than three years of service (P-3).

Since the services of husband of the petitioner was

regularized w.e.f 20.06.1977, ***Surji Devi's case (supra)*** cannot be applied to the facts of the present case, as in that case husband of the petitioner was working on work charge basis and was not regularized.

The State of Punjab made the Punjab Civil Services Rules. The said Rules, subject to modifications, became applicable to the State of Haryana. Volume 2 of the said Rules inter alia provide for service qualifying for pension. Rule 3.12 thereof reads as under:

“3.12 The service of a Government employee does not qualify for pension unless it conforms to the following three conditions: -

First The service must be under Government.

Second The employment must be substantive and permanent.

Third The service must be paid by Government. “

Applying the ratio of ***Lajwanti's case (supra)***, the present writ petition is allowed with cost of Rs.25,000/- and a direction is issued to the respondents to consider the case of the petitioner for regularization of his service, in view of the information received under the RTI Act and pass appropriate orders for grant of family pension to the wife/petitioner under above Rule 3.12 and release consequential benefits w.e.f 11.05.1978 when her husband had expired. The entire exercise shall be completed within a period of three months from the date of receipt of certified copy of this order.

(RITU BAHRI)
JUDGE

11.03.2016

G Arora