IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(262) **CWP-21138-2017**
Date of Decision: July 09, 2019

Ravinder Kaur **.. Petitioner**

Versus

State of Punjab and others **.. Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Gautam, Advocate, for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 20.03.2017 (Annexure P-6) whereby the benefit of 100% family pension has been declined to the petitioner on the ground that the share of the family pension, which the son from the first wife was getting, is non-transferable in favour of the petitioner, who was the second wife of the deceased Government employee keeping in view the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II. Petitioner is claiming that she should be given 100% family pension after the son born out of the first marriage of the deceased employee, has become ineligible to get family pension on attaining the age of 25 years.

The facts as stated in the writ petition are that one Sh. Davinder Pal Singh, joined the department of Animal Husbandary, Punjab as Veterinary Pharmacist on 16.10.1986. Thereafter, said Davinder Pal Singh was promoted as Veterinary Inspector. Sh. Davinder Pal Singh was initially married to Smt. Rajwinder Kaur and out of the said wedlock two sons namely Iqbal Singh and Gurminder Singh were born. Unfortunately

Rajwinder Kaur died on 10.07.1997. After the death of the first wife, Sh. Davinder Pal Singh married petitioner on 06.10.1997. While in service, Sh. Davinder Pal Singh unfortunately died on 30.08.2013 and after his death, petitioner applied for the grant of family pension. Keeping in view the request made by the petitioner for the grant of family pension, 50% of the share of total family pension was sanctioned in favour of the petitioner and 50% was sanctioned in favour of Iqbal Singh i.e. son of Sh. Davinder Pal Singh from his first marriage.

As per the Rules, son is only entitled for the grant of family pension till he attains the age of 25 years. After Sh. Iqbal Singh attained the age of 25 years, petitioner demanded 100% family pension in her favour. The said claim of the petitioner was rejected by the respondents vide order dated 20.03.2017 (Annexure P-6). The relevant part of order is as under:-

> "***Sub: Transfer of family pension of Sh. Iqbal Singh S/O Sh. Devinder Pal Singh.***
>
> *Please refer to your letter No.106 dated 14/02/2017 on the subject sited above. It is intimated that on terms of Note (1) below Rule 6.17 (4) of the Punjab CSR Vol. II share of family pension of son from first wife is not transferable in favour of second wife of the deceased Govt. servant. It is further added that such type of cases may be reviewed at your end and if covered under the Rule then submitted to this office.*
>
> *Sd/-*
> *Senior Accounts Officer."*

It is an admitted fact that son of Sh. Davinder Pal Singh from first marriage namely Iqbal Singh attained the age of 25 years on 06.12.2016 and from the said date, the share of family pension he was receiving has been stopped by the respondents.

The claim of the petitioner is for the grant of 100% family pension in her favour being the sole eligible legal heir for the grant of the same w.e.f. 06.12.2016.

Upon notice of motion, the respondents have filed the reply and the stand taken by the respondents in the reply is that keeping in view the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II after the son Iqbal Singh became ineligible for the grant of family pension, the said share ceases and cannot be transferred to the petitioner and therefore, the action of the respondents in passing the impugned order is in consonance with the provisions of law and the claim of the petitioner is liable to be declined. The relevant portion of the reply is as under:-

> *"2. That family pension in equal share @ Rs.5145/- per month w.e.f. 31.08.2013 had been authorized in favour of petitioner and Sh. Iqbal Singh (elder son from 1st wife of Sh. Davinder Pal husband of the petitioner) vide P.P.O. No.62444/S/PB & 62445/S/PB dated 16/17.04.2015 (Annexure P-2 & P-3).*
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> *3. That it is pertinent to mention here that as per Note 1 below Rule 6.17 (4) of Punjab CSR Volume II, in case of death or attaining the maximum age of eligibility of the family pesnioner, the share of her/his family pension will cease and is not to be transferred in favour of other family pensioner receiving share of family pension. Hence the office of the answering respondent has issued the letter dated 20.03.2017 (Annexure P-6) as per rules and instructions of the Punjab Govt. in this regard."*

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

The only question of law arising for determination in this writ petition is as to whether, the share of the first wife will be transferred to the second wife after the legal heirs of the first wife becomes ineligible to receive family pension, keeping in view the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II. The said question has already been decided by the Hon'ble Division Bench of this Court while deciding ***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 ineligible 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 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 does 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 :

"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 the 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.

Keeping in view the above, the present writ petition is allowed and the impugned orders dated 20.03.2017 (Annexure P-6) and dated 12.04.2017 (Annexure P-7) are set aside and the petitioner is held entitled for the 50% share which Sh. Iqbal Singh was receiving w.e.f. the date he became ineligible to receive the same on attaining the age of 25 years i.e. 06.12.2016. Let the calculation of the amount for which petitioner become entitled for under this order be done by the respondents within a period of two months from the receipt of copy of this order and the amount so calculated shall be released to the petitioner within a period of one month thereafter.

Counsel for the petitioner also prays for interest on 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 2017. 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.

At this stage, learned counsel for the petitioner states that 50% share of the pension which the petitioner was receiving was also reduced by the respondents without any valid justification.

Liberty is granted to the petitioner to file a representation with the respondents qua the said claim and the respondents are directed to decide the said claim, in case, the same is raised by the petitioner by filing representation within a period of two months from the date the said claim is raised, by passing an appropriate speaking order.

(HARSIMRAN SINGH SETHI)
JUDGE

July 09, 2019
harsha

Whether speaking/reasoned: Yes
Whether reportable: Yes