

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

CWP-24369-2017

Date of decision: - 10.05.2019

Ritika and another

....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ram Niwas Sharma, Advocate,
for the petitioners.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the claim of the minor children is for the grant of benefits which they are entitled for under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'Rules of 2006') as well as under the Family Pension Scheme, 1964 (Scheme of 1964') in respect of the service rendered by their mother Smt. Neero Devi, who died while in service.

The facts as narrated above in the writ petition are that Smt. Neero Devi married to one Sh. Bijender son of Sh. Surat Singh. According to the petitioners, said marriage was dissolved by way of settlement in the panchayat and after the said settlement, Smt. Neero Devi

solemnized marriage with Sh. Sandeep Singh. Both the petitioners were born out of the said wedlock of Smt. Neero Devi and Sh. Sandeep Singh. Petitioner No.1 Ritika was born on 09.10.2010 and petitioner No.2 Divyansh was born on 07.05.2013. Mother of the petitioners Smt. Neero Devi was recruited as a Lady Constable with the Haryana police on 16.04.2008 and she continued working as such till she died on 25.04.2014, leaving behind both the minor children, who are petitioners before this Court.

After the death of Smt. Neero Devi, Sh. Sandeep Singh, who claimed that Smt. Neero Devi married him, applied under the Rules of 2006 for the grant of benefits as well as the family pension under the Scheme of 1964. His claim was turned down by the competent authority on 16.03.2017 (Annexure P-3) on the ground that Smt. Neero Devi was married to Sh. Bijender son of Sh. Surat Singh and there was no divorce between them and therefore, the claim of Sh. Sandeep Singh, being widower of Smt. Neero Devi, is contrary to the settled principle of law and thus, he is not entitled for any benefit. Thereafter, a legal notice dated 14.08.2017 was served upon the respondents on behalf of Sh. Sandeep Singh as well as both the petitioners herein claiming the benefits under Rules of 2006 as well as under the Scheme of 1964 for the grant of benefit. The said claim was also rejected by the respondents, vide order dated 29.09.2017 (Annexure P-7) on the ground that Sh. Sandeep Singh cannot be treated as husband of Smt. Neero Devi as her earlier marriage was never dissolved by a decree of divorce by the Competent Court of Law.

The said order has been impugned by the minor children of Smt. Neero Devi claiming that they are entitled for the benefits under Rules of 2006 as well as Scheme of 1964 for the grant of benefits in respect of the service rendered by their mother with the Haryana Police.

Upon notice of motion, the respondents have filed their reply.

In the reply again, the respondents have taken the same stand that as the marriage between Smt. Neero Devi was contrary to the provision of the Hindu Marriage Act, 1955 and therefore, the said marriage cannot be treated as a valid marriage for all intents and purposes and hence, the petitioners, who are born out of the marriage between Smt. Neero Devi and Sh. Sandeep Singh, are not entitled for any benefits as claimed in the present writ petition.

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

The only question of law, which needs to be determined in the present writ petition as to whether, the children who are born out of void marriage, will be entitled for the benefits in respect of the service rendered by their mother or not?

Under the Hindu Marriage Act, 1955, the children, born out of a void marriage, have been treated to be as legitimate. Section 16 of the Hindu Marriage Act, 1955 is as under: -

“16. Legitimacy of children of void and voidable marriages.-

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether

such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

A bare perusal of the above would show that the children of void and voidable marriages have been held to be the legitimate children and therefore, for all intents and purposes, both the petitioners, who are minors, are to be treated as the children of Smt. Neero Devi.

Once, the children born out of a void and voidable marriage are legitimate, then, those children are entitled for the benefits in respect of the service rendered by their mother/father, as the case may be.

In the present case, the claim of the petitioners, who are minors, is only in respect of the service which their mother Smt. Neero Devi rendered with the Haryana Police before she died. Their entitlement to be seen under the provisions of Rules of 2006 as well as the Scheme of 1964, under which they are claiming benefits in the present writ petition.

Under Scheme of 1964, the 'family' has been defined and under the 'family', minor sons and unmarried minor daughters, are held to be entitled for the benefits of family pension, which is clear from Clause (4)(ii) of the 1964 Scheme, which is reproduced hereunder for the ready reference: -

[(ii) "Family" for the purposes of this scheme includes the following relatives of the officer: -

- (a) wife, in the case of a male officer;
- (b) husband, in the case of a female officer;
- (c) minor sons;
- (d) unmarried minor daughters;
- (e) widowed/legally divorced daughters; and
- (f) the parents of an unmarried officer."

Therefore, both the petitioners fit in the abovesaid definition for their entitlement for the grant of family pension after the death of their mother.

Similarly, under Rules of 2006, eligibility to receive the financial assistance is similar as that of in the Scheme of 1964. The relevant Rule 3, which deals with the eligibility, is as under: -

"Eligibility 3. The eligibility to receive financial assistance these rules shall be as per the provision in pension/family pension scheme 1964."

A bare perusal of the above would show that if a person is entitled for family pension under Scheme of 1964, he/she is entitled for the benefits under Rules of 2006 as well.

Keeping in view the above proposition, both the petitioners

are entitled for the benefits under Rules of 2006 as well as Scheme of 1964 for the grant of benefits in respect of the service rendered by their mother Smt. Neero Devi.

Hon'ble the Supreme Court of India in case **Rameshwari Devi Vs. State of Bihar and others, 2000(1) RSJ 580**, has held that even the children born out of the second marriage during the subsistence of the first marriage, will be entitled for the benefits of family pension. The relevant paragraph of the judgment is as under: -

“It cannot be disputed that the marriage between Narayan Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get equal shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narayan Lal, her marriage with Narayan Lal being void. Sons of the marriage between Narayan Lal and Yogmaya Devi being the legitimate sons of Narayan Lal would be entitled to the property of Narayan Lal for equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narayan Lal. Each would, therefore, would get 1/6th share in the property of Narayan Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.”

The case of the petitioners is squarely covered by the above

said judgment for the grant of the benefits in respect of the service rendered by their late mother.

In view of the above facts, the present writ petition is allowed. Petitioners are held entitled for the benefit under Rules of 2006 as well as Scheme of 1964 from the date of the death of their mother Smt. Neero Devi.

Let the benefits for which the petitioners become entitled for be computed by the respondents within a period of two months from the date of receipt of certified copy of this order. Thereafter, whatever the petitioners become entitled for, will be released to them within a period of next two months.

Counsel for the respondents argues that the present writ petition has been filed by the minors through their legal guardian Sh. Sandeep Singh and case of Sh. Sandeep Singh was already rejected by the Government of Haryana. Therefore, in order to safeguard the interest of two minor children, certain conditions be laid down in this order itself.

Counsel for the petitioners has no objection to lay down of the conditions for safeguarding the interest of the minors so that amount to be paid under this order is only spent on the welfare of the minors.

It is directed that the amount for which minors will become entitled for under this order and also interest accrued thereon shall only be used for the welfare of the minor children and not for any other purpose and shall be deposited in FDR in a Nationalized Bank with the instructions that in case any amount is needed for welfare of the children, the same can only be withdrawn after due permission from the District &

Sessions Judge, Sonapat, in whose jurisdiction the petitioners are presently residing keeping in view the address given by them. Further, the District & Sessions Judge, shall pass the appropriate orders after satisfying as to whether the amount so being asked for is to be used for the interest and benefit of the children.

Writ petition is allowed in the above terms.

May 10, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes