

IN THE HIGH COURT OF PUNJAB ANDHARYANAAT
CHANDIGARH

CWP No. 18606-2008 (O&M)

Date of decision:-07.01.2020

Imarti Devi

.....Petitioner

vs.

State of Haryana and ors.

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. D.S. Rawat, Advocate
for the petitioner.

Mr. Hitesh Pandit, Addl.A.G. Haryana

RITU BAHRI, J.(Oral)

C.M. No. 1271-2017

The present application is for disposing of present petition
interms of judgment dated 15.09.2006 passed by this Court in CWP No.
6283-2015 titled as ***Santosh Devi v. UHBVNL and ors., 2007 (1) RSJ 178***
(DB)

After hearing learned counsel for the parties, the application is
allowed and the matter is taken up today itself for disposal

C.W.P No. 18606-2008

Petitioner is seeking issuance of directions to the respondents
to issue her appointment letter to the post of Primary Teacher, as is made
entitled vide letter dated 09.11.2017 by the Directorate vide Annexure P-13.

On 07.02.2018, this Court adjourned the matter sine die to
await the decision in LPA No.1707-2017.

However, learned counsel for the petitioner submits that the

petitioner has been issued appointment letter and the present petition has become rendered infructuous.

In view of the above statement, the matter is taken up today itself for disposal.

CWP No. 18606-2008

The present petition has been filed under Article 226 of the Constitution of India for issuance of direction to the respondents to grant the family pension and other ex-gratia benefits admissible to widow of regular deceased employee, to the petitioner from the date of her entitlement i.e from the date of her husband's death with all consequential benefits.

On notice of the petition, a written statement has been filed on 31.07.2009 on behalf of respondent Nos. 1 to 3 stating therein that the petitioner's husband was posted on Muster Roll basis and was not on the establishment of the department. The husband of the petitioner expired on 24.05.1996 before issuance of order of regularization by S.E P.H Gurgaon. After the death of the husband of the petitioner, the services of husband of the petitioner was regularised from 01.02.1996. On the request of the petitioner, she was given ex-gratia employment against the post of Peon. The claim of the petitioner for pension was rejected on the ground that under the family pension scheme, 1964, it is clearly mentioned that minimum period of one year of continuous service without break is the essential requirement for the grant of pension. The petitioner's husband has not completed one year of continuous service before his death as his services were regularized w.e.f 01.01.1996 and he died on 24.05.1996. Further the husband of the petitioner was not medically examined as he expired on

24.05.19965 due to weak health and would have been declared medically unfit, had he not died.

Heard learned counsel for the parties at length.

It would be appropriate to make a reference to clause 4 of the Family Pension Scheme 1964 (for short “Scheme 1964”) as incorporated in Punjab Civil Services Rules, Volume I which reads as under:

“ 4. This scheme is administered as below The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of the gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.

Note-1: The term one year continuous service used in para 4(i) above is inclusive of permanent/ temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.”

The above Scheme 1964 came up for consideration before Division Bench of this Court in ***Santosh Devi's case (supra)*** wherein the petitioner filed the petition for claiming the benefit of family pension from the date of death of her husband and relase of ex gratia grant, gratuity and leave encashment. Her claim was rejected as the husband of the petitioner died after putting in two months of regular service. But it is not in dispute that the husband of the petitioner before regularization had put in nearly fifteen years of service with the department. The writ petition was allowed and the operative part of the judgment reads as under:-

*“The afore-mentioned Scheme has been subject matter of consideration of this Court in the case of **Savitri Devi v. State of Haryana and others 1996(2) RSJ 854**. A Division Bench of this Court has held that non completion of one year of service is no ground to deny the benefit of family pension to a widow. The afore-mentioned view has been repeated followed by this Court in the cases of **Sundra Devi v. U.H.B.V.N. Ltd 2005 (4) SCT 634; Krishana Devi v. U.H.B.V.N. Ltd (Civil Writ Petition No. 11285 of 2004 decided on 31.1.2005); Meena Kumari v. U.H.B.V.N. Ltd (CWP No. 1083 of 2003 decided 9on 28.7.2003) and Kusum Devi v. U.H.B.V.N.Ltd (CWP No. 86 of 2003 decided on 28.7.2003).***

In the present case, the petitioner has been appointed on 19.2.1977. His services were regularised on 31.10.1991 and he expired on 2.1.1992 which shows that the petitioner has completed 15 years of service if the period before the date of his regularisation is taken into consideration. The afore-mentioned interpretation of law on 1964 Scheme is imperative because there

*is nothing in the Scheme which would suggest excluding the work charge period. We are inclined to include the afore-mentioned period as Rule 3.17 of the Punjab Civil Services Rules which excluded the work charge service from being counted as qualifying service was struck down by a Full Bench of this Court in the case of **Kesar Chand v. State of Punjab 1988 (2) PLR 223**. It was further held that all work charge service preceding regularisation shall be considered as qualifying service for the purposes of granting pensionary benefits. If the work charge service could be considered as qualifying service for a pensioner we see no reason not to do so when her widow claims family pension especially when there is nothing in clause 4 prohibiting to consider such service as qualifying service. Accordingly, we hold that the instant petition deserved to be allowed.*

The absence of medical certificate on record of the respondent does not prove that the petitioner's husband did not undergo medical test because otherwise he would not be permitted to join. There is nothing on record suggesting that the husband of the petitioner was allowed to join subject to his medical fitness. Therefore, nothing turns on the absence of medical certificate.

This judgment is directly applicable to the facts of the present case where the husband of the petitioner joined the respondent-department as Mali-cum-Chownkidar on work charge basis in 1989 but his services were regularized on 01.02.1996. He expired on 24.05.1996. The respondents cannot reject the claim of the petitioner that the husband of the petitioner had not put in 01 year of continuous service and he was not

medically examined before he was regularised. The husband of the petitioner has completed 07 years of service if the period before the date of regularisation is taken into consideration.

Reference at this stage can further be made to letter dated 17.03.2010 (A-1) whereby the Government of Haryana has clarified that daily wage service followed by regular service will be countable for pension and pensionary benefits.

Accordingly, the writ petition is allowed and respondents are directed to give family pension and ex gratia benefits to the petitioner from the date of filing of the petition i.e 24.10.2008 along with 9% interest.

07.01.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	:	Yes
Whether reportable	:	No