IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14654 of 2015 (O&M)
Date of decision: 15.03.2017

Tripta Devi

... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Amandeep Saini, Advocate
for the petitioner.

Mr. N.K Chopra, Additional 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 ?

KULDIP SINGH, J. (ORAL)

The facts of the case leading to the present controversy are that deceased Chander Kant (husband of the petitioner) constable No. 203 GRP Amritsar joined on 21.11.1962 and died during the service on 02.05.1997 after rendering 33 years of qualifying service with the respondent-department. It also comes out that during his lifetime he married twice. First wife of the deceased employee died leaving behind one son namely, Jatinder Pal-respondent No.5. After the death of first wife, he remarried Tripta Devi-petitioner from which he had two daughters namely Seema & Chetna and two sons namely, Rajat Kumar and Naresh Kumar. Jatinder Pal (son of the deceased from first marriage) is now stated to be of 40 years and the other children from second marriage aged between 30-35 years as disclosed in the petition. It comes out that after the death of Chander Kant, the litigation cropped out between the legal heirs of the deceased regarding the retiral benefits. Bhagwati, mother of the deceased as well as Jatinder Pal (son of the deceased from first marriage) filed a civil suit claiming the proportionate share in the provident fund, gratuity, leave encashment, pension etc. The suit was ultimately decreed by learned Civil Judge, Junior Division, Amritsar vide judgment and decree dated 31.10.2001 wherein after discussion the provisions of Rule 6.17 (4) of Punjab Civil Services Rules and the effect of the judgment of the High Court in **State of Punjab and another Vs. Kharak Singh Kang and another, 1998 (4) SLR 594 (DB)**, it was held as under:

> *"Accordingly, it is held that plaintiff No.1 who is mother and defendant No.5, who is widow of the deceased, are entitled to the family pension. For their life and plaintiff No.2 and defendant Nos. 5 to 9 are entitled to received the share in the family pension till they attained the age of 25 years. In case any of the children attain age of 25 years. His or her eligibility to get the family pension will elapse automatically and such share will be divided in the remaining eligible legal representative."*

Now the admitted position is that Bhagwati (mother of the deceased employee) has also died and Jatinder Pal (son of the deceased from first marriage) has crossed the age of 25 years. The petitioner now claimed that she is now entitled to 100% pension. On the other hand, State has taken the stand that on the death of the mother as well as on attaining the age of 25 by Jatinder Pal (son of the deceased from first marriage) their share will cease and will not go to the petitioner. State has placed reliance upon instructions of Government of Punjab (Annexure RA-1) dated 24.10.2006.

The short question arising for consideration before this Court is as to whether on the death of the mother of the deceased employee and on account of his son from pre-deceased wife attaining the age of 25 years, their share will go to the second wife-widow of the deceased employee? The instruction dated 24.10.2016 (Annexure-RA1) of Government of Punjab, would show that it pertains to the case where the deceased employee is survived by two wives. In that regard Note 1 and 2 of Rule 6.17 (4) of Punjab Civil Services Rules, Vol II are there. In that case, if one of the widow dies and her share shall cease, in the absence of any minor legal heir. However, the position is different here. The mother was not included in the definition of 'family' as one of the family member and it was only on account of the judgment of **Kharak Singh Kang (supra)** that the parents were also held entitled to pension proportionately. Regarding the share of the son of pre-deceased first wife of the employee when he has attained the age of 25. The law has already been settled by the Hon'ble Division Bench judgments of this Court in **LPA No. 1434 of 2014 (O&M), The State of Punjab and others Vs. Harpal Kaur decided on 01.09.2014** and **Ram Dulari Vs. State of Haryana and others, 2010 (1) SLR 4**03. In both the cases this Court took the view that when the son of the pre-deceased first wife attain the age of 25 year, his share will go to the surviving widow of the deceased. The Division Bench of this court in **Harpal Kaur's** case has observed as under:

> *"In any case, the State is liable to pay 100% family pension, which can be shared by any number of legal heirs of the deceased employee, but the State cannot retain the share of one legal heir on the ground that he has attained the age of 25 years and his right to have family pension has ceased. The family pension is an estate of the legal heirs of the deceased employee. The apportionment of the family pension of a deceased employee is not the business of the State. Right in the family pension will devolve according to the Hindu Succession Act, 1956."*

It would mean that when a son from the pre-deceased wife will attain the age of 25 years, his share will go to the surviving widow which in this case is the petitioner, Tripta Devi. In view of the observations above, the share of the mother will also go to the widow of the deceased employee as it was held that the apportionment of the pensionary benefits of the employee is not the business of State and right of family pension will devolve according to the Hindu Succession Act, 1956. It being so, it is held that in view of two judgments of Division Bench of this Court, the share of the Jatinder Pal (son from pre-deceased first wife) as well as the Bhagwati (mother of the deceased employee) willj go to Tripta Devi-petitioner.

In view of above, present petition is allowed and the respondents are directed to release 100% family pension to the petitioner by way of transferring her the share of Bhagwati (mother of the deceased employee) from the date of her death and the share of Jatinder Pal (son of the pre-deceased first wife) from the date when he attained the age of 25 years with interest @ 9% per annum from the date it became due. Needful be done within three months from the date of the receipt of the certified copy of the order.

(KULDIP SINGH)
JUDGE

15.03.2017
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Whether speaking/non-speaking : Yes/No
Whether reportable : Yes/No