IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2784 of 2017 (O&M)
Date of decision : 29.10.2019

Kiran Bala

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Grewal, Advocate for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

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Harsimran Singh Sethi, J. (Oral)

CM-16046-CWP-2019

Present application has been filed to place on record copy of order dated 03.05.2013 passed by this Court in CWP No. 17473 of 2011.

Application is allowed and order dated 03.05.2013 passed in CWP No. 17473 of 2011 is taken on record.

CWP-2784-2017

In the present writ petition, the grievance which is being raised by the petitioner is that at present, she is the only surviving legal heir of late Sh. Darshan Chand, who is entitled for the family pension but keeping in view the Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rules Vol. II, she is being paid only 50% of the family pension instead of

100% family pension, for which the petitioner is entitled for.

As per the facts mentioned in the writ petition, Sh. Darshan Chand, deceased husband of the petitioner was working as a Dhobi in the Civil Hospital, Pathankot. He had joined service on 30.11.1977 and unfortunately, died while in service on 06.01.2009 after rendering about 31 years of service. Sh. Darshan Singh was initially married to one Tarsho Devi and after her death, Sh. Darshan Chand married the present petitioner-Kiran Bala. Sh. Darshan Chand had four children from his first wife. By the time, Sh. Darshan Chand died on 06.01.2009. All the children from his first marriage were over the age of 25 years, hence were not eligible for the grant of family pension.

After the death of Darshan Chand, the case of the petitioner for the grant of family pension was considered and after computing the family pension, petitioner was only given 50% of the total family pension calculated. The said action of payment of only 50% family pension to the petitioner instead of 100% family pension, is under challenge in the present writ petition.

Upon notice of motion, respondents have filed the reply and in the reply, they have taken a stand that keeping in view the Note 1 and 2 below Rule 6.17 (4) of the Punjab Civil Services Rules, Vol. II, petitioner is entitled only for 50% of the family pension as 50% share was to be given to the legal heirs, who were born out of the first marriage and as none of the children born out of the first marriage were eligible to be granted the family pension, their share will cease and petitioner will only be entitled for 50% of her share. The relevant portion of the reply is as under:-

> *"3. That as per note 1 and 2 below rule 6.17(4) of Punjab Civil Services Volume-II, it has been clearly mentioned that on the death of a widow, her share of pension will become payable to her eligible minor child, if at the time of her death, a widow leave no eligible minor child, the payment of her share of pension will cease. The contents of note 1 and 2 below rule 6.17(4) are reproduced 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 a widow, her share of the pension will become 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.*
> >
> > *Note 2 – Where a Government employee is survived by a widow but has left behind as 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."*

Learned counsel for the respondents states that though in one of the paragraph of the reply, it has been stated that children born out of the first marriage with Tarsho Devi were minor but keeping in view Annexure R-5/1 dated 24.10.2006, learned counsel for the respondents states that no child of Sh. Darshan Chand, born out of the first marriage with Tarsho Devi, was eligible for the grant of family pension as they all were above 25 years of age on the date of death of Sh. Darshan Chand.

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

The only question which arises for determination before this

Court is whether petitioner will be entitled for 50% of the total family pension or petitioner, being the only surviving eligible legal heir, is entitled for 100% of the family pension.

As per the respondents, keeping in view the Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rule, Vol. II, in case a deceased employee has married more than once and there are two families, family pension is to be apportioned 50% each between the legal heirs of the first marriage and the second marriage and in case, any of the legal heir becomes ineligible, their share ceases and cannot be transferred to the other legal heirs. The relevant Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rule, Vol. II is 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 a widow, her share of the pension will become 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.*
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> *Note 2 – Where a Government employee is survived by a widow but has left behind as 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."*

This Court has already interpreted the said Note 1 below Rule 6.17(4) of the Punjab Civil Services Rule, Vol. II while deciding CWP No. 8115 of 2010, on 03.07.2013 titled as ***Harpal Kaur Vs. State of Punjab and others.*** The Coordinate Bench of this Court while deciding ***Harpal***

Kaur's case (supra) has held that the share of the legal heirs cannot cease as the Government is under obligation to release 100% of the family pension and if a legal heir becomes ineligible, his/her share cannot cease and cannot be retained by the Government. Against the said decision, the State of Punjab preferred LPA No. 1434 of 2014 titled as ***The State of Punjab and others Vs. Harpal Kaur***. The said LPA was decided by the Division Bench on 01.09.2014 and the order passed by the learned Single Judge in **Harpal Kaur's case (supra)** was upheld. The Division Bench has held that keeping in view the judgment of the Division Bench of this Court passed in CWP No. 3359 of 2008 titled as ***Ram Dulari Vs. State of Haryana and others,***, decided on 03.07.2009, the Government cannot retain the share of family pension under Note 1 and 2 below Rule 6.17 (4) of the Punjab Civil Services Rules. The relevant portion of the judgment of the Division Bench 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.*
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> *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.
No merit. Dismissed."

Keeping in view the law laid down in ***Harpal Kaur's case (supra),*** it is clear that after interpreting Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rules, this Court has already given a finding that no portion of family pension can cease and retained by the Government. Learned State counsel is unable to distinguish the case of the present petitioner with that of Smt. Harpal Kaur. Learned State counsel very fairly concedes that after interpreting Note 1 and 2 below Rule 6.17(4) of the Punjab Civil Services Rules, Vol. II, this Court has already held that if there is only one legal heir, who is eligible for the grant of the family pension, he/she will be entitled for full 100% family pension and no portion of the same can be retained by the Government by taking shelter behind Note 1 and 2 of Rule 6.17(4) of the Punjab Civil Services Rules Vol. II.

Keeping in view the above, the case of the petitioner is squarely covered by the decision of the Division Bench of this Court in LPA No. 1434 of 2014 titled as ***The State of Punjab and others Vs. Harpal Kaur***. Hence, the present writ petition is allowed. The action of the respondents in only paying 50% of the total family pension to the petitioner is set-aside and a direction is issued to the respondents to release 100% family pension to the petitioner from the date she became eligible for the same alongwith arrears.

While issuing notice of motion, this Court has already restricted the petitioner that in case the writ petition is to be allowed, the petitioner will only be entitled for arrears of 38 months before filing of the present writ petition.

Learned counsel for the petitioner agrees that petitioner is satisfied with the arrears of 38 months prior to the filing of the present writ petition.

Let the arrears under this order be calculated and released to the petitioner within a period of two months from the date of receipt of certified copy of this order.

No other argument has been raised on behalf of the parties.

Writ petition is allowed in above terms.

October 29, 2019 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether reasoned/speaking? Yes
Whether reportable? Yes