

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

Date of decision: 29.02.2016

CWP No.3986 of 2016

Kailash Devi

...Petitioner

Vs.

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Chatrath, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

Notice of motion.

On the asking of the Court, Mr. Inqulab Nagpal, AAG, Punjab, present in Court accepts notice on behalf of the respondents and waives service on them.

The petitioner is widow of Krishan Kumar. Krishan Kumar was appointed on work charged basis on 16th September, 1980 in the office of the Executive Engineer, Rajasthan Feeder Division, Ferozepur. His services were regularized w.e.f. 1st January, 2006. He died on 30th July, 2013. His widow applied for family pension and sought declaration from the Government that her husband should be regularized from a date prior to 1st January, 2004 to entitle him to pension and thereby family pension to her. This means that his services ought to have been regularized with effect from first available regularization policy of the Punjab Government, which Mr. Chatrath points out

is dated 4th March, 1999 (Annex P-1). The next policy is dated 23rd January, 2001 (Annex P-2). Either one would do.

In case the claim of the petitioner is accepted for regularization of her husband's services prior to 1st January, 2004, she would become entitled to family pension and perhaps monetary benefits, which her husband may have had a right to. Had he been regularized with effect from date prior to 1st January, 2004, when the GPF was disbanded to meet place for CPF.

The petitioner served a legal notice dated 5th August, 2015 (Annex P-15) on the respondents to consider her case. The notice has been replied to vide letter dated 15th September, 2015 (Annex P-16) raising objection that the petitioner's late husband never raised a claim for regularization in service with effect from 1st January, 2006 till he died in the year 2013. This delay runs against the widow and therefore she is not entitled to relief claimed. It has been disclosed that the petitioner's son has been appointed on compassionate grounds in place of his father. There are three reasons, which have been used to reject the claim of the petitioner. Firstly, there is a waiver of right by late Krishan Kumar by not raising a dispute or claiming regularization from a date prior to 1st January, 2006, which binds his widow. Secondly, the request suffers from delay. Thirdly, their son has been offered compassionate appointment.

There is no dispute that petitioner's husband came from work charged service to regular service. Therefore, the entire period has to be counted towards pension and pensionary benefits. None of these three ouster clauses are tenable. If late Krishan Kumar did not object, it does not mean that the claim by wife is barred by time or suffers from gross delay and laches. A claim for family pension is not barred, when son is appointed on compassionate basis. In the impugned letter, no notice has been taken of the policy instructions dated 4th March, 1999 (Annex P-1) and 23rd January, 2001

(Annex P-2) nor did any discussion on the judgment of this Court passed in CWP No.1933 of 2014 (O&M) titled 'Kanta Rani Vs. State of Punjab & others' decided on 28th October, 2014, which gave consequential benefits including family pension in similar circumstances alongwith interest at the rate of 18% per annum. The impugned reply refers to notices the instructions dated 1st May, 2000, but does not deal with them.

In any case, a letter written in response to a legal notice cannot be accepted as a view of the Government unless it comes from competent authority and therefore no faith can be placed on the document nor can the Court on the writ side go blindly on it. Such instances have come to the notice of this court in the present roster where the orders impugned are in the shape of replies filed to the legal notices/representations. This is not a happy situation. The Government is legally bound to decide the legal notice by passing orders and rendering decisions by the competent authority, who only could be made responsible for actions of the Government on judicial review before this Court. This fact needs to be put to an end as it cannot substitute an order made after due application of mind. Consequently, this Court cannot treat the letter dated 15th September, 2015 (Annex P-16) as an order of the Government. All that it means is that it shows the working of the mind of the signatory. In the circumstances, it will have to be expected that there is no order, which takes us back to the legal notice. The infirmities pointed out in the reply to the legal notice may be kept in mind when the competent authority takes up the legal notice (Annex P-15) and passes a speaking order containing reasons as to why in the case of the petitioner that Krishan Kumar should not be declared regular under the regularization policy available prior to 1st January, 2004 if his case squarely falls in one.

Accordingly, a direction is issued to the decision maker to take up the legal notice (Annex P-15) and decide it within six weeks from the receipt of

certified copy of this order. In case the petitioner makes a request for personal hearing or through authorized representative, the same shall be granted. While making the final order, the respondents would also keep in view the law laid down by the Supreme Court in Review Petition (C) No.2038 of 2013 in Special Leave Petition (C) No.23578 of 2012 titled 'State of Punjab & others Vs. Harbans Lal' upholding the view of this Court on 4th November, 2015 in the main SLP while dismissing the review application filed by the State of Punjab.

Disposed of accordingly.

29.02.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE