

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15216 OF 2015
DECIDED ON: MARCH 20, 2018

LAKHWINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ankur Mittal, Advocate,
for the petitioner.

Ms. Deepali Puri, Additional Advocate General, Punjab.

Mr. Amit Gupta, Advocate,
for respondents No. 5 to 8.

JASPAL SINGH, J (Oral)

By virtue of instant petition preferred under Articles 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of mandamus directing the respondents to fix and release the family pension of late Inspector Harjit Singh in favour of petitioner-Lakhwinder Kaur being his widow as well as in terms of settlement dated 04.10.2013 (P-1) arrived at between the parties i.e. legal heirs of deceased Harjit Singh before the Mediation and Conciliation Centre of this Court.

2. Undisputably, husband of the petitioner was killed by the terrorists on 10.06.1987 while he was posted as Inspector. Subsequent thereto, a dispute arose amongst his legal heirs with regard to the retiral benefits etc. accrued on

account of the demise of aforesaid Inspector Harjit Singh. The petitioner claimed herself to be his legally wedded wife whereas Kartar Kaur also asserted herself as his widow. Ultimately, parties were advised by the office of respondent No.2 to obtain succession certificate. In pursuance thereof, both the parties i.e. Lakhwinder Kaur and Kartar Kaur filed separate applications under Section 372 of Indian Succession Act, 1925, which were disposed of by Id. Civil Judge (SD), Jalandhar vide judgment dated 18.01.1997 by holding that petitioner-Lakhwinder Kaur is entitled to succession certificate on the basis of Will dated 18.06.1985 executed by Harjit Singh in her favour.

3. Feeling dissatisfied from the said order, Kartar Kaur preferred an appeal against the aforesaid order which stood was allowed vide judgment dated 02.05.2001 and the order passed by the Civil Judge was set aside. It ultimately, resulted into filing of Civil Revision No.6020 of 2001 before this Court.

4. During the pendency of aforesaid civil revision petition, matter was referred to Mediation and Conciliation Centre of this Court and a settlement was arrived at between the petitioner and other legal heirs of late Inspector Harjit Singh. The terms and conditions are also reduced into writing in the order dated 04.10.2013 (P-1). As per the terms and conditions, all the other legal heirs of Inspector Harjit Singh candidly agreed that pensionary benefits accrued on account of unfortunate demise of Harjit Singh be released in favour of Lakhwinder Kaur i.e. petitioner. Meanwhile, Kartar Kaur also left for heavenly abode. Legal representatives of Kartar Kaur are being represented by Mr. Amit Gupta, Advocate and he is kind enough to say that settlement has arrived at amongst petitioner-Lakhwinder Kaur and other legal heirs of Inspector Harjit

Singh as well as that of Smt. Kartar Kaur, in which, all the other legal heirs had categorically stated that they shall have no objection if the benefits accrued on account of the death of Harjit Singh-Inspector are released to Smt. Lakhwinder Kaur-petitioner..

5. The questions which arise for determination in this writ petition are twin fold:-

(i) *whether amount of special family pension has been calculated and is being paid to the petitioner absolutely in terms of the policy with regard to the family pension and revised rates dated 01.01.1996.*

(ii) *whether the petitioner is entitled to full pension i.e. 100% and not 50% as has been done in the instant case keeping in view the provisions contained in Rule 6.17(4) Note-1 of Punjab Civil Services Rules.*

6. Instructions No.1488/616 (Vol.III) 01.01.1996 provides a specific relief to the persons where the death or permanent disability is attributable on account of terrorists activity and in the instant case, there is no dispute in this regard. The husband of the petitioner namely Harjit Singh lost his life while on duty on 10.06.1987 in a terrorists attack. Rule 5 which provides special family pension to the families of government employees, who died while performing duties as a result of such an attack of terrorists etc. would be helpful for the disposal of the instant petition. It reads as under:-

5. *Special Family pension to the families of government employees who while performing their duties*

die as a result of attack or during action against extremists, dacoits, smugglers and antisocial elements etc.

5(i) The revised rate of special family pension payable to the families of government employees who, while performing their duties, die as a result of attack by or during action against extremists, dacoits, smugglers and antisocial elements etc. shall be the last pay drawn by the deceased employee.

7. A glance at the aforesaid provisions makes it crystal clear that revised rates of the special family pension payable to the families of the government employees who, while performing duties died as a result of attack or during action against extremists, dacoits or smugglers shall be last pay drawn by the deceased employee.

8. Here, it would also be pertinent to mention that it clearly emerges from the documents available on file that on 10.06.1987 when Inspector Harjit Singh breathed his last, he was drawing basic pay of Rs.2300/- and if his notional pay is refixed as per the 5th pay commission w.e.f. 01.01.1996, it would come to Rs.6140/- and further w.e.f. 01.01.2006 on the basis of recommendation of 6th pay commission, it would be deemed to Rs.13,877/- which is further to be revised in view of report of 7th pay commission. There is no justification as to how last pay drawn by the deceased has been assessed and calculated by the respondents. Thus, the same deserves to be granted and calculated as has been referred to above.

9. As regards the second limb i.e. the grant of 50% pay while

applying the Rule 6-17(4) of Punjab Civil Services Rules is concerned, it is not legally and factually justified in the facts and circumstances of the instant case. Undoubtedly, after demise of Inspector Harjit Singh in the terrorists attack, Kartar Kaur and Lakhwinder Kaur came forward for claiming the benefits. Considering the dispute with regard to the heirship of deceased-Harjit Singh, both the parties i.e. Lakhwinder Kaur as well as Kartar Kaur approached the Civil Court for seeking succession certificate, which was ultimately granted in favour of the petitioner. Though, in an appeal preferred by Kartar Kaur against the said order, the appeal was accepted, however, when the matter was pending before this Court by way of Civil Revision No. 6020 of 2001 preferred by the petitioner, the matter was set at rest by the Mediation and Conciliation Centre of this Court on the basis of settlement dated 04.10.2013, according to which, Smt. Lakhwinder Kaur-petitioner has been held entitled to all the benefits. Though, the compromise was based upon the consensus arrived at amongst the legal representatives of deceased Harjit Singh but ultimately, it favoured the present petitioner to whom the entire retiral benefits are to go. In these circumstances, petitioner becomes entitled to special family pension. In the facts and circumstances, particularly in this case, Rule 6-17 (4) of the aforesaid Rules will have no attraction or applicability. Thus, this Court is of the considered view that petitioner is entitled to 100% special family pension from the date of demise of her husband and order is made accordingly.

10. In the light of aforesaid discussion, instant petition is allowed. Respondents are directed to make the payment of arrears of special family pension to the petitioner by calculating it from the date of demise of her

husband on the basis of last pay drawn as has also been discussed and observed above as well as 100% special family pension (minus 50% which has already been paid towards family pension) In other words, amount already paid shall be adjusted towards arrears. The needful shall be done within a period of two months from the date of receipt of certified copy of this order.

11. In case of non-compliance of order, petitioner shall be entitled to interest @ 9% from the date of institution of instant petition till actual payment and in addition to it, she shall also be at liberty to approach this Court.

12. No order as to costs.

MARCH 20, 2018
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes*

Whether reportable *Yes/No*