

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP No. 20374 of 2017
Date of Decision : 11.02.2020

Jaspal Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

(2) CWP No. 16190 of 2019

Rajinder Kaur

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Arihant Goyal, Advocate for the petitioner
in CWP No. 20374 of 2017.

Ms. Swati Verma, Advocate for the petitioner
in CWP No. 16190 of 2019.

Mr. Navdeep Chhabra, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

By this common order, two writ petitions, the details of which have been mentioned in the heading, are being disposed of as both the writ petitions involve the same question of law and identical facts. For the purpose of this order, the facts are being taken from CWP No. 20374 of 2017.

In the present writ petition, the grievance of the petitioner is

that 50% of the family pension has been ceased by the respondents keeping in view the Note (I) below Rule 6.17(4) of the Punjab Civil Services Rules Volume-II and petitioner is only being paid 50% of the total family pension for which she is entitled, which act of the respondent is contrary to the settled principles of law. The prayer of the petitioner is for issuance of a direction to the respondents to release 100% family pension after her step son, namely, Gurvinder Singh became ineligible for the grant of family pension on attaining the maximum age required for the grant of family pension i.e. 25 years alongwith arrears.

The facts as stated in the present writ petition are that husband of the petitioner, namely, Sukhbir Singh was working as a Peon in the department of Excise and Taxation. While in service, Sukhbir Singh died on 24.03.2015. Sukhbir Singh's marriage with the petitioner was the second marriage. The first wife of Sukhbir Singh had died after which Sukhbir Singh married petitioner. From the first marriage of Sukhbir Singh, he had a son, namely, Gurvinder Singh. After the death of Sh. Sukhbir Singh, the family pension was bifurcated between the first family of Sh. Sukhbir Singh and the petitioner keeping in view the provisions of Rule 6.17 of the Punjab Civil Services Rules Vol. II.

At the time of death of Sh. Sukhbir Singh, Gurvinder Singh was only 7 months less than 25 years of age and, therefore, was entitled for the grant of family pension from the date of the death of Sh. Sukhbir Singh upto the age of 25 years. Keeping in view the provisions of Rule 6.17 (4), 50% of the family pension was to be given to Gurvinder Singh and the remaining 50% to the petitioner.

When Gurvinder Singh reached the age of 25 years on 25.10.2015, 50% share, which he was getting in the family pension, was ceased by the respondent-State but was not transferred to the petitioner, who remained the sole claimant for the family pension. The prayer of the petitioner is that 50% share of the family pension, which was being paid to Gurvinder Singh after the death of her husband, namely, Sukhbir Singh, be transferred to her alongwith the arrears, from the date Gurvinder Singh became ineligible for the grant of family pension.

Upon notice of motion, respondents have filed the reply and in the reply, respondents have stated that 50% share, which Gurvinder singh was getting in the family pension was ceased keeping in view Note (I) given under Rule 6.17 (4). The relevant paragraph of the reply is as under:-

“3. That as per rule 6.17 of the Punjab Civil Services Rules, Volume 2, the petitioner is not entitled for full pension of Sukhbir Singh-deceased employee i.e. 50% pension of her step son on attaining the age of 25 years by her step son i.e. son of the first wife of the deceased employee. Rule 6.17 (4) Volume 2 is reproduced herein below for the kind perusal of this Hon'ble High Court:

“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.”

Thus in view of the aforesaid, the petitioner being second wife is entitled only for 50% of family pension of deceased employee, which is already being granted to the petitioner and not entitled for the share of her step son due to attaining the age of 25 years by him;. The

department has rightly ceased to pay the aforesaid 50% share of pension, therefore, the petition is liable to be dismissed.

That from a bare perusal of Rule 6.17 of the Punjab Civil Service Rules (Volume-II) it is clear that the petitioner is not entitled for the relief of grant of 100% family pension from the date of attaining the age of 25 years of the Step son of the petitioner and there is no provision in the Rule 6.17 of the Punjab Civil Service Rules Volume II which entitles the petitioner for grant of 100% family pension. Admittedly, the petitioner is second wife of the deceased Sukhbir Singh-employee of department and after his death, the pension was being granted to the petitioner as well as to the first wife/family of deceased employee strictly in accordance with the rules and after attaining the age of 25 years by the step son of the petitioner and once the step son of petitioner has attained the age of 25 years and his share of family pension has been stopped as per rules, this does not automatically entitles the petitioner to claim 100% of family pension from the department. Even as per Explanations provided in Rule 6.17 of Punjab Civil Service Rules, Note-I, it is provided as under:-

Note – I:

“When a Government employee is survived by more than one widow, the pension will be paid to them in equal share. 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.”

Thus seen from any angle, the claim of the petitioner is not acceptable and the present writ petition is liable to be dismissed.

4. *That as per the aforesaid rules, annexures P-6 and P-8 have been passed strictly in accordance with law and it has been rightly held that in case of Gurwinder Singh (step son of petitioner) son of Sukhvir Singh, the pension will cease on completion of 25 years of age and only single share will be payable to Smt. Jaspal Kaur (petitioner).*

Keeping in view the submissions made above, the present petition of the petitioner is not maintainable and is liable to be dismissed.”

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

The claim of the petitioner is for the transfer of 50% of the family pension to her, which the respondents have ceased after Sh. Gurvinder Singh became ineligible for the grant of family pension. Prayer of the petitioner is that the said 50% be transferred to her alongwith arrears being the sole claimant of the family pension.

The only question of law arising for determination in this writ petition is as to whether, the share of the first wife will be transferred to the second wife after the legal heirs of the first wife becomes ineligible to receive family pension, keeping in view the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II. The said question has already been decided by the Hon'ble Division Bench of this Court while deciding **LPA No.1434 of 2014, titled as The State of Punjab and others Vs. Harpal Kaur, on 01.09.2014.** In the said case, the same objection 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, this Court has held that 100% share of the family pension is to be given to the remaining legal heirs and any portion of the family pension, same 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 said share cannot 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 claim of the petitioner in present writ petition so as not covered by 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 giving 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 of the recipients of the family pension has become ineligible and therefore, the share of those claimants is ceased and cannot be transferred to the other eligible legal heirs.

As far as CWP No. 16190 of 2019 (Rajinder Kaur Vs. State of Punjab and others) is concerned, after the death of her husband on 25.04.2005, petitioner was paid full pension upto 24.08.2015, after which the pension was stopped on the basis of a complaint filed against the petitioner – Rajinder Kumar that she is not entitled for family pension. After verification, the complaint against the petitioner was found to be incorrect. During the verification process, the total pension of the petitioner was stopped by the respondents on 24.08.2015. Later on, as the said complaint was found to be incorrect, the respondents passed an order on 17.07.2018 that petitioner is entitled for 50% of the family pension from 25.04.2005 and the excess pension drawn by the petitioner be recovered.

The reason given by the respondent in the order was as there were two families of the deceased employee, hence, petitioner is only entitled for 50% of the family pension as the 50% was the share of first family of the deceased employee, which share has been ceased after all the legal heirs of the first family became ineligible. It is not disputed that from 17.07.2018, petitioner has been released 50% of the pension. In the present case, the claim of the petitioner is that she be paid full pension from 24.08.2015 onwards alongwith arrears as she is the sole claimant of the

family pension.

Keeping in view the above noticed settled principles of law in ***Harpal Kaur's case (supra)***, the claim of the petitioner(s) is allowed. The impugned orders dated 20.08.2016 (Annexure P-6) and 26.04.2017 (Annexure P-8) are set-aside. A direction is issued to the respondents to grant the petitioners-Jaspal Kaur and Rajinder Kaur 100% family pension from 26.10.2015 and 25.08.2015 onwards respectively alongwith arrears.

As the petitioner(s) were restrained from enjoying the benefits of their share by the respondents in an arbitrary manner despite there being a settled principle of law, petitioner(s) will also be entitled for interest on the amount, which they have not been able to use only because of the illegal and arbitrary action of the respondents. Petitioner(s) are held entitled for interest @ 9% per annum on the arrears of pension, which will be paid to the petitioner(s) under this order.

Let the calculation of the arrears alongwith interest under this order be done by the respondents within a period of two months from the date of receipt of certified copy of this order and the amount so calculated by the respondents be paid to the petitioner(s) within a period of one month thereafter.

Writ petitions are allowed in above terms.

February 11, 2020
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(HARSIMRAN SINGH SETHI)
JUDGE

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