

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(107+277)

CM-9516-CWP-2022 in/and
CWP-12331-2022

Date of Decision : July 07, 2022

Sarita Devi

.. Petitioner

Versus

Union of India and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Amit Dhawan, Advocate, for the petitioner.

Mr. Bharat Bhushan Sharma, Sr. Panel Counsel,
for respondents-UOI.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-9516-CWP-2022

Present application has been filed for placing on record the written statement on behalf of the respondents.

Keeping in view the averments made in the application, the same is allowed and written statement on behalf of the respondents, is permitted to be taken on record.

CWP-12331-2022

Present petition has been filed for issuance of the direction to the respondents to grant the petitioner family pension and also release of the benefit in respect of the service rendered by her late husband Gurcharan Singh, who unfortunately died while on service on 31.12.2021.

As per the facts mentioned in the petition, the husband of the petitioner was employed with the Military Engineer Services. The petitioner's marriage was solemnized with Gurcharan Singh on 06.04.2019 for which the marriage certificate was issued by the priest, a copy of which has been attached as Annexure P-4 with this petition. After the marriage, the petitioner was residing with her husband and even as per the identity card issued by the Election Commission, the petitioner has been described as a wife of Gurcharan Singh. Out of the wedlock, a daughter namely Ravleen Kaur was born on 09.10.2020 and a birth certificate was issued wherein, the petitioner is described as the wife of Gurcharan Singh.

Unfortunately, while in service, Gurcharan Singh died on 31.12.2021. After the death, the petitioner requested the authorities to release the benefits in respect of the service rendered by her late husband including the grant of family pension. As the said benefits were not extended to the petitioner, the petitioner has approached this Court claiming the same.

After notice of motion, the respondents have filed the reply and have contested the claim that the documents which are required for the release of the benefits, have not been submitted by the petitioner and therefore, the benefits cannot be released to the petitioner. The respondents have relied upon Rule 49 of the Central Civil Services (Pension) Rules, 2021 to contend that a succession certificate is needed for the release of the gratuity and other salary benefits in favour of the petitioner, which is yet to be submitted by the petitioner.

Learned counsel for the petitioner submits that the reliance is being placed by Rule 49 of the Central Civil Services (Pension) Rules, 2021

is incorrect as the petitioner has already submitted a legal heir certificate issued by the competent authority, a copy of which has been appended alongwith the petition as Annexure P-14 dated 13.04.2022.

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

The only question which arise for the determination in the present case is whether, the succession certificate is needed in the facts and circumstances of the present case or, the petitioner can be given the benefits keeping in view the legal heir certificate issued by the competent authority, which certificate is corroborated by the other documents including the marriage certificate and the identity card issued by the Election Commission of India.

Before proceeding further, Rule 49 of the Central Civil Services (Pension) Rules, 2021, which is being relied by the respondents to contend that succession certificate is necessary, is reproduced hereunder for the ready reference:-

*49. Lapse of retirement gratuity and death gratuity:-
Where a Government Servant dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and:-*

(a) has made no nomination, or

(b) the nomination made by him does not subsist, the amount of retirement gratuity or death gratuity payable in respect of such Government Servant under rule 45 shall lapse to the Government:

Provided that the amount of death gratuity or retirement gratuity shall be pay able to the person in whose favour a Succession Certificate in respect of gratuity in question has been granted by a Court of Law.”

A bare perusal of the above Rule 49 would show that the same is only applicable in respect of a Government servant who leave behind no family. In the present case, the family of the deceased employee is very much in existence, which is clear from the legal heir certificate given by the competent authority wherein, the petitioner has been described as the wife of the deceased and Ravleen Kaur as the daughter of the deceased.

The reliance being placed by the respondents on Rule 49 of the Central Civil Services (Pension) Rules, 2021 is by total misleading of the rule and by applying the rule where the family of the deceased exist. Rule 49 will only be applicable where the employee dies without leaving behind any family/legal heirs, therefore, the reliance being placed by the respondents on Rule 49 of the Central Civil Services (Pension) Rules, 2021 is totally misplaced in the facts and circumstances of the present case.

Learned counsel for the respondents submits that a nomination has to be there so that the benefits could be given in favour of the nominee and in the present case, the late husband of the petitioner had nominated his mother.

No doubt, at one given point of time, the deceased employee had nominated his mother but it is also a conceded fact that the mother had pre deceased the employee concerned. That being so, it is not a case where there are two claimants of the benefits i.e. nominee in the record and the wife, who is the petitioner here. In the absence of the mother, the legal heirs of the employee, who have been duly certified by the competent authority, are required to be extended the benefits. The petitioner is fully eligible to receive the claim in the respect of the service rendered by her late husband.

Keeping in view the above, the prayer of the petitioner is allowed. The respondents are directed to release the pensionary benefits in respect of the service rendered by Gurcharan Singh in favour of the petitioner and her daughter within a period of one month from the receipt of copy of this order.

The present writ petition is allowed in above terms.

July 07, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes