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

**CWP-9486-2015 (O&M)
Date of Decision : 17.12.2018**

**Anita Devi**

**...Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

***CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Mr. Durgesh Aggarwal, Advocate for the petitioner.

Mr. Sunil Kumar Vashisth, DAG, Haryana.

Mr. Pritam Singh Saini, Advocate
for respondents No. 2 and 3.

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***Harsimran Singh Sethi, J.(Oral)***

***CM-18235-CWP-2018***

The present application has been filed to place on record additional report of Forensic document expert as Annexure R-2.

The application is allowed and report of Forensic document is taken on record as Annexure R-2.

***CM-18257-CWP-2018***

The present application has been filed to place on record the reply to an additional affidavit filed on behalf of respondents No. 3 Copy has already been supplied to learned counsel for respondents No. 2 and 3.

The application is allowed and reply to the additional affidavit is taken on record, subject to all just exceptions.

***Main Case***

1. In the present case, the wife of one Sh. Sat Narain, who was working as a Mali with the Market Committee, Pundri, District Kaithal, has approached this Court for grant of death-cum-retiral benefits on account of the service rendered by her late husband, which is not being paid to her. She further submits that after her husband died on 10.04.2002, she is entitled for the family pension as well.

2. The factual narration as given in the writ petition is that husband of the petitioner, namely, Sat Narain, joined as Mali in the Market Committee, Pundri on 18.12.1985. Thereafter, he was regularly appointed on the same post on 13.08.1986. It is a matter of fact which is not denying that the husband of the petitioner continued working from 18.12.1985 till he unfortunately, died on 10.04.2002. After the death of the husband of the petitioner, a request was made for release of the death-cum-retiral benefits on account of the service rendered by the late husband of the petitioner. After the death, only a sum of ₹72,201/- was paid to the petitioner in the month of May, 2002. A copy of the said bill has been attached by the petitioner as Annexure P-13 with the writ petition. A bare perusal of the said bill would show that the same was on account of refund of General Provident Fund (in short 'GPF').

3. As the other benefits were not being released to the petitioner, she approached the respondents and she was informed that the petitioner's husband had never applied for pension under the Haryana State Agricultural Marketing Board and Market Committees Employees Pension Provident Fund and Gratuity Rules, 1989 (in short '1989 Rules'), therefore, the petitioner will not be entitled for any pension and the Contributory

Provident Fund (in short 'CPF') for which the petitioner is entitled for after the death of her husband, has already been paid to her and, therefore, no further action is required.

4. Petitioner, alongwith the writ petition has attached the documents to show that the husband of the petitioner had already applied for the Pension Scheme under the 1989 Rules and that is why in the year 1993, a GPF account was also opened by the respondent-Market Committee in Kaithal Central Cooperative Bank Limited, Kaithal and all the deposits under GPF were deposited by respondent No. 3 continuously till the husband of the petitioner died and, therefore, the petitioner was entitled for the pension.

5. In rebuttal to the said averments, which were made by the petitioner in the replication, learned counsel for respondent Nos. 2 and 3 states that the said account of GPF was opened inadvertently despite there being no option from the husband of the petitioner. The said account was opened in respect of all the employees and, therefore, the opening of the said account will not be beneficial to the petitioner to claim the pension on account of the service rendered by her late husband as there is no option form available on record so as to make the petitioner entitle for the death-cum-retiral benefits as well as the family pension which is being claimed by the petitioner in the present writ petition.

6. Learned counsel for respondent Nos. 2 and 3 admits as a matter of record that the GPF deductions were made and were being regularly deposited in the account which was opened by the respondent No. 3 in the name of the husband of the petitioner but the said deposit will not give a right to claim pension to the petitioner on account of the service rendered by

her late husband in the absence of option given by the late husband of the petitioner.

7. I have heard learned counsel for the parties and have gone through the record.

8. The controversy is as to whether the husband of the petitioner is to be considered continuing under the Old CPF Scheme, which was available at the time when late husband of the petitioner joined respondent No. 3 in the year 1985 or the husband of the petitioner is to be treated entitle for the benefits under the 1989 Rules mentioned above.

9. As per Rule 9 of the 1989 Rules, it is only the employees, who opt for these Rules, the accounts of the CPF which were being maintained by the Board and Market Committees were to be converted into the GPF and the subscription portion of the employees CPF along with interest accrued thereupon were to be credited in the GPF account. The relevant provision of the 1989 Rules is as under :-

> *"9. **General Provident Fund Section [43(2)(xxviii)]** – (1) On coming into force of these rules, the contributory provident fund established by the Board and Market Committees shall be converted into general provident fund and the subscription portion of the Employees Contributory Provident Fund alongwith interest accrued thereon shall be credited to the general provident fund in respect of the employees who opt for these rules and shall be governed by the general provident fund rules and instructions issued by the State Government from time to time."*

10. A bare perusal of the above would show that only in case an employee has opted for the Rules, the CPF was to be converted into a GPF and it is a matter of fact which has been accepted by respondent No. 3 that

account of the husband of the petitioner was converted from CPF to GPF and an account was opened in this regard in favour of the husband of the petitioner. It is further admitted by respondents No. 2 and 3 that deductions under the GPF were duly being made from the late husband of the petitioner and being deposited in the said account. Once the GPF account was only to be opened after the option of an employee to be given and in the present case, the GPF account was opened in the name of the late husband of the petitioner for all intents and purposes, the option is deemed to have been there even if the actual form is not available on record. Once respondent No. 3 by his own act considered the husband of the petitioner having opted to the 1989 Rules by opening a GPF account, now after his death, the benefits cannot be denied to the family on the single objection that actual option form, by which late husband of the petitioner opted for the 1989 Rules, is not available on record. The said objection is immaterial in view of the facts above mentioned that respondent No. 3 treated husband of the petitioner under the GPF account for all intents and purposes themselves.

11. Further Annexure P-11, which is a letter written by the Market Committee, Pundri (Kaithal) dated 18.08.2011 admitted that the option form was pasted on the first page of the service book. This fact was reiterated again by respondent No. 3 itself while recommending the case of the petitioner for the grant of pensionary benefits on 07.12.2011 (Annexure P-12). Once the respondents themselves were recommending the case of the petitioner for the grant of the pensionary benefits by treating that late husband of the petitioner had opted for the 1989 Rules, now at this stage, they cannot turn back and say that there was no actual option form available on file so as to make the petitioner entitled for the pensionary benefits under

the 1989 Rules after the death of her husband.

12. Learned counsel for respondent Nos. 2 and 3 states that Annexures P-11 and P-12 cannot be relied upon as the same were written in the year 2011 and according to the findings of the Committee, the option form was not available at the time when late husband of the petitioner died in the year 2002 and it is a probability that somebody has inserted that at a later stage.

13. Be that as it may, once the GPF account was opened in the year 1993, it is presumed for all intents and purposes that it was opened after the option form was submitted by the husband of the petitioner as envisaged under the 1989 Rules.

14. In view of the above, the present writ petition is allowed. Respondents No. 2 and 3 shall consider the case of the petitioner for the grant of benefits under the 1989 Rules by treating that late husband of the petitioner had opted the 1989 Rules for all intents and purposes. The calculation with regard to the benefits shall be done within a period of three months from the date of receipt of a certified copy of this order and the payment/monetary benefits for which the petitioner will be entitled for shall also be released to her within a period of next three months.

**December 17, 2018** **(HARSIMRAN SINGH SETHI)**
*kanchan* **JUDGE**

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