

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.12995 of 2016

Date of Decision: 7.4.2017

Namrata Pandit

... Petitioner

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.R.A.Sheoran, Advocate for the petitioner

Mr.Dheeraj Jain, Advocate for UOI/BSF

...

RAJIV NARAIN RAINA, J. (Oral)

1. This petition has been filed by Namrata Pandit challenging discontinuance of family pension with entitlement coming from her late husband Constable Surya Prakash. Surya Prakash was enrolled in BSF in 2001. At the time of enrolment, his family consisted of his father, mother, two sisters and a brother, namely, Harish Kumar. Late Surya Prakash was granted 60 days Earned Leave w.e.f. 27th June, 2005 to 25th August, 2005. During this period, his marriage was solemnized with the petitioner on 10th July, 2005. Sadly, on 12th July, 2005, while returning after answering nature's call in the morning in his native village, he accidentally slipped into a Well and died due to head injury.

2. On information of death received by the BSF, the financial benefits admissible to Surya Prakash alongwith family pension under the Rules of 1972 was granted including sums mentioned in the written statement filed by the respondents.

3. On 24th August, 2005, the petitioner remarried the younger brother of the deceased, Harish Kumar. On getting information about the re-marriage, the pension was discontinued from December, 2015 onwards by the respondent BSF under Rule 54 (6) (i) of the Rules of 1972. The petitioner had received Ordinary Family Pension upto 10 years as per Rule 54(6)(i) of the Rules of 1972 as the husband of the petitioner died due to an accident while he was on earned leave. There is an embargo in the said rule which entitles widow to family pension, but in case of widow or widower, upto the date of death or re-marriage, whichever is earlier.

4. The petitioner has approached this Court for seeking directions from this Court for restitution of pension. The stand of the BSF is that the death of late Constable Surya Prakash was not attributable to government service as he died in an accident while on leave and not on duty. The petitioner did not disclose the fact of re-marriage with Harish Kumar to the Department and withdrew pension from 21st August, 2005 to December, 2015 knowing well that she was not entitled to the same after her re-marriage. Hence, the petitioner is liable for recovery of pension which she withdrew during the period. As per entitlement, the refutation of the claim is not based on re-marriage alone, but also by citing Rule 2 (xi) Schedule-II of the Central Civil Services (Extraordinary Pension) Amendment Rules, 2011 (Annex. P-3) (for short “the EPF Rules, 2011”) for determining the compensation payable on death and

disability under different circumstances. Though EPF Rules, 2011 produced at Annex. P-3 appear to be confined to persons serving in the Audit and Accounts Department, but have been recognized in the written statement in paragraph 3 to be applicable rules in the present context and where reference is made to Rule 2 (xi).

5. Both the parties have built their cases around the Rules of CCS Rules, 1972 and the EPF Rules, 2011. The cases are categorised in five distinct categories in the Schedule to the EPF Rules, 2011. The petitioner's case falls under Category "A" which provides for pension on "Death or disability due to natural causes" which is not attributable to Government service. Examples given are chronic ailments like heart and renal diseases, prolonged illness, accidents while on duty. The Schedule further provides that cases covered under Category "A" are also covered by the provisions of the Rules of 1972. Hence, it is urged by BSF that the case of the petitioner rightly falls under the Rules of 1972 and not the EPF Rules, 2011 dealing with arrangement as to Extraordinary Pensions.

6. On the other hand, the petitioner has argued in the petition and before me that her case falls under the EPF Rules, 2011 and not the CCS Rules of 1972. As per Rule 12 of the EPF Rules, 2011, the family pension will ordinarily be tenable in case of widow till death or re-marriage, whichever occurs earlier.

7. But there is an exception in Rule 12-A which prescribes that the widow of an employee who remarries deceased husband's brother and continues to live in a communal life with, or contributes to the support of the other dependents of the deceased shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under these rules.

Rules are subject to any “procedure rules” relating to ordinary pensions for the time being in force, to the extent that such procedure rules are applicable and are not inconsistent with these rules. Rules 12-A and 13(1) are reproduced below:-

“Rule 12-A: Notwithstanding anything contained in Clause (i) of sub-rule (2) of Rule 12, a widow of an employee who remarries her deceased husband’s brother and continues to live a communal life with, or contributes to the support of the other dependents of the deceased shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under these rules.

Rule 13(1): In respect of matters of procedure, all awards under these rules are subject to any procedure rules relating to ordinary pensions for the time being in force, to the extent that such procedure rules are applicable and are not inconsistent with these rules.”

8. Rule 13 (a) (1) stands substituted by the new rule which has come into force vide Notification dated 15th February, 2011 which substituted Rule informs interested persons deriving rights as follows:-

“(1) In respect of matters of procedure, all awards under these rules are subject to any procedure rules relating to ordinary pensions for the time being in force, to the extent that such procedure rules are applicable and are not inconsistent with these rules and also, if eligibility concerning pension is not covered under these rules but covered under Central

Civil Services (Pension) Rules, 1972, the Central Civil Services (Pension) Rules, 1972 shall be applicable, provided it is not repugnant to or inconsistent with the provisions of these rules.”

9. In view of these rules prevailing, the petitioner asserts that she is entitled to extraordinary pension and the impugned decision withdrawing the precious right is legally bad and deserves to be quashed.

10. I have heard Mr. Sheoran, learned counsel for the petitioner and Mr. Dheeraj Jain, learned counsel for the Union of India/BSF.

11. The question which falls for consideration is whether the petitioner is entitled for family pension as per Rule 12-A of the EPF Rules, 2011, despite re-marriage within the family of her deceased husband from whom she claims despite her re-marriage. She is not only entitled to these benefits as she supports the family of the deceased husband, grand-mother, his parents and the child of deceased Surya Prakash as required by the Rule. Not only this, the petitioner is entitled to extraordinary pension under Category 'B' because the husband died while he was on leave during service. It is urged that person who is on leave is deemed to be on duty and, therefore, the petitioner is entitled for 60% family pension of the salary last drawn by the deceased as per Category 'B' as against the opposing stand of the respondents which makes the case to fall in Category 'A' which rule was amended by the Central Government w.e.f. 1st January, 1986 after the acceptance of the recommendations in the report of the 5th Pay Central Commission.

12. The petitioner disclaims applicability of Rule 6 (i) of the Rules of 1972 because they are inconsistent with the extraordinary rules.

the salary last drawn by the deceased, but in Category `B`, the family pension would be 60%, and therefore, the petitioner is entitled to the more beneficial provisions of the EPF Rules, 2011. It is strongly argued that the rule for special family pension is designed to benefit the employee's direct claimant and the respondents have wrongly stopped the payment of family pension to the petitioner. Consequently, family pension should be restored because her husband died as a result of injury sustained in an accident though he was on Earned Leave at the time of death. The only reason in the impugned order dated 23rd April, 2016 (Annex. P-2) addressed to the petitioner is that she is not eligible for family pension because of her re-marriage. To take the argument further, it would be best to reproduce wording of Categories `A` and `B` of Schedule II of the EPF Rules, 2011 which read as follows:-

“Category “A””- Death or disability due to natural causes not attributable to Government service. Examples would be chronic ailments like heart and renal diseases, prolonged illness, accidents while not on duty etc.

Category B- Death or disability due to causes which are accepted as attributable to or aggravated by Government service. Diseases contracted because of continued exposure to a hostile work environment, subjected to extreme weather conditions or occupational hazards resulting in death or disability would be examples.”

13. Accident while not on duty falls in Category `A`. But the claim is made under Category `B`. I would not hold that the death in this

case by an accidental fall in a well is attributable to or aggravated by government service. It is only cases covered under Category 'A' which are governed under the provisions of Rules of 1972. On a plain reading of Categories 'A' and 'B' and two rules in question, I am of opinion that the case would fall only in Category 'A' which takes us to the CCS Rules of 1972. There is no doubt that the case of the petitioner on the death of her husband was processed as ordinary family pension as per Rule 54 (6) (i) of the Rules of 1972, since the accident occurred while not on active duty. Under Rule 54, there is a restriction to ordinary family pension which deprives beneficiary to ordinary family pension on re-marriage. Re-marriage within the same family and to the brother of the deceased is a guarantee against want and security to the widow.

14. What remains to be studied is the impact of Rule 12-A of the Central Civil Services (Extraordinary Pension) Rules, 1939 as amended by the Central Civil Services (Extraordinary Pension) Amendment Rules, 2011. These Rules came into force after about six years of the death of petitioner's husband. Rule 13 (1) is a procedure rule saving awards under the Extraordinary Pension Rules to be governed by the procedure relating to the ordinary pension for the time being under force to the extent such procedure rules are applicable and not inconsistent with EPF Rules, 2011 and also if eligibility concerning pension is not covered under the EPF Rules, 2011, but covered by the Rules of 1972. Then it follows that the Rules of 1972 shall be applicable provided they are not repugnant or inconsistent with the provisions of these rules. The question of repugnancy and inconsistency between the two central rules i.e. Rules of 1972 and 1939/2011 gives rise to the question immediately as to whether

there is anything in the Rules of 1972 which is inconsistent with the EPF Rules, 2011 and repugnant to it.

15. Category 'A' of Schedule II to the EPF Rules, 2011 entitles beneficiaries to extraordinary pension in cases of accidents while not on duty. Schedule II deals with the determination of compensation payable for death or disability under different circumstances, which have been categorised in five distinct categories. There is no dispute that Categories 'C' to 'E' are inapplicable to this case. There is a serious dispute with respect to Category 'B' under which the claim is made with BSF asserting that the case falls under Category 'A' and the petitioner asserting that the case falls under Category 'B' as well as Category 'A' in the alternate.

16. Rule 12-A is a special provision to cater to a special circumstance where widow remarries her husband's brother and continues to live a communal life and continues to support the other dependents of the deceased. She shall not then be disqualified for the grant of extraordinary pension, otherwise admissible to her under the EPF Rules, 2011. No doubt, the petitioner was entitled as a matter of right to extraordinary pension provided the condition precedent is established that she not only marries her husband's brother, but continues to live a communal life to support the other dependents of the deceased which includes grand-mother, parents and the child through late Constable Surya Prakash.

17. The moot question which remains unanswered is whether the petitioner continues to live a communal life and continues to support the other dependents of the deceased and if she does, she will not be disqualified for extraordinary pension. Here it appears to me that the

words 'contributes' and 'supports' used in the rule are of wide amplitude

encompassing contribution to all support systems in the background of a joint Hindu family and not necessarily merely financial support from the pension, whatever name called. The support can be emotional, physical and sharing of labour to run a joint household and to do all acts and things in support of communal life which a daughter-in-law is traditionally expected to do. Even physical proximity I think is not necessary in any manner. The person should remain at the place where support is needed and it can be from outside joint home, even assuming that her second husband serves elsewhere and she has to reside with him by a career choice which adds to the common wealth of the family as a unit, but the family remains joint in its habitual place of abode. After all, the petitioner is not only married to Harish Kumar, but is nurturing the child of late Surya Prakash and this is a special link to justify extraordinary pension.

18. Mere re-marriage as BSF thinks should not disentitle the widow to extraordinary pension and if this view is accepted or upheld it would lead to serious ill-effects and cause grave damage to the institution of marriage of widows, who are the most vulnerable section of society. I, however, express no opinion on the rule where the re-marriage takes place outside the fold of the family where a child fathered by the late government employee is being nurtured. This can be in an appropriate case to explore as to the purpose and philosophy of pension itself whether it is family pension or extraordinary pension unless the second husband refuses to maintain the child. Then the rule can be tested if the occasion arises in an appropriate case. To find law whether there is any other legal principle to support or to deny the claim where marriage is not with the brother of the deceased husband is beyond the scope of the present exercise. The policy may demand that a widow be re-married for her

future security and this should not be a fetter or deterrent from getting re-married. This might encourage live-in relationship. Though there is nothing morally wrong in such a relationship.

19. Reliance placed by Mr.Dheeraj Jain, appearing for the respondents on Meer Kaur vs. Union of India and others, 2005 (1) SCT 709 is misplaced. This case was decided by the Division Bench of Delhi High Court in 2004 when Rule 12-A was not born and the amendment in 2011 has not seen the light of day. The Delhi High Court considered the case of death due to diarrhoea and dehydration of an employee while on leave which was not attributable to service, and therefore, held the petitioner therein not entitled to extraordinary family pension, but only ordinary family pension. The case turned on interpretation of Appendix-3 of the Extraordinary Pension Rules. Accordingly, the case is of no help to the respondents.

20. Mr. Sheoran cites the Division Bench judgment of this Court in Barkat Masih vs. Union of India and others (CWP No.17792 of 2013 decided on 23rd May, 2014) wherein the issue involved related to an injury suffered while on casual leave which entitles for disability pension as the injury would be deemed to have been attributed to military service. When an employee is on casual leave and annual leave, both the situations would have to be taken as on duty, the Court held. The case is not point specific and is of no real assistance to the issue involved in this case so also the judgment relied upon by Mr.Dheeraj Jain passed by a Single Bench of this Court in Neena Devi vs. Union of India and others, 2013 (1) SCT 133 which is also not a case directly in point while it deals with Rule 3-A (1) (a) of the Central Civil Services (Extraordinary Pension) Rules, 1998 in a case of natural death on account of heart attack while returning

to join the place of posting after availing casual leave which factual position was held not to be attributable to or aggravated by government service. The claim of the petitioner therein for ex-gratia lump sum compensation or extraordinary special family pension was held to be inadmissible. The learned Single Judge held that where language of the provision is clear and unambiguous, no resort to interpretation can be made by the court to extend the benefits in favour of those for whom such benefits were not intended merely on the ground of 'compassion and equity'.

21. In my view, the extraordinary pension rules are special provisions while the Rules of 1972 are general in nature. Special law will prevail over and over-ride the general law. The rule making authority had the Rules of 1972 before it when it embarked on an amendment to the extraordinary pension rules. Rule 12-A guarantees to widow who remarries husband's brother and continues to live a communal life and as such she would be entitled to the benefit of extraordinary pension under the special rules. This is, however, a matter of determination whether the widow has satisfied the second test in Rule 12-A which demands that she continues to live a communal life as envisaged in the rule. On this factual aspect, no opinion can be expressed since it is a matter of enquiry and verification which would entail affirmation from the family members of the petitioner whether she continues to live a communal life in the village or elsewhere, but supports and contributes the other dependents of late Surya Prakash in more ways than one.

22. Accordingly, this petition is allowed and impugned order dated 23rd April, 2016 (Annex. P-2) is set aside. A direction is issued to the respondent-authorities to verify the accomplishment of the second test

in Rule 12-A of the EPF Rules, 2011 for grant of extraordinary pension. However, whatever may be the ultimate decision will be open to challenge in case they are adverse to the interest of the petitioner, but recoveries will not be made from the widow as asserted in the reply filed by the respondents, even though she may not have disclosed her marital status to the BSF authorities. A decade was long enough for the respondents to have carried out verifications from the District Administration and from the village through revenue authorities of the concerned District and the neighbours of the petitioner and elders in the village as to whether the petitioner 'contributes' and 'supports' her matrimonial home after her re-marriage to her brother-in-law after the sad and untimely death of her husband two days after taking the ritual seven steps around the fire. If there are no rules or instructions prevailing to this effect as to spot verification as per rules to satisfy the prescription in Rule 12-A of the EPF Rules, 2011, then it is for the rule-making authority to fill the gap and may consider making necessary amendment in the law or by issuing instructions as to the methodology to be adopted on the narrow factual issue left open for determination by spot enquiry. In this regard, nothing can be assumed till proved as a fact. I have no material on the record of this case to form opinion, which is left to the authorities to determine with care and caution as to the status of "communal life" an satisfaction of the demands of Rule 12-A.

23. Accordingly, this petition on the law point is accepted in favour of the petitioner as to interpretation of the interplay of the two set of rules. The competent authority amongst the respondents is directed to pass a fresh order in accordance with law within three months from the

date of receipt of a certified copy of this order and in the light of this judgment.

(RAJIV NARAIN RAINA)
JUDGE

7.4.2017

MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes