

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

201

CWP-4688-2016

Date of Decision : 06.02.2020

Rajpati Devi

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr.Rajesh K.Kataria, Advocate
for the petitioner.

Mr. Gaurav Jindal, Addl.A.G., Haryana.

NIRMALJIT KAUR, J. (ORAL)

The prayer in the present petition is for quashing of the order dated 28.11.1974 (Annexure P-5) as well as letter/order dated 05.07.2013 (Annexure P-12) vide which the petitioner had been denied the family pension and with a further prayer for grant of the family pension alongwith interest.

Reply has been filed. As per the said reply, Smt. Rajpati (petitioner) was married to Constable Mahabir Singh who was enrolled in Haryana Police on 02.01.1970 and was allotted const. No.2/542 but he expired on 22.01.1973. Thereafter, the petitioner re-married one Sh. Balwan Singh and had three children from this marriage namely Pawan Kumar and Parveen Kumar (both sons) and Poonam Devi (daughter). Pawan Kumar and Poonam Devi are now married whereas Parveen Kumar

is still unmarried. Hence, the petitioner had concealed the fact of her second marriage with Balwan Singh and had submitted an affidavit (Annexure R-9). Therefore, this act and conduct of the petitioner goes to show that she has submitted the false affidavit only to claim benefit of family pension. As per the Rules, a widow who gets remarried is not entitled to pension.

After hearing learned counsel for the parties as also going through the written statement and hearing the learned counsel for the respondents, the following facts have emerged.

Firstly, the petitioner was married to one late Constable Mahabir Singh. He died in the year 1973. She claimed her family pension for the first time vide representation dated 20.11.1974 (Annexure P-4). Thereafter, she got married to Balwan Singh, the younger brother of her deceased husband in the year 1977. Her second husband died in the year 2000. After the death of her second husband, she approached the authorities once again for grant of widow pension vide application dated 30.08.2012 (Annexure R-1), although prior to the said application, she had also filed one in the year 2007 (Annexure P-7) as well. This time, the pension was denied on the ground that a widow who has re-married was not entitled to the widow pension and also on the ground that she has filed a false affidavit.

The first objection cannot be sustained in the facts of the present case. As per Note II of 8.35 of the Punjab Civil Services Rules as applicable to State of Haryana, a family pension of a widow will cease on re-marriage but when such re-marriage is annulled by divorce, desertion or

death of the second husband, her pension may be restored upon proof that she is in necessitous circumstances and otherwise deserving.

Even as per the definition of family provided under the Haryana Civil Services (Pension) Rule 2016, Rule 10 (B) (i)(c) a remarried widow is entitled to pension in case the independent income from all other sources is less or not equal to the minimum family pension prescribed by the State Government. Rule 10 (B) (i)(c) reads as under :-

“childless widow of a deceased Government employee who has got remarried provided her independent income from all other sources is less than or not equal to the minimum family pension prescribed by the State Government from time to time plus dearness relief thereon. In all such cases, she shall be required to give a declaration regarding her income from all other sources to the Treasury Officer and Head of Office once in every three months.”

The Division Bench of this Court in the case of **Kiran Kumar vs. State of Haryana and others, 2004(2) SLR, 694** held that in case a widow got married to the real brother of the deceased and her daughter is living with her and the widow continues to live a common life with or contributes to support other living eligible heirs of the family after remarriage, she is entitled to family pension.

In the present case, the present petitioner, no doubt, got remarried but to the younger brother of her husband but he too, died leaving behind three children. Hence, she is entitled to the pension, in any case, after the death of her second husband.

Learned counsel for the respondent, at this stage, submits that

the petitioner has not been able to show that her financial condition is bad or such that she is entitled to the family pension. Although, her case has been rejected only on the ground of remarriage and the alleged false affidavits and not on financial ground. However, as per the reply filed by the respondents, they made inquiries and as per said inquiries, although that was found that she had got remarried but there is nothing on record to show that her financial condition was good or that she had other sources of income. Not a word is said in the written statement with respect to the same nor did the respondent ask her to submit her affidavit qua her other source of income. Not once did the respondent ask her to submit an affidavit that she had no other source of income. They made inquiries about her marital status but failed to find out about her financial status. The argument that she has grown up children to look after her is uncharitable and as if the family pension would be sufficient to look after all her needs and she did not need any extra support. Accordingly, this Court does not find it a sufficient cause to deny the family pension to her.

The objection of false affidavit too has no merit. The first representation seeking widow pension was filed in the year 1974 (Annexure P-4) which is before she got married to Balwan Singh in the year 1977. Thereafter, her second affidavit is admittedly filed in the year 2013 (Annexure P-9) i.e. after the death of her second husband in the year 2000. Hence, there was no misstatement by her. Still, the respondents chose to read it their own way to deprive the widow of her rightful pension. The mighty state, chose to interpret it in their own way and in that application of mind to deprive the poor, helpless and uneducated widow of her family

pension which was her right and that too, on absolutely flimsy grounds.

In view of the above, the present writ petition is allowed with a direction to the respondents to pay the family pension from the date she filed her second representation dated 23.07.2007 (Annexure P-7), which was after the death of the second husband. The arrears shall be paid alongwith 6% interest as expeditiously as possible preferably within two months of the receipt of the certified copy of this order. In case of any delay, the same shall be liable to be paid @ 12% interest from the date of expiry of two months and in that case shall be recovered from the officer responsible for delaying the release of the widow pension any further.

06.02.2020
anju

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No