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

CWP No. 10852 of 2015 (O&M)
Date of decision: 27.03.2017

Amarjit Kaur

... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Ms. Sonia G. Singh, Advocate for the petitioner.

Ms. Vandana Malhotra, Addl. Advocate General, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

<u>KULDIP SINGH, J. (ORAL)</u>

This order shall dispose of CWP Nos. 10852 & 10853 of 2015, 20203, 20015 of 2014 as the point involved in these petitions is identical. The facts are extracted from CWP No. 10852 of 2015.

The writ petition is filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to revise the pension of the petitioner under the instructions dated 14.09.1998(P-1) and 18.08.1998 (P2) as per the last pay drawn by the deceased husband of the petitioner and to revise the pension as per the policy instructions and to grant the payment of arrears to the petitioner.

Husband of the petitioner-Late Jaswant Singh was working as ASI with the Punjab Police. He died on 02.03.1993 while on active duty in fighting terrorism. As per the policy of the Punjab Government contained in Rule 5.1 of the Policy dated 14.09.1998 (Annexure-P1), the special family pension equal to the last pay drawn by the deceased employee was granted. The plea of the petitioner is that the special family pension equal to the last pay drawn should be allowed till the death of the widow of the deceased in view of Rule 8.35 of the Punjab Civil Services Rule, Volume II.

The State in the reply has taken the stand that the deceased-Jaswant Singh, ASI, was to otherwise superannuated on 31.12.2007. As per the Policy dated 14.09.1998 Annexure-P1, the petitioner was allowed special family pension at the rate of ₹ 1,560/- which was the last pay drawn by the deceased w.e.f. 03.03.1993 till 31.12.2007 when ASI Jaswant Singh (now deceased) would have otherwise be retired. Thereafter, instead of special family pension, normal family pension at the rate of ₹ 900/- per month from 01.01.2008 till the date of death of petitioner has been awarded vide pension order dated 22.04.1993 (Annexure-R1).

I have heard learned counsel for the parties and have gone through the file carefully.

The law point arising for consideration before this Court is as to whether in case the employee dying in harness and his family pension being allowed as special family pension equal to the last pay drawn, such special family pension is to continue till the date of notional superannuation of the deceasd or till the death of the widow? The policy of the Government dated 14.09.1998 (Annexure-P1) is regarding the implementation of the recommendation of the 4th Punjab Pay Commission regarding extra ordinary pension of awards. It prescribe the rate of family pension to the family of the deceased employee. Rule 5 provides for special family pension to the families of the government employees who while performing their dutes die as a result of attack or during action against extremists, dacoits, smugglers and antisocial elements. Rule 5.1 provides as under:

> *5.1 The revised rate of special family pension payable to the families of Government employees who, while performing their duties, die as a result of attack by or during action against extremists, dacoits, smugglers and anti-social elements etc. shall by the last pay drawn by the deceased employee.*

This makes it clear that special family pension is to be equal to the last pay drawn by the deceased employee.

Rule 5.9 provides as under:-

> *5.9 Pension/Extraordinary pension away as per existing rules/instruction on the subject shall continue to be in force and the Punjab Civil Service (Revised Pay) rules 1998, shall apply wherever relevant.*

Rule 5.9 makes it clear that the Punjab Civil Service (Revised Pay) Rules 1998 to apply wherever relevant.

Annexure P1 make special provision regarding the family pension and the special family pension. The policy makes it clear that distinction has been made between the family pension under the extra ordinary pension rules for which certain rates of pension are prescribed and also regarding special family pension.

Learned counsel for the petitioner heavily relied upon rule 8.35 of Punjab Civil Services Rule, Volume II which provides as under:

> *"8.35 (1) A family pension will take effect from the day following the death of the Government employee or from such other date as the competent authority may decide.*
>
> *(2) A family pension will ordinarly by tenable-*
>
> *(a) (i) in the case of widow or mother until death or re-marriage whichever occurs earlier;*
>
> *(ii) in the case of minor son, or minor brother, until he attains the age of 18;*
>
> *(iii) in the case of unmarried daughter or minor sister, until marriage or until she attains the age of 21, whichever occurs earlier;*
>
> *(iv) in the case of of the father, for life.*
>
> *(b) Notwithstanding, anything contained in sub-clause (a) a widow who remarries her deceased husband's brother and continues to live a communal life with or contributes to the support of other dependants of her deceased husband shall not be disqualified for the grant of extraordinary pension otherwise admissible to her under these rules."*

It has been argued that as per Rule 8.35, the family pension is to continue in case of widow or mother of the deceased until their death or remarriage whichever is earlier. Therefore, same rule is to apply to family pension.

I am of the view that these rules are confined only to family pension. Special family pension is a special measure adopted by the Government vide police dated 14.09.1998 (Annexure-P1). The purpose of the rule is to grant the same pay to the family of the deceased employee who dies while performing duties till the date he was to otherwise superannuate. By no stretch of imagination, the family can be given the same salary till death or remarriage of the widow. Rule 2.1 makes a special provision. Therefore, the State was justified in granting the special family pension equal to the last pay drawn by the deceased till the date, he would have been superannuated and thereafter ordinary family pension is admissible under instruction dated 14.09.1998 (Annexure-P1) read with Punjab Civil Services Rules. It being so, I do not find any merit in the present petition. The same is hereby dismissed with the above observations.

(KULDIP SINGH)
JUDGE

27.03.2017
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Whether speaking/non-speaking : Yes
Whether reportable : Yes