

234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.10239 of 2019 (O&M)
Date of decision : January 13, 2020

Smt. Leela

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Mukesh Arora, Advocate for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

The question of law raised in the present writ petition is as to whether, keeping in view the Note-1 of Rule 6.17 of the Punjab Civil Services Rules, Volume-II, the share of the widow will seize in case there is no eligible minor child for the grant of family pension or lone surviving legal heir will get 100% family pension?

Learned counsel for the petitioner argues that Rule 6.17 *ibid* has already been interpreted by this Court more than once. The reliance is placed upon the judgment passed in CWP No.3359 of 2008, titled as “**Ram Dulari vs State of Haryana and others**”, decided on 03.07.2009 as well as in CWP No.8115 of 2010, titled as “**Harpal Kaur vs State of Punjab and others**”, decided on 03.07.2013 to contend that this Court has held that the sole eligible claimant of the family pension will be entitled for 100% family pension and the State has no power to seize any share. The relevant paragraph of the judgment in **Ram Dulari's** case (*supra*) is 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.

Learned counsel for the respondents is unable to dispute the said settled question of law and also the fact that the judgment in **Ram Dulari's** case (supra), has already attained finality.

Learned counsel for the respondents is also unable to dispute that even in ***Harpal Kaur's*** case (*supra*), the State of Punjab has implemented the judgment wherein, it has been held that no share of the family pension will seize, keeping in view Note-1, Rule 16.7 *ibid* and the sole survivor/legal heir, who is entitled for family pension will be entitled for 100% of the family pension.

In the present case also, the claim of the petitioner is for the release of the 100% family pension, which is being denied to her only by placing reliance upon Note-1 of Rule 6.17 *ibid*.

As the learned counsel for the respondents is unable to dispute the settled principles of law as settled by the Division Bench of this Court in ***Ram Dulari's*** case (*supra*), the present writ petition is also allowed in the same terms and the impugned order 28.12.2018 (Annexure P-1) is set aside.

It is held that the petitioner will be entitled for 100% of the family pension from the date she became the lone surviving family member entitled for the family pension. Let the arrears, for which the petitioner will be entitled, in pursuance to this order be calculated by the respondents within within a period of two months from the date of receipt of certified copy of this order and be released to the petitioner within a period of one month thereafter.

(HARSIMRAN SINGH SETHI)
JUDGE

January 13, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No