284 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21717 of 2014
DECIDED ON: SEPTEMBER 13, 2017

SUMAN LATA & ANOTHER

.....PETITIONERS

VERSUS

EMPLOYEES PROVIDENT FUND ORGANISATION

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ravi Kant Sharma, Advocate
for the petitioners.

Mr. R. Kartikeya, Advocate
for the respondent.

*****

JASPAL SINGH, J

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioners have sought for the issuance of a writ in the nature of mandamus directing the respondents to release and to pay the family pension of 1233/- per month to petitioner No.1 and child pension of 308/- per month to petitioner No.2 under the provisions of Employee's Pension Scheme 1995 (for short '1995 scheme') as well as Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity 'EPF Act') and further not to effect recovery of the amount of pension paid to the petitioners amounting to

1,80,927/- with further direction to immediately release and to pay the widow and children pension to the petitioners from January 2006 onwards the day when it was stopped.

2. The only question which requires determination in the instant case is, whether the petitioners are entitled to the relief(s) claimed through the instant petition as referred to above and answer to the question is in the negative for the reasons recorded here-in-below.

3. Petitioner No.1 being the widow of Ramesh Kumar who was working as Store Clerk with the Meham Co-operative Sugar Mills at Maham (for short 'sugar mill) was taken away by the nature on August 08, 1995 while on duty due to cylinder blast in the mill premises. He was covered under the Act and was allotted EPF a/c No. HR/7308/261. The Sugar Mill Management granted the admissible benefits to the widow of the deceased-Ramesh Kumar on account of gratuity and compensation admissible under the Group Insurance Scheme and after having calculating the period of service as well as contributions made to the Employee's Provident Fund, family pension to the tune of 1233/- per month was fixed for the widow of the deceased i.e. petitioner No.1 whereas a sum of 308/- was fixed for the surviving son of the deceased i.e. petitioner No.2 and they continued to enjoy the said pension till 2012. Vide letter dated May 14, 2012, it was stopped on account of reason that petitioner No.1 has got re-married. Now the question is only whether the petitioners are entitled to the pension under the provisions of afore-said Act. Section 16 (1) of the EPF Act deals with the family pension to the deceased employee. The relevant portion of the said section is reproduced as under:-

> *"Section 16 (1) Pension to the family shall be admissible from the date following the date of death of the member, if the member dies:-*
>
> *(a) while in service, provided that at least one month's contribution has been paid into the employees' pension fund, OR*
>
> *(b) & (c) XXXXXX XXXXXX XXXXXXX*
>
> *(2) (a) (i) to (iv) XXXXXX XXXXXX XXXXXX*
>
> *(b) The monthly widow pension shall be payable upto the date of death of the widow or re-marrriage whichever is earlier".*

4. A glance at the afore-said section makes it crystal clear that the pension shall be payable upto the date of the death of widow or re-marriage and in the instant case it has emerged on record that petitioner No.1 re-marriage after the death of her husband in the year 1996 and further that petitioner No.2 has attained the age of more than 25 years. However, in the event of death or re-marriage, children shall be entitled to a monthly pension from the date of re-marriage of widow. Thus, in the event of re-marriage of widow children would be entitled to orphan pension and not family pension.

5. At this juncture, learned counsel for the petitioners has urged that in the instant case, re-marriage by petitioner No.1 after the demise of her husband is immaterial, as she continued to be living in the same family and it was only a 'chadder' or 'kreva' marriage, as she started living as wife of the younger brother of her deceased husband. At the most, it could be said to be a case of live-in-relationship. In support of this contention, learned counsel for the petitioners has relied upon the Division Bench judgment of this Court rendered in CWP No. 7313 of 2003, titled as ***Kiran Kumar vs. State of Haryana and others,*** decided on August 19, 2003 as well as in CWP No. 17970 of 2008, titled as

<u>Shanti Devi vs. State of Haryana and others</u>, decided on September 05, 2009.

5. This Court has given a deep thought to the afore-said contention raised by learned counsel for the petitioners but it does not find favour as there is no such exception to the provisions of the 1995 Scheme. Even this scheme was also not discussed in the afore-said judgments and the provisions were not held to be contrary. Since, petitioner No.1 solemnized marriage, may be with the younger brother of her husband, she is not entitled to the continuation of the family pension and it has rightly been stopped. Similarly, after re-marriage of petitioner No.1, petitioner No.2 also does not deserve the family pension, though he would be entitled to an orphan pension under the provisions of the afore-said scheme. The judgment referred to above relied upon by the learned counsel for the petitioners are not applicable in the facts and circumstances of the case in hand particularly for the reasons that provisions contained in scheme of 1995 are still operative and have not been either struck down or quashed. Thus, this Court does not find any illegality or impropriety in the impugned order/letter May 14, 2012, whereby the family pension of the petitioners has been stopped.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same is dismissed but no order as to costs. However, petitioners shall be at liberty to pursue the application which is stated to be already moved for the grant of orphan pension

SEPTEMBER 13, 2017 **(JASPAL SINGH)**
sham **JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*