

**CWP-14734-2006**

**-1-**

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

**CWP-14734-2006**

**Date of Decision: 16.01.2019**

**Panpauri**

**... Petitioner**

**vs.**

**State of Haryana and others**

**.. Respondents**

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

Present: Mr. I.D.Singla, Advocate  
for the petitioner.

Mr. C.S.Bakhshi, Additional Advocate General, Haryana

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**HARSIMRAN SINGH SETHI, J**

The present writ petition has been filed by the petitioner seeking the family pension for the service which the late husband of the petitioner has rendered on *ad hoc* basis as JBT Teacher from 24.11.1977 till 24.12.1981, when unfortunately he died.

As per the averments made in the writ petition, the husband of the petitioner joined as a JBT Teacher on *ad hoc* basis on 24.11.1977 and was posted in Government Co-education High School, Kheri Sarafal, District Karnal. Thereafter, he was transferred to Govt. Primary School, Beer Badhwala, Block Nilokheri, Karnal where he unfortunately died on 24.12.1981 while in service.

Learned counsel for the petitioner states that the petitioner is entitled for the pensionary benefits under the Family Pension Scheme, 1964 under which, an employee who has completed one year of continuous service, after his death, his wife is entitled for the family pension.

**CWP-14734-2006**

**-2-**

The case of the petitioner was considered by the respondent(s) after the petitioner approached this Court by filing CWP No.823-2005, wherein, a direction was given to the respondents to dispose of the demand notice dated 12.12.2004 by passing a speaking order. In the speaking order, passed on 10.02.2005, the respondent(s) rejected the claim of the petitioner on the ground that the husband of the petitioner did not render continuous service for one year for the period starting from 24.11.1977 till the date he unfortunately died i.e. 24.12.1981. This order dated 10.02.2005 is under challenge in this writ petition.

Learned counsel for the petitioner further states that the action of the respondent(s) in rejecting the claim of the petitioner on the ground that the husband of the petitioner did not had continuous one year service is liable to be rejected on the ground that on 19.09.1995, the respondents issued instructions granting the benefit of pay to the *ad hoc* employees for the summer vacation, who were appointed during the period 1971 to 1979. Therefore, as the husband of the petitioner was entitled for the benefit of salary for the summer vacation, the said period has to be counted as the period spent on duty and, therefore, the period which has been treated as a break in service, is contrary to the said instructions and, therefore, the petitioner completes a period of one year starting from 12.07.1979 till 20.07.1980.

In reply to the writ petition, the claim has been opposed on the ground of delay as well as again on the same objection that the case of the petitioner is not covered under the Family Pension Rules, 1964 because the husband of the petitioner rendered less than one year service in each year and that too on *ad hoc* basis.

I have heard learned counsel for the parties.

**CWP-14734-2006**

**-3-**

Learned counsel for the petitioner fairly admits that no claim has been made by the petitioner for grant of the salary for the summer vacation in respect of the service rendered by the husband of the petitioner after issuance of the instructions dated 19.09.1995. He further submits that once the instructions have been issued, it should be deemed that the benefit has to be granted to the petitioner and, therefore, by deeming fiction, it should be treated that the husband of the petitioner had rendered one year service starting from 24.11.1977 till 24.12.1981 and, therefore, the case of the petitioner is fully covered under the Family Pension Rules 1964.

Learned counsel for the respondent(s), on the other hand, states that unless and until there is a grant of benefit to the husband of the petitioner for the service rendered by him during the summer vacation, there cannot be any deeming fiction and, therefore, as no actual benefit has been granted to the husband of the petitioner for the summer vacation by considering his case in view of the letter dated 19.09.1995, the deeming fiction being claimed by the petitioner is liable to be rejected.

The second objection which has been taken by learned counsel for the respondent(s) is that the services of the husband of the petitioner were rendered on *ad hoc* basis and it is only the regular service of one year, which can be taken into consideration as per the Family Pension Rules, 1964 and, therefore, the claim of the petitioner is liable to be rejected on this ground also. It is further contended that if it is assumed for the sake of argument that the benefit of instructions dated 19.09.1995 is to be given, the same is to be given from the year 1971 to 1979 only and not thereafter and, therefore, no benefit can be given to the petitioner for the period 25.05.1980 till 20.07.1980 i.e. the summer break, which is being counted by the petitioner to claim one year

CWP-14734-2006

-4-

continuous service.

In rebuttal, counsel for the petitioner states that the instructions dated 19.09.1995 is being wrongly interpreted by the counsel for the respondent(s). The appointment has to be between the years 1971 to 1979 and there is no clause which restricts the relief only for the years 1971 to 1979. He further states that there is no requirement of regular service for the grant of the said benefit in view of the law laid down by this Court in CWP-7506-1998 titled as **Kanta Devi vs. State of Haryana and others, 2000 (1) R.S.J 505**, decided on 16.12.1999, where this Court had already given direction that even *ad hoc* service of one year is good enough to grant the benefits under 1964 Rules.

Keeping in view of the above arguments raised, I am of the view that first the benefit of the instructions dated 19.09.1995 is to be applied in case of the husband of the petitioner for the service which he rendered from 24.11.1977 till 24.12.1981. In case, after considering the facts of the present case, benefit is granted to the husband of the petitioner for the summer vacation and thereafter, if it is found that the husband of the petitioner has rendered continuous one year of service by including the period of summer vacation, the benefit under 1964 Rules needs to be granted for the grant of pensionary benefits.

The arguments of the learned counsel for the respondent(s) that only regular service can be taken into account for the grant of family pension is rejected keeping in view of the law laid down by this Court in **Kanta Devi' case** (supra), wherein this Court has categorically held that as per the regulation of 1964, even *ad hoc* service for continuous one year is good enough for the grant of family pension.

**CWP-14734-2006**

**-5-**

In view of the above, the present writ petition is disposed of with the direction to the respondent(s) first to consider the case of the petitioner for the grant of benefit under instructions dated 19.09.1995 for the service rendered by the husband of the petitioner from 24.11.1977 till 24.12.1981 for summer vacations. Thereafter, an appropriate order shall be passed by the respondent(s) in respect of the claim of the petitioner for the grant of pension. In case, it is found that after granting the benefit of summer vacation, the husband of the petitioner had worked continuously for one year in any year, the benefits under 1964 Rules needs to be extended to the petitioner.

Let such exercise be completed within a period of three months from the receipt of the certified copy of this order. In case, after passing of the order, any monetary benefit needs to be extended, the same should also be extended to the petitioner by passing an appropriate order within a period of one month thereafter.

**16.01.2019**  
smriti

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No