

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

CWP No.8008 of 2017 (O&M)
Date of decision:-02.05.2019

Smt. Kamlesh

.....Petitioner

versus

Union of India and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.K. Chauhan, Advocate for the petitioner.

Mr. S. K. Sharma, Senior Panel Counsel for respondent/UOI.

Mr. Siddharth Sanwaria, DAG, Haryana.

TEJINDER SINGH DHINDSA, J.(ORAL)

Challenge in the instant writ petition is to the memo dated 14.12.2016 (Annexure P-19) and in terms of which the claim of the petitioner for grant of benefit under the Swatantarta Sainik Samman Pension Scheme, 1980, has been declined.

Brief facts that would require notice are that father of the petitioner was issued a Praman Patra on 26.01.1962. The Government of India introduced a Central scheme for grant of pension to freedom fighters and their eligible dependants on 15.08.1972. The scheme of 1972 was liberalized and renamed as the Swatantarta Sainik Samman Pension Scheme, 1980. On 11.08.1981 vide Annexure P-5, the Financial Commissioner and Secretary to Government of Haryana, Protocol Department, sanctioned an amount of Rs.50/- per month as financial assistance to the father of the petitioner being a freedom fighter. Father of

the petitioner expired on 04.01.1992 and the death certificate has been placed on record and appended as Annexure P-7. Subsequent thereto the State Freedom Fighter pension/financial assistance was transferred in the name of the mother of the petitioner Smt. Channo Devi in the year 1994. Petitioner lost her husband Sh. Raj Kumar on 23.06.2007 during the lifetime of her mother and as such became dependant upon her. Mother of the petitioner expired on 08.09.2008.

It is against such brief factual backdrop that the petitioner set up a claim to be released the financial assistance under the Swatantarta Sainik Samman Pension Scheme, 1980 and which benefit had earlier been granted to her father namely Data Ram and upon his demise transferred in the name of mother of petitioner namely Channo Devi and who also expired on 08.09.2008.

The claim of the petitioner has been rejected on the ground that as per para 5.2.5 of the Swatantarta Sainik Samman Pension Scheme, 1980, a widowed/divorced daughter of the freedom fighter is not entitled for any kind of benefit after the death of the pensioner/spouse.

Having heard counsel for the parties at length, this Court is of the considered view that the impugned order dated 14.12.2016 (Annexure P-19) cannot sustain as it is in direct conflict with the view taken by a Division Bench of this Court in ***Letters Patent Appeal No. 1721 of 2015 titled as Khajani Devi Vs. Union of India and others decided on 29.07.2016.***

In case of Khajani Devi (supra), the claim that was under consideration was at the hands of a widowed daughter of a freedom fighter and under the Swatantarta Sainik Samman Pension Scheme, 1980 itself.

While negating the objection raised on behalf of Union of India and other respondents as regards the claim being not admissible to a divorced daughter of a freedom fighter under the 1980 scheme, it was held as follows:-

This appeal is directed against the judgment of learned Single Judge dated 30.10.2015.

In existence is a Scheme known as “Swatantarta Sainik Samman Pension Scheme, 1980 (hereinafter referred to as “the Scheme”). Father of the petitioner, namely Norang, who was a freedom fighter and admitted to the benefit under the Scheme, died on 8.2.1994 leaving behind his wife, who died on 12.6.1995, survived by the appellant, who is his daughter, as the sole biological survivor, even though, Norang, during his life time, had adopted his brother's son, namely Prem, who had also expired. The appellant is a divorcee and thus, has prayed that in the given set of circumstances, she, being the sole surviving heir, was entitled to the benefit of pension being drawn under the Scheme by her late father and lastly by her widowed mother. The benefit has been denied to her on the ground of ineligibility as prescribed in the Scheme dated 15.8.1981. The relevant of which may be extracted herebelow:-

“2. WHO ARE ELIGIBLE DEPENDENTS:

For the purpose of grant of Samman pension, family include (if the freedom fighter is not alive), mother, father, widower/widow if he/she has not since remarried, unmarried daughters.

Not more than one eligible dependent can be granted pension and in the event of availability of more than one dependent the sequence of eligibility will be

widow/widower, unmarried daughters, mother and father.”

The learned Single Judge, after noticing that since a divorcee is not included in the list of eligible dependents, even though an unmarried daughter does find mention, negated the claim of the appellant which is now the cause of grievance to her.

We have heard learned counsel for the parties and are unable to persuade us to conform to the interpretation placed by the learned Single Judge qua the appellant's ineligibility for the benefit of the pension under the Scheme.

The underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to construe the admissibility of benefit from that angle. It is not the case that the daughters are excluded altogether. An unmarried daughter finds mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There would be no rationality to the reason that the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the sole eligible dependent and thus, qualifies for the benefit, which is concededly made admissible only to one dependent. Even otherwise, we are of the opinion that a beneficial Scheme such as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. We also notice that the Ministry of Defence has issued instructions dated 14.12.2012 (on record as Annexure P8) which included a divorced daughter in the category of eligible dependents for grant of liberalized/special family pension beyond 25 years. We may extract the same herebelow:

“2. The above matter is considered by the Government and it has been decided in consultation with Department of P&PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised/special family pension beyond 25 years of age subject to fulfillment of other prescribed conditions as hitherto fore.”

Both the liberalized/special family pension and Swatantarta Sainik Samman Pension Scheme are intended to honour the valour of the uniformed people who laid down their lives or suffered for the cause of the country. We would, thus, not place any demeaning interpretation on the Scheme to deprive the unsung heroes of the country of benefits meant to ensure a life of dignity to their dependents.

With the aforesaid observations, we accept the appeal and direct that the benefit of Swatantarta Sainik Samman Pension Scheme shall be admissible to the divorced daughter as well. Consequently, letter (Annexure P5) and Show Cause notice (Annexure P7), by which the pension was stalled, stand quashed.

(Mahesh Grover)
Judge

July 29, 2016

(Shekher Dhawan)
Judge

The same very reasoning as has been applied by the Division Bench in favour of the claim being admissible to a divorced daughter would squarely apply even to a widowed daughter.

Resultantly, the instant writ petition is allowed in terms of judgement dated 29.07.2016 in LPA No. 1721 of 2015 (Khajani Devi Vs.

Union of India and others). Impugned order dated 14.12.2016 (Anenxure P-19) is set aside.

The respondent authorities are directed to release to the petitioner the admissible benefits under the Swatantarta Sainik Samman Pension Scheme, 1980 alongwith arrears within a period of two months from the date of receipt of certified copy of this order.

Petition is allowed.

Pending application (s) if any shall also stand disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

02.05.2019

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No