IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.20548 of 2015
Decided on : 31.10.2017

Kamla Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. J.S. Maanipur, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

G.S. Sandhawalia, J. (Oral)

The petitioner who is a widow of late Shri Rajinder Singh-Ex-Constable, seeks quashing of the order dated 19.06.2015 (Annexure P-5), whereby the family pension has been denied to her on the ground that the same was payable to the wife of the deceased retiree till the date of re-marriage or death of the wife whichever is earlier, as per the rules. It has also been mentioned that the daughter Smt. Kavita had got married on 14.01.1998 and no family pension was payable to the family of the deceased as per rules.

It is the case of the petitioner that her husband was a constable with the Police Department and had served w.e.f. 02.11.1970 till 18.04.1980. He had expired while on duty and left behind one minor daughter, namely, Kavita. The petitioner was granted family pension vide PPO No.3413 F/HR dated 19.04.1980 and at that time she was around 30 years. She had re-married with the younger brother of the deceased husband, namely, Dilbagh Singh and accordingly the family pension had been stopped. The petitioner had served the legal notice dated 19.05.2015 (Annexure P-4) on the strength of a Division Bench judgment passed in **'Kiran Kumar Vs. State of Haryana and others' 2003 (4) RSJ 283**, which led to the passing of the impugned order dated 19.06.2015 (Annexure P-5).

The defence of the State in its written statement is that revised pension was being paid @ ₹225 per month w.e.f. 19.04.1980 to 18.04.1987. The petitioner had got re-married on 20.04.1983. A request had been made to disburse the family pension to the daughter of the deceased employee through her legal guardian upto the age of 24 years or her marriage, who had got married on 14.01.1998. On 07.10.1983 (Annexure P-1), the Superintendent of Police had informed the mother of the deceased employee that the wife of the deceased had got re-married and under Civil Service Rules Volume-II only the wife could be granted the pension, but in view of Rule 6.16 D (3) no pension was payable under this rule to a widow women member of an officer's family in the event of her re-marriage. Resultantly, the pension payment order had been returned on 20.05.1998, after making family pension upto 13.01.1998. Resultantly, the State relied upon the said rule to the extent that no pension was payable to the widow women member of an officer family, in the event of re-marriage.

It is not disputed that the said rule had been deleted vide notification dated 26.06.1983 and the State as such could not justify which rule prevented the widow from receiving the pension, which was being paid to the daughter till 14.01.1998 and how reliance was being made on a provision, which did not exist.

Counsel for the State has also submitted that the petition has been filed at a belated stage, but the fact remains that the pension is recurring cause of action and nothing has been shown that there is any bar under the rules that the widow is not entitled for the grant of family pension even on account of her re-marriage.

Counsel for the petitioner is well justified in placing reliance upon the Division Bench judgment passed in **Kiran Kumar's case (supra),** to which there is no rebuttal by the State. The case was also similar to the extent that widow had re-married to the younger brother of the deceased and it was noticed that Rule 6.16 D (3) had been deleted. Resultantly, it was held that the object of the rule is not to deny benefit of family pension to the dependent of the deceased, but provides an exception to that concept by postulating a situation where the widow re-married independently and it was held that the economic dependence of the family thus continues. The relevant part of the said judgment reads as under:-

> *"4. We have heard learned counsel for the parties at some length. The objection raised by the respondents is found to be without any merit. It may be noticed, at the very outset that the Rule 6.16 D was ordered to be deleted vide notification dated 26th June 1983 and no other rule has been brought to our notice which was substituted for the said rule. If that be the position, the reliance placed by the respondent State is totally misconceived and is erroneous.*
>
> *5. Firstly there is no rule which prohibits grant of family pension to the widow of the deceased who has remarried and particularly in the*

same family. The object of the rule is not to deny benefit of family pension to the dependent of the deceased, but, obviously provides an exception to that concept by postulating a situation where the widow remarried independently and her economic dependence upon the deceased is disintegrated, from the need of the family. In the present case, both such situations exists. Admittedly, the daughter of the deceased is living with the petitioner, who has remarried with the younger brother of the deceased. The economic dependence of the family, thus, continues in its entirety and ingredient of an exception seems to be satisfied in the present case.

6. Furthermore, we may refer to judgment of this Court in the case of ***Kamaljit Kaur v. Union of India and others, 1998(1) SCT 312 (P&H) : 1997(3) PLR 441****, wherein the Court while dealing with the regulations 216 and 219 of the Service Pension and Gratuity Regulations in somewhat similar circumstances granted relief to the petitioner and held as under :*

> *"Petitioner, widow of Malkit Singh, married with the brother of the deceased. This fact is admitted in the written statement. In such a situation the relevant Rule that applies to the case in hand is Rule 219 of Section 2 of Service Pension and Gratuity. That Rule states that "A relative specified in regulation 216 shall be eligible for the grant of family pension." Widow is one mentioned in Regulation 216. Thus, it is beyond controversy that widow is entitled to pension under Rule 219. That Rule further states that if the widow re-marries her deceased husband's brother and continues to live a common life with and/or contributes to the support of the other living eligible heirs she continues to be entitled to family pension. In this case petitioner re-married deceased's direct brother. She is maintaining the son born to her through the deceased thus petitioner continues to have a right to get the family pension. That family pension was denied to her from May, 1994. The said action on the part of the respondents was illegal. So, respondents are directed to pay the entire arrears of pension due to the petitioner within a month from today. If the entire arrears are not paid within one month, as stated above, that entire arrears will carry*

> *interest at the rate of 12% per annum from the date of the expiry of one month till the date of actual payment. We direct the respondents to continue to disburse the family pension due to petitioner regularly month by month.*
>
> *Petition is allowed as indicated above. Since respondents have raised all cantankerous contentions in the written statement filed in this case, we feel that it is a fit case where they are to be mulcted with costs. Respondents are directed to pay the costs of the petition including Advocate's fee of Rs. 2000/-."*
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> *7. We have perused the judgement of the Court and find no reason to differ with the reasoning given by their Lordships in the above judgments.*
>
> *8. For the reasons aforestated we allow this petition and quash the noting in Annexure P-1 recorded by the Treasury Officer. Further, we direct the respondents to pay jointly the family pension to the widow and minor, in accordance with the rules. Parties are left with no costs."*

Counsel for the State has only tried to distinguish the said judgment on the ground that in the present case the daughter as such had been receiving pension after re-marriage till she got married on 14.01.1998. Undoubtedly after that date the petitioner thus again become entitled for the grant of pension and nothing could be shown that there is any bar under the rules which prohibited the said benefit.

However, the petitioner shall not be entitled for interest, since the petitioner herself chose not to agitate for the grievances and only served the legal notice on 19.05.2015 (Annexure P-4).

Accordingly, the present writ petition is allowed. The order dated 19.06.2015 (Annexure P-5) is quashed. The respondents are directed to continue the family pension w.e.f. 14.01.1998 to the petitioner. The arrears will accordingly be paid within a period of 2 months from the receipt of the certified copy of this order.

(G.S. SANDHAWALIA)
OCTOBER 31, 2017 **JUDGE**
Naveen

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