

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.17205 of 2012 (O&M)
Date of Decision: 01.08.2017

Krishano Devi

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. R.S. Manhas, Advocate for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

Petitioner, who is the widow of late Sh. Gurdial Singh, has filed the instant petition seeking the issuance of a Writ of Mandamus for directing the respondent Department of Irrigation, State of Punjab to release to her family pension that already stood sanctioned w.e.f. 19.10.1998 i.e. the date of death of her husband as also to release to her an amount of Rs.22,050/-, which has been withheld from the amount of gratuity that was payable to her deceased husband.

Brief facts that may be noticed are that husband of the petitioner had served with the Indian Army and retired as Naik. He was, thereafter, appointed as Beldar in the office of Chief Engineer, Ranjit Sagar Dam, Shahpur Kandi, District Pathankot under the Department of Irrigation, State of Punjab on 7.1.1988 on work charge basis. Services of the husband of the petitioner on the post of Beldar were regularized w.e.f 1.1.1996. Husband of the petitioner died while in service on 18.10.1998.

It is the pleaded case of the petitioner that she on the strength of a legal heir certificate raised a claim for grant of family pension as also for

release of other admissible financial benefits.

Placed on record and appended at Annexure P-4 is a document which prima facie indicates a recommendation for grant of family pension to the present petitioner being a legal heir of late Sh. Gurdial Singh.

The grievance raised in the instant petition is that inspite of such recommendation, the requisite benefit of family pension has not been released in favour of the petitioner and neither has any specific order been passed declining such claim.

As regards withholding of a sum of Rs.22,050/- under the head of gratuity, the same would be explained in the light of office order dated 9.3.2000 at Annexure P-8. Upon perusal of this order, it appears that a clarification was received from the Govt. of Pujab, Department of Finance, (Finance Pension Policy and Coordination Branch) to the effect that special increments are to be reduced/ignored while calculating pensionary benefits. Accordingly, a view was taken that since deceased husband of the petitioner had been accorded special increments while serving under the Department of Irrigation, the pay of the deceased employee was to be re-fixed. In pursuance to the order dated 9.3.2000 (Annexure P-8) the consequential re-fixation at a lower stage has been effected vide document placed on record at Annexure P-9.

In the written statement filed on behalf of the State, the contents of the document at Annexures P-8 and P-9 are not disputed. A stand has been taken that re-fixation of the pay of the deceased employee was on a valid and cogent basis as the benefit of special increments that had been given to late Sh. Gurdial Singh had not been reduced. It is further stated that prior to withholding of the amount in question i.e. Rs.22,050/-,

due opportunity was granted inasmuch as a show cause notice was issued to the petitioner and even a personal hearing was afforded and in which she had duly appeared and had even furnished an undertaking in the form of a no objection for such amount to be deducted from the admissible gratuity head.

In so far as grant of family pension is concerned, the stand taken in the written statement is that the petitioner has been drawing family pension from Army in lieu of service rendered by her husband in the Indian Army. It is contended on behalf of the State that the petitioner is not entitled to draw two family pensions i.e. one from the Army side and the other from the civil side in terms of Rule 6.17 (8) of the Punjab Civil Services Rules, Vol. II.

Learned counsel appearing for the petitioner would submit that the petitioner is not aggrieved of the exercise of re-fixation in terms of order dated 9.3.2000 (Annexure P-8) but would confine her grievance only as regards the recovery of the amount in question i.e. Rs.22,050/-. With regard to the claim of family pension counsel submits that a relevant development has taken place after filing of the instant writ petition and during the course of hearing itself refers to a notification dated 23.6.2016, issued by the Punjab Govt. Defence Services Welfare Department (Defence Services Welfare Branch) and contends that as per such notification approval already stands granted to dual family pension to the widows of Ex-service Men, who were re-employed in the govt. service after retirement from the Army. The contents of the notification are as follows:-

“The Governor of Punjab is pleased to grant approval to Dual Family Pension to the widows of Ex-servicemen who were re-employed in the Government

institutions after retirement from the Army as per decision of the Council of Ministers taken in the meeting dated 23.05.2016 and the widows of the Ex-servicemen who are getting family pension from the Government of India as per the notification of Ministry of Defence No.01(05)/2010D(Pen/Policy) dated 17.01.2013 has been made applicable in the State of Punjab with the condition that the pensioners would not be entitled to any kind of third pension except the Dual Family Pension.

2. The approval of this Dual Family Pension has been given vide E.L.P. No.3/4/13-3FPPC/695601/1 dated 24 February 2016 by the Finance Department (Finance Pension Policy and Coordination Branch).

3. This approval has been given through General Administrative Department (Affairs of Council of Ministers Branch) vide E.D.L.N.1/37/2016-1 Cabinet/2185 dated 25.05.2016 with the approval of Council of Ministers.

4. This order would be operative from the date of notification.”

A copy of the notification has also been furnished to learned State counsel during the course of the day.

Learned State counsel would join issue and would submit that the notification dated 23.6.2016 itself recites that it would be operative from the date of notification. Contention raised by State counsel is that such notification dated 23.6.2016 would not have retrospective operation and as such, on the strength of such notification there cannot be an automatic grant of family pension to the present petitioner as her husband had expired way back in the year 1998. State counsel would otherwise concede that no specific order till date has been passed declining the claim of the petitioner for grant of family pension.

Counsel for the parties have been heard at length and the pleadings on record have been perused.

In the considered view of this Court the contention raised by counsel for petitioner as regards recovery of Rs.22,050/- being proposed from the petitioner is misplaced. Concededly, vide order dated 9.3.2000 (Annexure P-8) an exercise of re-fixation of the pay of deceased husband of the petitioner was carried out. There is no challenge to such exercise of re-fixation at a lower stage. The consequential effect of the order dated 9.3.2000 (Annexure P-8) is that a certain amount calculated and computed on the basis of re-fixation at a lower stage i.e. Rs.22,050/- has been withheld. Per se this would not amount to recovery. It is not a case where a certain financial benefit has already been released and paid to the employee or the widow of the deceased employee. That apart, there is also no denial to the factual premise that the petitioner herein had been called upon to show cause and at the stage of grant of personal hearing had furnished an undertaking and had specifically deposed that she would have no objection to the withholding of the sum in question while accepting the balance computed amount of gratuity.

In so far as the claim for family pension is concerned, concededly, no specific order has been passed declining the claim.

A notification dated 23.6.2016 has been issued by the Defence Services Welfare Department, State of Punjab in the interregnum and during the pendency of the petition. As to whether such notification would hold the field even with regard to a claim for family pension in respect of the deceased husband of the petitioner would be an issue to be dealt with by the appropriate authority.

Under such circumstances, the present writ petition is disposed of with a direction to the State/competent authority to examine the claim of

the petitioner for grant of family pension in accordance with law as also against the backdrop of the issuance of the notification dated 23.6.2016 issued by the Secretary to Govt. of Punjab, Defence Services Welfare Department and to pass a final order and convey the same to the petitioner, within a period of eight weeks from today.

It is clarified that the observations made by this Court in this order would not be construed as an expression of opinion on merits as regards the claim of the petitioner for grant of family pension as also with regard to the applicability of the notification dated 23.6.2016 for grant of family pension.

Petition is disposed of in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

01.08.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No