

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6134 of 2016

Date of Decision: 23.05.2019

Smt. Banti Devi

... Petitioner

VS.

Union of India & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Raj Kapoor Malik, Advocate for the petitioner

Mr. Arihant Goyal, Advocate for respondents No.1&2

Mr. Navmohit Singh, Advocate for respondent No.3

G.S. SANDHAWALIA, J. (Oral)

The petitioner being the mother of the deceased Pawan Kumar has preferred the writ petition under Articles 226/227 of the Constitution of India seeking quashing of the letter dated 19.03.2015 (P4) whereby her claim of service-cum-death benefits and grant of family pension has been rejected.

A perusal of the impugned communication would show that the stand taken by the official respondents is that as per CCS (Pension) Rules, 1972, family pension cannot be granted to mother of a deceased person when a legally wedded wife and next of kin (NOK) is alive. Respondent No.3 Smt. Babita Rani widow of the deceased was thus held fully eligible for family pension and sharing of pension between mother-in-law and daughter-in-law was not permissible as per the Rules and thus the challenge to the said communication.

Respondents No.1&2 in their reply have submitted that as per Rule 54 of the Rules *ibid*, respondent No.3 being a legally wedded wife is entitled to receive all the pensionary benefits including family pension and

the petitioner being the mother of the deceased soldier has no legal right to claim any portion of the family pension in her favour when the wife is alive. It is pointed out that the petitioner had earlier filed Civil Suit No.62 of 2015 along with an application for temporary injunction for payment of all pensionary benefits to her due to the death of her son. The stay application was dismissed on 09.12.2015 (R1/3). The suit was thereafter withdrawn on 02.02.2016 (P8). It is apparent that writ petition was filed thereafter and the stay has been granted on 26.04.2016 regarding pension that it should not to be disbursed to the respondent-wife.

Respondent No.3 in her reply has taken the stand that she was nominated by the deceased and thus was entitled for benefit. She has relied upon Clause (10-A) of Rule 54 of the 1972 Rules which reads as under:-

54.(6) The period for which family pension is payable shall be as follows:-

(i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

xxxx xxxx xxxx

Provided that family pension shall continue to be payable to a childless widow on re-marriage, if her income from all other sources is less than the amount of minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon:

xxxx xxxx xxxx

(10-A) (a) Family pension to the parents shall be payable if the parents were wholly dependent on the Government servant immediately before his or her death and the deceased

Government servant is not survived by a widow or an eligible child.

The official respondents have also appended the nomination declaration made by the deceased in favour of respondent No.3 (R1/1). Another aspect which has been highlighted by respondent No.3 is that the petitioner was owner in possession of 33 kanals 2 marlas of land (R3). She had also transferred the land of the deceased in name of her two sons and an FIR No.162 dated 11.05.2015 under Section 420, 467, 468, 469, 471, 120-B IPC was also registered.

Keeping in view the statutory mandate as such in favour of the widow, the claim as such by the petitioner to the pensionary benefits of the deceased is without any basis. Accordingly, there is no merit in the present writ petition which is accordingly dismissed. Resultantly, the interim order dated 26.04.2016 also stands vacated.

Ordered accordingly.

23.05.2019

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**(G.S. Sandhawalia)
Judge**

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No