

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP No. 15772 of 2005
Date of Decision : 20.02.2019

Smt. Harbans Kaur ...Petitioners

Versus

State of Punjab and others ...Respondents

(2) CWP No. 17873 of 2005

Smt. Bimla Devi and others ...Petitioners

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Anupam Sharma, Advocate for the petitioners
in both the petitions.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

Mr. A.S. Virk, Advocate for
Mr. P.S. Thiara, Advocate for respondent No. 4
in both the petitions.

Harsimran Singh Sethi, J.(Oral)

By this common order, two writ petitions bearing CWP Nos.
15772 of 2005 and 17873 of 2005 are being disposed of as common
question of law and similar facts have been stated in both the writ petitions.

In the present writ petitions, the widows are before this Court
claiming the family pension after the death of their husbands, which benefit
has been denied to them on the ground that they were not entitled for the
family pension as the late husbands of the petitioners were absorbed with

the Punjab State Tubewell Corporation (hereinafter referred to as 'Corporation'), which post was non-pensionable. Therefore, the cases of the petitioners are not covered under Rule 5.3(2) of the Punjab Civil Services Rules.

In the writ petitions, in support of the claim for the grant of family pension, reliance was placed upon the order passed by the Division Bench of this Court in CWP No. 13555 of 1994, decided on 09.12.2004, wherein, a similar situated personnel i.e. Phulan Rani, widow of one late Mohinder Singh was allowed the family pension by this Court by passing a detailed order.

Notice of motion was issued in CWP No. 15772 of 2005 on 03.10.2005 and in CWP No. 17873 of 2005 on 17.11.2005 but no reply has been filed on behalf of the State.

When the cases came up for hearing on 2.02.2006, this Court was informed that the State has already filed an SLP (Civil) No. 19313 of 2005, titled as ***State of Punjab and another Vs. Phulan Rani and others*** against the order passed by the Division Bench of this Court in CWP No. 13555 of 1994, decided on 09.12.2004 and the matter is pending before Hon'ble the Supreme Court. This Court adjourned the cases sine-die to await the decision of Hon'ble the Supreme Court. The relevant order dated 02.02.2006 is as under:-

“Adjourned sine die.

*To be listed for hearing after the decision of the Supreme Court in SLP (Civil) No. 19313 of 2005 ***State of Punjab and another Vs. Phulan Rani and others.***”*

Hon'ble the Supreme Court decided Civil Appeal Nos. 4951

and 4952 of 2009 on 17.08.2017. By a detailed judgment, Hon'ble the Supreme Court held that the employees, who after retirement were getting pension, their families are entitled for family pension as well under Rule 6.17 of the Punjab Civil Services Rules. The relevant judgment of Hon'ble the Supreme Court is as under :-

“These appeals are filed by the State aggrieved by the judgment of the High Court, wherein the High Court has taken a stand that the employees transferred to non-pensionable establishments will also be entitled to family pension in case they are covered under Rule 5.3 of the Punjab Service Rules. The said Rule reads as follows:-

“5.3(1) When a Government employee is transferred from pensionable Government service to a non-pensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.

(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a corporation or a company wholly or substantially owned or controlled by Government or in or under a body controlled by Government or in or under a body controlled or financed by Government, or Municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Government to be in the public interest, be deemed to have retired from the Government service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from the date of such absorption or the date of his voluntary retirement, whichever is later. Each such Government employee is required to exercise an option within six months of

his absorption for either of the alternative indicated below:-

(a) receiving the monthly pension and death-cum-retirement-gratuity under the usual government arrangements; or

(b)receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.

(3) Where no option is exercised within the specified period, the employee will be automatically governed by alternative (b). An employee opting for alternative (a) is entitled to commutation of a portion of the pension admissible to him in accordance with the provisions of rules contained in Chapter XI:

Provided that Government shall have no liability for the payment of family pension in such a case:

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company, Municipality, Panchayat Samiti or Zila Parishad shall be required in respect of Government employee whom Government may, by order declare to be a scientific employee.”

2. It is the persuasive submission of the learned counsel appearing for the State that the proviso under Rule 5.3 is applicable only in case of the pensioners covered under Rule 5.3(2)(a). In other words, it is the case of the appellants that in the case of Government employees transferred to non-pensionable establishments, even if they are in receipt of monthly pension, after their death, the surviving family members will not be entitled for family pension since the proviso under Rule 5.3(3) has carved out an exception, whereby the Government has been exempted from the liability.

3. We find it difficult to appreciate the submission. Family

Pension Scheme is provided under Rule 6.17, which reads as follows:-

“6.17. The provisions of this rule shall apply:

(a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and

(b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provision of Family Pension Scheme, 1964, for Punjab government Employees.”

4. It is not in dispute that the pensioners in these appeals are covered under the Scheme under Rule 6.17(b). Nowhere under the Family Pension Scheme is there a provision carving out the class of pensioners in receipt of monthly pension so as to deny the benefit of family pension. The Scheme having granted the benefit of family pension to such pensioners, the proviso, even assuming it applies to everybody, under the general rules cannot take away the benefit since the Family Pension Scheme is a special benefit granted to the pensioners.

5. Thus, we wholly agree with the view taken by the High Court. These appeals are, accordingly, dismissed.

6. The arrears of pension shall be disbursed to the respondents within a period of twelve weeks from today and if not, the same shall carry interest @ 12% from the date of the judgment of the High Court and the officers responsible for the delay shall be personally liable for the same.

7. Pending applications, if any, shall stand disposed of.

8. There shall be no orders as to costs.”

Learned counsel for the petitioners states that both the writ petitions be also disposed of in the same terms as CWP No. 13555 of 1994.

Learned counsel for the respondents-State is unable to point out any difference between the cases of the petitioners herein and in case of Phulan

Rani, who was the petitioner in CWP No. 13555 of 1994. Under these circumstances, it can safely be held that present writ petitions are covered by the order passed by this Court in CWP No. 13555 of 1994.

Prayer of the counsel for the petitioner is accepted and both the writ petitions are disposed of in the same terms as CWP No. 13555 of 1994, decided on 09.12.2004.

February 20, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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