

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

CWP No.6572 of 2016

Date of Order: 19.7.2018

Mukesh Devi

....Petitioner

Versus

State of Haryana and Ors.

....Respondents

CORAM: HON'BLE MR. JUSTICE RITU BAHRI

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Mr. Tanuj Kumar, Advocate for respondent Nos.3 & 4.

RITU BAHRI, J (ORAL)

By way of filing the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari for quashing impugned order dated 11.3.2016 (P.4) passed by respondent No.2 whereby the entire family pension of husband of the petitioner namely Zile Singh has been awarded to respondent Nos.3 & 4 being unmarried daughters from his first wife (since deceased).

In the present case, this Court while issuing notice of motion on 07.4.2016 stayed the payment of pension to the extent of 50%. The claim of the petitioner qua family pension of her husband-late ASI Zile Singh has been considered and rejected vide order (P.4). It has come on record that said Zile Singh expired on 17.6.2012 and vide order dated 30.3.2015 (P.1) the petitioner-Mukesh Devi was granted Succession Certificate. It has also come on record vide Annexure P.4, Smt Chetna, second wife of late ASI Zile Singh was held entitled for complete pension being guardian of two

remaining unmarried daughters till they reached the age of 25 years or till their marriage as per rule and thereafter family pension would have to be released in favour of the petitioner.

I have heard learned counsel for the parties and perused the record thoroughly.

Learned counsel for the petitioner in support of his contentions relied on a Division Bench judgment rendered in **Ram Dulari Vs. State of Haryana and Others 2010 (1) SLR 403** vide which this Court examined the Pension Scheme, which was part of Haryana Civil Service Rules, Vol. II (for short “the Rules”) .

As per Sub Section (ii) of Section 4 of the Rules, the “Family” includes (a) wife, in the case of a male officer; (b) husband, in the case of a female officer; (c) minor sons; and (d) unmarried minor daughters. As per Section 4 (iii) of the Rules, the pension is admissible to (a) in the case of widow/widoer upto the date of death or remarriage whichever is earlier and (b) in the case of minor son/unmarried daughter until he/she attains the age of 25 years. As per Note (i) where an officer is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child the payment of her share of the pension will cease whereas as per Note (ii) where an officer is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received, if, she had been alive at the time of the death of the officer. Accordingly, it was held that if a officer is survived by a widow and minor child from another wife, the

pension will be paid to each of the claimants as also to the minor till he attains the age of 25 years and after attaining 25 years the whole pension will be paid to the widow.

The relevant paragraphs 10 & 11 of the abovesaid judgment read as under:

“ 10. In the present case, family pension has been granted and apportioned in accordance with Note (ii) of sub-clause (iii) of clause 4 of the ‘Pension Scheme’ because at the time of death of Shri Mehar Singh, there were minor children who were born out of his wedlock with Smt. Sona Devi apart from the petitioner who was rendered widow. Note (ii) appended to sub-clause (iii) of Clause 4 of the ‘Pension Scheme’ is squarely attracted to the facts of the instant case. It postulates a widow surviving the death of her husband and minor child from another wife. It further clarifies that the minor child would become entitled to that share of pension which was payable to her mother had she been alive which obviously according to Note (i) is 50%. Accordingly, 50% share of the family pension was apportioned to the minor children whereas the petitioner continued to get the other 50%. The youngest of the minor children, Shri Braham Singh, attained majority on 13.5.2001 and consequently payment of 50% family pension to them was stopped. The claim of the petitioner is meritorious because had there been no minor child then at the first place she would have got 100% family pension. The same stage has now been set in May 2001 when the minor children have stopped getting their 50% share of the family pension on account of the fact that every one of them had attained majority. In any case we would interpret the provision of ‘Pension Scheme’ liberally as it is a piece of social

welfare legislation. The State cannot appropriate that amount which would have come to the petitioner. Therefore, the petitioner, who is widow, has rightly claimed that State cannot appropriate 50% of the family pension, which she is entitled to get during her life time. Accordingly, we are of the view that the petitioner would be entitled to the payment of remaining 50% family pension from the date the youngest of the minor children have attained majority and stopped availing the same i.e. 13.5.2001.

11. The argument of the respondents is wholly misconceived when they argued that according to Note (i) of sub-clause (iii) of clause 4 of the 'Pension Scheme' once the minor children have stopped getting their share on account of attaining majority then the 50% share would cease. A perusal of Note (i) would show that the aforesaid provision is applicable only in a case where an employee is survived by more than one widow. In the present case there was only one widow on the date of death of Shri Mehar Singh. It has come on record that Shri Mehar Singh died on 27.8.1980 and his earlier wife Smt. Sona Devi had predeceased him in the year 1976 leaving behind three children, namely, Raj Singh, Manju Rani and Braham Singh, who were born on 5.1.1972, 20.3.1974 and 13.5.1974 respectively Then he married the petitioner. It is further appropriate to mention that the petitioner also had a minor child, namely, Megh Raj, who was born on 8.12.1980. Therefore, Note (i) would have no application in the absence of at least two widows. The present is a case of one widow who had a minor child of her own and three minor children of her husband, born out of his wedlock with Smt. Sona Devi, who had predeceased him. The respondents have totally misdirected themselves in applying Note (i) to the case of the petitioner whereas

the matter is covered by Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme', which does not contemplate ceasing of pension. Therefore, there is no substance in the argument of the respondents and the same is rejected."

The respondents have neither been able to controvert the said judgment nor cited any judgment contrary to the same.

Keeping in view the mandate of the aforesaid DB judgment and taking into account the facts and circumstances of the present case, present petition is allowed and the impugned order dated 11.3.2016 (P.4) passed by respondent No.2 is set aside. The respondents are directed to pay the family pension to the extent of 50% to the petitioner as per the abovesaid judgment and after the minors attain the age of 25 years, the entire pension will be given to the petitioner.

July 19, 2018
manoj

(RITU BAHRI)
JUDGE

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