IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19311 of 2015
Date of decision: 10.07.2019

Raj Kumari .... Petitioner

versus

State of Punjab and others .... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Ritu Punj, Advocate
for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab.

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HARSIMRAN SINGH SETHI, J.

The grievance of the petitioner in the present writ petition is that she has only been granted 50% of the family pension in view of Note 1 and 2 below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II and the remaining 50% of the family pension has been declined by the respondents under the said note on the ground that same stands seized. Prayer of the petitioner is for the grant of 100% family pension, being the sole eligible family member for the grant of benefit of pension.

The facts as mentioned in the present writ petition are that husband of the petitioner was appointed as Patwari on 1.4.1983, thereafter, he was promoted as Senior Patwari on 01.07.1991. Sukhwinder Singh i.e. husband of the petitioner, was earlier married to Kamaljit Kaur and out of the said wedlock one son Sukhandeep Singh and daughter Sukhjit Kaur were born. Unfortunately, Kamlajit Kaur (first wife of the deceased-husband) died on 7.4.1999. After the death of the first wife, Sukhwinder Singh married the petitioner on 5.12.1999 and the said marriage was also registered. Out of the wedlock between the petitioner and Sukhwinder Singh, one son namely Sukhrajdeep Singh and daughter Sukhmandeep Kaur were born. Unfortunately, husband of the petitioner died while in service on 16.8.2013. At the time of death of the husband of the petitioner, children of the deceased-husband, from first marriage, were grown up. Daughter was already married and even the son was married and was above 25 years of age and, therefore, under the Family Pension Scheme, 1964, they were not eligible for the grant of family pension.

While considering the claim of the petitioner for the grant of family pension, only 50% was allowed in favour of petitioner, by the respondents. This was done by relying upon Note 1 and 2 below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II. The claim of the petitioner for 100% family pension was declined by respondent vide order dated 5.8.2015 (Annexure P/8). The said order is under challenge before this Court.

Upon notice of motion, reply has been filed by the respondents in which the same stand has been taken by them that as there were two families of the petitioner and, therefore, petitioner will only be entitled for 50% of the family pension as envisaged under Note 1 and 2 below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II. The relevant part is as under:-

> "That it is relevant to mention here that the husband of the petitioner L. Sh Sukhjinder Singh, Sr. Patwari had maintained two series of families i.e. second wife and children from first wife. As such 50% of family pension was allowed in favour of the petitioner being the second wife of L. Sh Sukhjinder Singh in

> terms of Rule 6.17(4), Note 1 and 2 of Punjab Civil Services Rules, Volume II. In the said Rule as per Note 1, it has been provided as "When a Government employee 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 be 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." In Note 2 of the aforesaid rule, it has been provided that "Where a Government employee 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 Government employee": Hence 50% of family pension allowed in favour of the petitioner is in order in terms of Note 1 and 2 below Rule 6.17(4) of Punjab C.S.R. Volume II. The other share of 50% was payable to the children of first wife subject to their eligibility for the same. If they were not eligible, their share was subject to lapse as per said Note 1 and 2 of Rule 6.17 (4) of Punjab CSR Volume-II. Hence no cause of action has arisen to the petitioner against the office of the answering respondent."

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

The question which arises for the determination of this Court is as to whether, 50% of the family pension will cease keeping in view the Note 1 below Rule 6.17(4) of the Punjab Civil Services Rule or not.

The said question already stand answered by the Division Bench in ***LPA No.1434 of 2014, titled as The State of Punjab and others Vs. Harpal Kaur, on 01.09.2014***. In the said case, the same objection was taken by the respondents that as per Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II, the share of the first wife ceases when the minor children, who were granted the benefit of family pension after the death of the first wife, becomes ineligble for the grant of family pension.

After considering the said Rule, this Court has held that 100% share of the family pension is to be given to the legal heirs and any portion of the same cannot be retained by the Government. The Division Bench has held that in case the children of the first wife on attaining the the age of 25 years become ineligible for the grant of the family pension, the said share is to be transferred to the other eligible legal heirs, which could be the second wife or the parents as the case may be and the same deos not cease. The relevant portion of the said judgment is as under:-

> *"In this case, Jit Singh was an employee of the Punjab Government. He died in harness on February 15, 2004, leaving behind one son from his pre-deceased wife and one son born to respondent Harpal Kaur (the second wife). In accordance with the provisions of Rule 6.17 of the Punjab Civil Service Rules Volume II (hereinafter referred to as `the Rules'), the respondent and son of pre-deceased wife of the deceased employee were granted family pension in equal share. The son of pre-deceased wife of the deceased employee attained the age of 25 years on October 28, 2005 and as per the instructions dated March 07, 2005 (Annexure P-3) issued by the appellants, payment of half share of the family pension was stopped to him with effect from October 29, 2005. At that stage, the respondent moved an application (Annexure P-5) to the Accountant General, Punjab (appellant No.4 herein) for grant of full family pension, in view of Note 1 and 2 of Rule 6.17 of the Rules, which read as under :*
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> *"Note 1 – When a government employee is survived by more than one widow the pension will be paid to them in equal shares. On the death of the widow her share of the pension will become payable to her eligible minor child. If at the time of death widow leaves no eligible*

minor child, the payment of her pension shall cease.

Note 2 – When a government employee is survived by a widow but has left behind eligible minor child from another wife, the eligible minor child will be paid the share of the pension which the mother would have received if she had been alive at the time of the death of the government employee."

The claim of the respondent was rejected by the appellants on the ground that after attaining the age of 25 years, the right of son of the pre-deceased wife of the deceased employee to draw 50% of the family pension ceased and the said share could not have been granted to the respondent. This interpretation was given by the appellants in view of Note 1 and 2, as quoted above.

The contention of the appellants is without any substance and the same cannot be accepted, as earlier in the similar circumstances, exactly the similar Rule was interpreted by a Division Bench of this Court in the case of Ram Dulari versus State of Haryana and others (CWP No. 3359 of 2008, decided on July 03, 2009). Copy of the judgment rendered in the said case was annexed with the writ petition as Annexure P-1. In that case, it was held that widow of the deceased employee, in absence of any eligible heir from her and from the first wife of the deceased employee, is entitled to get full family pension. The observations of the Division Bench read as under :

"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.

12. For the reasons aforementioned, this petition succeeds. Order dated 17.7.2007 (P-7) passed by the Director General of Police respondent No. 2 is set aside.

The respondents are directed to release 50% share of the family pension to the petitioner, which was being paid to the minor children of deceased wife of Shri Mehar Singh, namely, Smt. Sona Devi, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner shall also be entitled to all the arrears with effect from May 2001 till date along with interest at the rate of nine percent per annum."

Learned counsel for the appellants argued that even after the said judgment, in the State of Punjab, there is dichotomy about the interpretation of the aforesaid

> *provisions. But we do not find any dichotomy in Punjab also, because the Punjab Civil Service Rules are exactly the same, and the situation as well as the facts and circumstances in Ram Dulari's case (supra) were also exactly the same. The reason is obvious. On the date of death of the deceased employee, his eligible dependents are to be identified, to whom the family pension is to be granted. If from the pre-deceased wife, children are there, they are eligible legal heirs and are entitled to get family pension till they attain the age of 25 years. In the instant case, son of the pre-deceased wife of the deceased employee being eligible legal heir was entitled to have family pension upto the date of his attaining the age of 25 years and thereafter, his share was to be restored or to be given to the remaining legal heirs of the deceased employee. In this case, widow of the deceased employee and her son survive and both of them are entitled to have family pension in equal shares. In any case, the State is liable to pay 100% family pension, which can be shared by any number of legal heirs of the deceased employee, but the State cannot retain the share of one legal heir on the ground that he has attained the age of 25 years and his right to have family pension has ceased. The family pension is an estate of the legal heirs of the deceased employee. The apportionment of the family pension of a deceased employee is not the business of the State. Right in the family pension will devolve according to the Hindu Succession Act, 1956. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge .*"

Counsel for the respondents is unable to distinguish the present case from decision of the Division Bench in LPA No.1434 of 2014 decided on 01.09.2014. Division Bench of this Court interpreted the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II while giving the finding that the family pension is estate of the legal heirs of the deceased employee and hence cannot be ceased in any manner by the State as the State is liable to pay 100% family pension which can be shared by any number of the legal heirs of the deceased employee but the State cannot retain the same on the ground that one of the recipients of the family pension has become ineligible and therefore, the same is ceased and cannot be transferred to the other legal heirs.

Further, this Court while deciding CWP-21138 of 2017 relying upon the judgment in Harpal Kaur's case (supra) again held that where there is no other eligible family member of the deceased-employee, who is entitled for the family pension, 100% family pension is to be paid and there is no power with the Government to cease the amount.

Counsel for the petitioner argues that the petitioner is also entitled for interest on the 50% share which the respondents will be releasing in pursuance to this order, as the respondents withheld the said amount without any valid justification. On the other hand, counsel for the respondents states that the petitioner is not entitled for interest as the amount was withheld, keeping in view Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rules which gave the respondents jurisdiction to withhold the said amount. This Court is of the view that the question of law, which is being contested by the respondents already stands settled by the decision in LPA No.1434 of 2014 decided on 01.09.2014 and that too in an appeal which was preferred by the State of Punjab. Despite suffering the said judgment, still the respondents have passed an order, contrary to the said judgment in the year 2015. As the impugned orders, which have been set aside, were passed contrary to the settled principle of law, petitioner is held entitled for the interest on the amount which the petitioner was unable to use for a period of more than two and half years. Therefore, the amount which will be calculated by the respondents to be paid to the petitioner will also carry interest @ 9% per annum from the date it became due till the same was released.

In view of the above, the present writ petition is allowed. Impugned order dated 05.08.2015 (Annexure P/8) is set aside. The petitioner is held entitled for 100% of family pension with effect from the date, she became entitled for i.e. after the death of her husband. Further, keeping in view the facts as mentioned above, the petitioner will also be entitled for interest @ 9% per annum from the date, the amount became due till the same is released to the petitioner by the respondents.

(HARSIMRAN SINGH SETHI)
JUDGE

10.07.2019
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1. Whether speaking/non-speaking? Yes/No
2. Whether reportable? Yes/No