

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17192 of 2016

Date of Decision : 11.03.2019

Kuldeep Chand Malhotra

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. G.S. Punia, Senior Advocate with
Mr. P.S. Punia, Advocate for the petitioner.

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

None for respondent No. 4.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the claim which is being made by the petitioner is for the grant of family pension after the death of his wife, namely, Smt. Kaur Kanta Malhotra.

As per the averments made in the writ petition, Smt. Kaur Kanta Malhotra retired from the services of the Government of Haryana on 30.06.2002 after rendering service as S.S. Mistress. After the retirement, Smt. Kaur Kanta Malhotra was getting pension. Unfortunately, after the retirement, Smt. Kaur Kanta Malhotra died on 07.11.2003. As per the averments made in para 4 of the writ petition, the petitioner i.e. husband of deceased Smt. Kaur Kanta Malhotra, was not living with her due to a matrimonial dispute. It has been stated that marriage of the petitioner and

Smt. Kaur Kanta Malhotra was solemnized on 16.04.1971 and they lived together till 1978. Out of the said wedlock, a daughter, namely, Sumeda was born on 18.08.1978. After that a matrimonial dispute arose between them and a petition under Section 13 of the Hindu Marriage Act was filed by the petitioner, which was dismissed on 08.01.1982 and the first appeal filed by the petitioner against the said order was also dismissed by this Court on 04.01.1984. From the orders passed in those proceedings, which have been attached with the petition, it transpires that petitioner and Smt. Kaur Kanta Malhotra were husband and wife. After the death of Smt. Kaur Kanta Malhotra, petitioner filed an application for grant of the family pension under the Family Pension Scheme, 1964 but the same was declined on the ground that in the service book of deceased smt. Kaur Kanta Malhotra, there was no mention of the petitioner being her husband. The only details of the family members given by the deceased employee was of Sumeda i.e. the daughter, who was born on 18.08.1978.

Vide letter dated 08.10.2015 (Annexure P-7) petitioner was directed that in case he wants the family pension, he has to submit a Legal Heir Certificate so that his case could be processed for the grant of the family pension. The same reason was again reiterated on 08.08.2016. Feeling aggrieved with the non-grant of the family pension, the petitioner filed the present writ petition claiming the same.

Upon notice of motion, reply on behalf of respondent No. 4 has been filed which reply has been adopted by learned counsel for respondents No. 1 to 3.

As per the averments made in the said reply, the stand taken by

the respondents is that as there is no mention of the name of the petitioner in the record, hence no benefit of family pension can be extended to the petitioner and, therefore, the petitioner has rightly been asked to obtain a Legal Heir Certificate so that his case for the grant of the family pension could be processed. The relevant averments made by the respondents in the reply are as under:-

1. *That petitioner has filed the present writ petition for issuance of a writ in the nature of Mandamus directing the respondents to grant family pension to petitioner, being husband of deceased Mrs. Kaur Kanta, recipient of pension vide PPO No. 18406-S/HR DOR 30.06.2002.*
2. *That as per pension papers submitted by deceased Smt. Kaur Kanta, name of petitioner has not been (sic) mentioned and only one name Sumedha (daughter of deceased) was mentioned. Copy of same is attached as Annexure R-1.*
3. *That as per Government Instructions, after the death of pensioner, only that person is entitled for family pension whose name has been mentioned in the family list of the deceased and in the present case the name of petitioner was not mentioned in the family list. Hence he is not entitled for the family pension of deceased Smt. Kaur Kanta. Moreover the petitioner was asked to submit Legal Heir Certificate by respondent No. 4 vide office letters dated 08.10.2015 and 08.08.2016 but he did not submit the same till date. Copy of same are attached herewith as Annexures R-2 & R-3 respectively.*
4. *That it is pertinent to mention that it is question of fact as to whether the petitioner is entitled for the family pension and arrear being husband of deceased Smt. Kaur Kanta and the same can be suitably decided by the*

civil court. The petitioner has not produced succession certificate to prove his entitlement for the family pension and to prove the same, certain leading evidence would require consideration of facts which can suitably be debated before civil court. Hence the petitioner should avail the remedy of filing a civil suit before civil court. Keeping in view of averments made above, the present writ petition is devoid of merits and deserve dismissal.”

The averments made in para 4 of the writ petition have been denied by respondent No. 4 for want of knowledge. In para 4 of the writ petition, the petitioner has stated with regard to the matrimonial dispute and the order passed by the Civil Court as well as by this Court, wherein deceased Smt. Kaur Kanta has been arrayed as the wife of petitioner Kuldeep Chand Malhotra and the facts noticed in the said orders, it can be clearly established that petitioner and Smt. Kaur Kanta Malhotra were husband and wife.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only reason for not granting the family pension to the petitioner is that there is no detail of the petitioner being husband was given by deceased Smt. Kaur Kanta while she was in service. The only name given by deceased Smt. Kaur Kanta was of her daughter, namely, Sumeda, who has been mentioned as unmarried daughter at the relevant time.

Learned senior counsel appearing on behalf of the petitioner states that there is no need to obtain the Legal Heir Certificate in view of the record, which the petitioner has submitted before the respondents.

As per the said record, deceased Smt. Kaur Kanta has been

described as the wife of petitioner Kuldeep Chand Malhotra and daughter of Tulsi Ram Malhotra. The said record is with respect to the matrimonial dispute, which was decided by the competent Court of law. The said record has not been disputed except that the same has not been admitted due to the want of knowledge. Prima-facie, this Court is of the view that the said record is a valid record, which can be taken into account by the respondents while processing the case of the petitioner for the grant of family pension. Once, before the competent Court of law, the petitioner Kuldeep Chand Malhotra and deceased Smt. Kaur Kanta were described as husband and wife and said facts stand admitted, unless proven otherwise that there was a decree of divorce later on the same cannot be disputed or ignoring by the department while considering the case of the petitioner for the grant of benefit of family pension.

In the present case, the petitioner has submitted that no divorce was granted to him and rather the divorce petition filed by the petitioner was dismissed initially by the trial Court on 08.01.1982 and thereafter by this court as far back as on 04.01.1984. Under these circumstances, I deem it appropriate to direct the respondents to process the case for grant of family pension to the petitioner by taking into consideration these judgments, wherein, the petitioner has been described as husband of deceased Smt. Kaur Kanta Malhotra. Further, even the death certificate, which has been attached by the petitioner, deceased Smt. Kaur Kanta Malhotra has been described as wife of petitioner Kuldeep Chand Malhotra.

Let the respondents consider the case for the grant of family pension to the petitioner on the basis of these documents and pass

appropriate orders in this regard within a period of three months from the receipt of copy of this order. Before passing the order, the petitioner be given liberty to appear in person and again present all the documents, which the respondents feel are required to prove the factum that the petitioner was husband of deceased Smt. Kaur Kanta except the Legal Heir Certificate as being demanded by the respondents.

Writ petition stands disposed of in above terms.

March 11, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*