

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

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**RSA No.2404 of 2016 (O&M)
Date of Decision : 04.09.2017**

State of Punjab and others

..... Appellants

Versus

Saran Dulari

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Manoj Bajaj, Addl. Advocate General
Punjab.

None for the respondent.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below decreeing the suit of the respondent whereby she had claimed that she was entitled to family pension after the death of her brother-Shanti Saroop.

The admitted facts are that Shanti Saroop was an employee of the appellants-Irrigation Department, Punjab and died in the year 1988. Thereafter the respondent raised a claim that she had become widow about 42-43 years prior thereto and had since then been dependent upon her brother and consequently was entitled to family pension. She had originally filed civil writ petition in this Court bearing CWP No.5986 of 2002 which was decided on 29.09.2010 and this Court held that once Shanti Saroop had not exercised his option to be governed by the pension scheme of 1964

therefore, he stood governed by the prior Rules and as per those Rules any dependent of a deceased employee was entitled to family pension. Since it was not possible for this Court in the writ petition to have decided this claim it disposed of the petition after giving this ex-position of law and directed the respondent to file a Civil suit and further held that in case she was able to prove that she was dependent upon Shanti Saroop she would be entitled to family pension but the arrears would be restricted to the period 38 months preceding the date of institution of that petition. Consequently the appellants filed the instant suit, which, as mentioned above has been decreed by both the Courts.

Both the Courts noticed that the respondent was shown to be living in the same village as Shanti Saroop and further relied upon her oral testimony that she had no source of income.

The learned Additional Advocate General has argued that the Court misconstrued the document (ex.D2). That document was an attested copy of an un-dated application moved by the son of the respondent for making a ration card. The Courts below rightly held that firstly there was no proof that the son of the respondent moved that application and secondly even if he had made an application for preparation of ration card it would not tend to prove any independent source of income or tend to disprove that the respondent was infact dependent on Shanti Saroop. The second argument of the learned Additional Advocate General is that ultimately the Courts have only believed the oral testimony of the respondent.

In my opinion this can not be a complete answer. The issue is not the kind of evidence but the credibility of evidence. He has not been able to show me that the evidence led by the respondent was intrinsically unbelievable. It may also be mentioned that DW2 (a witness of the appellants) had admitted that the respondent was infact dependent of Shanti Saroop.

In the totality of circumstances, I am not incline to accept the appeal and consequently the same is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

04.09.2017
pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No