

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 6067 of 2013

Date of decision : April 11, 2016

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Urmila Devi

.....Petitioner

Versus

HVPNL and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Prabhjeet Singh Sullar, Advocate for the respondents.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The petitioner is seeking quashing of the order dated 27.4.2012 (Annexure P-1) vide which she has been denied the benefit of family pension and financial assistance on account of remarrying on 17.11.2010 pursuant to the death of her husband.

The husband of the petitioner, Rajesh Kumar was working as a Lower Division Clerk with the office of respondent no.3 i.e the Executive Engineer, TS Division, HVPNL, Manesar. He died in a

road accident on 16.2.2008. The petitioner was legally wedded wife of the deceased Rajesh Kumar who got married to him on 21.11.2007. On the demise of her husband, the petitioner applied for compassionate assistance and family pension under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006 on 20.4.2011 which was rejected vide the order dated 27.4.2012 (Annexure P-1) on the ground that the petitioner has remarried to Rishi Pal on 17.11.2010 and, therefore, is not covered into the definition of family as given under Family Pension Scheme, 1964. While rejecting the case vide impugned order dated 27.4.2012, it was observed that as per the State Government Notification dated 21.7.2006, the pension was admissible in the case of widow up to the date of death or remarriage, whichever is earlier. As per the clarification given by the Financial Commissioner and Principal Secretary to Govt. of Haryana the State govt. finance notification dated 21.7.2006 (Annexure P-2) have not been repealed and in view of the clarification, the case of the petitioner must be rejected.

Counsel for the petitioner has argued that as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 a widow having remarried was not entitled to pension and hence was excluded from the scope of family but the same were subsequently superseded by Haryana Government Notification dated 17.4.2009 (Annexure P-3) applicable w.e.f 1.1.2006 wherein childless widow who had remarried was held

entitled to family pension as per Rule 14(iv) subject to the condition that the family pension shall cease once her independent income from all other sources becomes equal to or higher than the minimum prescribed family pension in the State Government. In all such cases, the family pensioner would be required to give a declaration regarding her income from all other sources to the Pension Disbursing Authority every six months.

Counsel for the petitioner says that the case is squarely covered by the notification dated 17.4.2009 (Annexure P-3) as the petitioner and her husband are unemployed and living a life of poverty and destitute and the income of the couple does not exceed Rs.3500/- per month. He has further referred to the notification dated 01.8.2006 (Annexure P-4) by which on account of death of an employee, financial assistance to a sum equal to the pay and another allowances that was last drawn by the deceased employee has to be paid in the normal course for a period of 5 years from the date of death of an employee. He has referred to a judgment passed by this Court in the case of Shanti Devi Vs. State of Haryana and others (CWP No. 17970 of 2008) decided on 5.9.2009 (Annexure P-5) which was allowed while holding that the remarried widows are entitled to family pension. This judgment was assailed in Letters Patent Appeal No. 273 of 2010 before a Division Bench of this Court and the same was upheld vide order dated 2.3.2010 (Annexure P-6).

Counsel for the respondent has argued that the order (Annexure P-1) has been rightly passed after getting clarification

from the State Government that the notification (Annexure P-2) has not been repealed and a widow is entitled to have pension till she remarries. Since the petitioner has remarried to Rishi Pal on 17.11.2010 she is not entitled for the family pension. A reference has been made to a judgment passed by this Court in the case of Mithlesh @ Kamlesh vs. Chairman, UHBVPN Ltd and others (CWP No. 3180 of 2010) decided on 19.7.2012 (Annexure R-3). In this case husband of the petitioner died during the course of his employment. His family pension was given to the petitioner and later on upon her request the said family pension was transferred to her son namely Mukesh Kumar. Respondent-department stopped giving family pension to Mukesh Kumar after he completed the age of 25 years as he was not entitled to get the family pension after attaining the age of 25 years. The petitioner who had solemnized kareva marriage with the brother of the deceased claimed family pension on the ground that she was the widow of deceased. This Court dismissed the writ petition while observing that there was no such Rule in the Pension Scheme as applicable to the deceased husband of the petitioner and as per the provisions of the Family Pension Scheme as applicable to the deceased husband of the petitioner, a married daughter, a son who has attained the age of 25 years and a widow who has remarried are not entitled to family pension. As the petitioner has organised Kareva marriage with the brother of the deceased she cannot take a plea that she was not legally married.

Heard counsel for the parties.

The judgment passed in the case of Mithlesh @ Kamlesh has not taken into consideration the notification dated 17.4.2009 (Annexure P-3), the case of the petitioner will fall in the definition of family for entitlement of family pension:

4.(i) Category II

(iv) The childless widow of a deceased Government servant shall continue to be paid family pension even after her remarriage subject to the condition that the family pension shall cease once her independent income from all other sources becomes equal to or higher than the minimum prescribed family pension in the State Government. In all such cases, the family pension would be required to give a declaration regarding her income from all other sources to the Pension Disbursing Authority every six months.

These instructions have been considered by this Court in the case of Shanti Devi vs. State of Haryana and others (CWP No. 17970 of 2008) decided on September 05, 2009 (Annexure P-5). While allowing the writ petition, reference was made to the Instructions issued by the Government of India on the basis of the recommendations of the 5th Pay Commission regarding pension or special pension in case of Armed Forces officers and personnel

below officer rank. Para 5.8 of these instructions regulates family pension on remarriage of widow. A widow has been held entitled to full family pension if she continues to support the children after remarriage. In case she does not support the children after remarriage, the ordinary family pension equal to the 30% of the emolument to the last drawn to the remarried widow will be payable. If such a widow has no children, full special family pension will continue to her. There is even a provision for sharing the family pension between the parents and the widow where she remarries. As per Rules updated in 2009, the definition of a 'family' for the purpose of family pension is contained in Rule 14. Though in Category 1, widow or widower is defined as 'family' up to remarriage or death as the case may be but still a provision has been made that the childless widow of the deceased Government servant shall continue to be paid family pension even after her remarriage subject to the condition that the family pension shall cease once her independent income from all other sources become equal to or higher than the minimum prescribed family pension in the State Government. The judgment of the Single Bench was upheld by the LPA Bench of this Court.

In compliance of the order dated 13.1.2015, counsel for the petitioner has further informed that the petitioner has given the necessary affidavit with regard to her income to the authorities.

In view of all that has been discussed above and as the case of the petitioner is squarely covered by ***Shanti Devi's case***

(supra), this writ petition is being allowed and a direction is being given to the respondents to consider the affidavit of the petitioner and pass appropriate orders with regard to the family pension as per the Notification dated 17.4.2009 (Annexure P-3).

April 11, 2016
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(RITU BAHRI)
JUDGE