IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(237) **CWP No. 18192 of 2019**
Date of Decision : 26.02.2020

Jaswinder Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Surinder Garg, Advocate for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Learned counsel for the petitioner states that petitioner, who is the widow of Sh. Dhana Singh, is being denied the full family pension by placing reliance upon Note (1) below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II. The prayer of the petitioner is for issuance of a direction to the respondents to grant her 100% family pension w.e.f. 18.12.2017, when Sh. Lovepreet Singh i.e. son of late Sh. Dhana Singh from the first marriage, became ineligible to get the family pension upon attaining the age of 25 years, alongwith arrears and interest.

As per the facts stated in the present writ petition, late Sh. Dhana Singh, who was working as Assistant Sub Inspector in the Punjab Armed Police, unfortunately died on 18.02.2016. Sh. Dhana Singh was initially married to Baljit Kaur. Out of the said marriage, two children, namely, Lovepreet Singh (son) and Jaspreet Kaur (daughter) were born. Smt. Baljit Kaur i.e. first wife of Sh. Dhana Singh, unfortunately, died on 12.06.2007, after which Sh. Dhana Singh married petitioner-Jaswinder Kaur, who is the sister of late Smt. Baljit Kaur i.e. the first wife.

After the death of Sh. Dhana Singh, keeping in view the provisions of Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II, total family pension was bifurcated between the first family of late Sh. Dhana Singh and the petitioner, who is the second wife of late Sh. Dhana Singh. Lovepreet Singh (son), who was granted 50% of the family pension, attained the age of 25 years on 17.12.2017 after which, he became ineligible for the grant of family pension keeping in view the provisions of the grant of family pension and no pension was released to him after December, 2017. After the said date, petitioner claimed the full family pension being the sole claimant, but the request of the petitioner was not accepted by the respondents and petitioner filed the present writ petition claiming the benefit of 100% family pension w.e.f. 18.12.2017 alongwith arrears and interest.

Upon notice of motion, respondents have filed the reply. In the reply, the respondents have stated that keeping in view the Note (1) below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II, petitioner is only entitled for 50% of the family pension and the family pension, which was being given to Sh. Lovepreet Singh i.e. the son, ceased after he became ineligible for the grant of same.

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

The question which has been posed before this Court for determination is whether the petitioner, who is the sole claimant of the family pension, is entitled for 100% of the family pension or only 50% which is being paid to her keeping in view the Note (1) below Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II.

Rule 6.17 (4) of the Punjab Civil Services Rules, Volume-II alongwith the Note is as under:-

"(4) The pension will be admissible–

(i) (a) in the case of widow or widower up to the date of death or remarriage whichever is earlier;

(b) in the case of a son until he attains the age of twenty-five years or till he starts earning his livelihood, whichever is earlier; and

(c) to a daughter upto the age of twenty-five years irrespective of her marriage. However, an unmarried daughter shall be entitled to family pension irrespective of her age. But, family pension shall not be admissible to a daughter, if she starts earning her livelihood:

Provided that if the son or daughter of a Government employee is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after becoming ineligible for family pension under sub-clauses (b) and (c), the family pension shall be payable to such son or daughter for life subject, to the following conditions, namely:–

(i) if such son or daughter is one among two or more children of the Government employee, the family pension shall be initially payable to the children in the order set out in the sub-rule (3) until the last child becomes ineligible for

family pension under sub-clauses (b) and (c) and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him or her as the case may be, for life;

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind or they are physically crippled or disabled, the family pension shall be paid in the following order, namely:–

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the life time of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the life time of the elder;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out as far as possible, the exact mental or physical condition of the child;

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continued to suffer disorder or disability of mind or continues to be physically crippled or disabled.

Explanations,–(a) The disability which manifests itself *before or after the retirement or death of the Government employee shall be taken into account for the purpose of grant of family pension under this rule.*

(b) Omitted.

(c) The family pension payable to such a son or daughter shall be stopped if he or she starts earning his/her livelihood.

(d) In such cases it shall be the duty of the guardian to furnish a certificate to the Treasury or Bank , as the case may be, every month that (i) he or she has not started earning his/her livelihood; (ii) Omitted.

Explanation (2).–A son or a daughter shall be deemed to be earning his/her livelihood if his/her monthly income is equal to the prescribed minimum family pension of Rs. 3500 plus dearness relief thereon. Similarly, parents whose total monthly income from all sources is equal to or more than the prescribed minimum pension of Rs. 3500 plus dearness relief thereon, shall not be considered to be dependent upon the deceased Government employee and no family pension shall be admissible to them.

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 an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received if she had been alive at the time of the death of the Government employee."

This Rule came up for interpretation before the Division Bench in LPA No. 1434 of 2014 titled as ***The State of Punjab and others Vs. Harpal Kaur***, decided on 01.09.2014. Before the Division Bench, the same objection as being taken in this writ petition, was taken by the respondents that as per Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II, the share of the first wife ceases when the minor children, who were granted the benefit of family pension after the death of the first wife, becomes ineligible for the grant of family pension. After considering the said Rule 6.17(4), this Court has held that 100% share of the family pension is to be given to the legal heirs and no portion of the family pension cannot be retained by the Government. The Division Bench has held that in case, the children of the first wife on attaining the age of 25 years become ineligible for the grant of the family pension, the said share is to be transferred to the other eligible legal heirs, which could be the second wife or the parents as the case may be and the same does not cease. The relevant portion of the said judgment 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.

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 .*"

Counsel for the respondents is unable to distinguish the present case from the decision of the Division Bench in LPA No.1434 of 2014 decided on 01.09.2014. Division Bench of this Court interpreted the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II while returning the finding that the family pension is estate of the legal heirs of the deceased employee and hence cannot be ceased in any manner by the State and the State is liable to pay 100% family pension, which can be shared by any number of the legal heirs of the deceased employee but the State cannot retain the same on the ground that one share holder of the recipients of the family pension has become ineligible and the said share is to be ceased and the same cannot be transferred to the other legal heirs.

Keeping in view the above, the claim of the petitioner for the grant of benefit of 100% family pension is allowed as her claim is squarely covered by the decision rendered by the Division Bench in ***Harpal Kaur's case (supra)*** from the date Sh. Lovepreet Singh became ineligible to receive the family pension and the same was stopped**.** Respondents are directed to compute the arrears for which the petitioner becomes entitled, under this order within a period of two months from the date of receipt of certified copy of this order and the amount so calculated will be released to the petitioner within a period of one month thereafter.

As the claim of the petitioner was not being accepted despite being a settled principle of law settled by this Court as far back as in the year 2014, petitioner will also be entitled for interest on the arrears of the family pension, which will be paid to her under this order. The said arrears will also carry interest @ 9% per annum from the date the amount became due till the release of the same.

February 26, 2020 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether reasoned/speaking? *Yes*
Whether reportable? *Yes*