

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

RSA-1781-2022 (O&M)
Decided on : 15.12.2022

DHBVNL and others

..... Appellants

Versus

Kitabo Devi

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Parveen Mehta, Advocate
 for the appellants.

Manjari Nehru Kaul, J.(Oral)

CM-5973-C-2022

Application is allowed as prayed for and the delay of 11 days in filing the appeal is condoned.

Main case

The defendants are in Regular Second Appeal challenging the concurrent findings recorded by the trial Court vide judgment and decree dated 06.02.2019 and affirmed by the Lower Appellate Court vide judgment and decree dated 02.04.2022.

Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The pleaded case of the plaintiff may be noticed as thus; the husband of the plaintiff namely Ishwar Singh was employed as Assistant Lineman in the office of SDO, Sonapat. He died in harness in the year 1980. Previously, said Ishwar Singh was married to his first wife and out of

the said wedlock one son namely Devi Singh was born. After the death of his first wife, Ishwar Singh got married to the plaintiff. After the death of Ishwar Singh, his pension was disbursed to the plaintiff vide order dated 22.04.1981, which was subsequently revised vide order dated 07.10.1983 by virtue of which the plaintiff started receiving 50% family pension and the remaining 50% family pension was given to her step son Devi Singh till he attained the age of 21 years. Devi Singh attained the age of 21 years in the year 1984. Thereafter, his entitlement to receive the family pension ceased. The plaintiff claimed that she had become entitled to get 100% family pension w.e.f. the year 1984, as per family pension rules and the settled law, however, she had been only receiving family pension to the extent of 50%. The plaintiff repeatedly asked the defendants to pay her 100% family pension w.e.f. 1984 but to no avail. Hence, a suit for declaration and mandatory injunction was instituted by the plaintiff against the defendants.

In the written statement, the defendants submitted that the plaintiff had been getting family pension to the extent of 50% while the remaining 50% of the family pension was being given to her step son Devi Singh as per letter dated 18.04.1984, Ex.D-2. It was further averred that family pension had been released vide U.O No.6/NGE-1197 dated 07.10.1983, Ex.D-3 whereby it had been clearly mentioned that Devi Singh was entitled to get half share of the total pension till he attained the age of 21 years and thereafter it would cease as per note 3(i) and (ii) below Rule 4 of Appendix II of Family Pension Scheme 1964. Since the share of Devi Singh had ceased after he attained the age of 21 years, therefore, the plaintiff was only entitled to get 50% of the family pension.

Both the Courts below decreed the suit of the plaintiff by recording the concurrent findings. It was held by the Courts below that the order dated 07.10.1983 Ex.D-3 could not be construed to mean that 50% of the family pension, which would cease on Devi Singh's attaining the age of 21 years, would be deposited in the account of defendant-department. The Courts held the plaintiff entitled to 100% family pension w.e.f. 1984 i.e. the date on which Devi Singh attained the age of 21 years.

Learned counsel for the defendants-appellants has submitted that the judgments and decree of the Courts below are based on misinterpretation of the Family Pension Rules and therefore, are liable to be set aside. He has further vehemently argued that both the Courts below failed to appreciate that the suit of the plaintiff was hopelessly time barred as admittedly the suit in question had been filed by the plaintiff after a lapse of 33 years from the date of orders of release of pension i.e. Ex.D-2 and Ex.D-3. He thus, submits that on grounds of limitation alone the suit of the plaintiff was liable to be dismissed. He has submitted that since there were two widows of Ishwar Singh, therefore, as per note 3(i) and (ii) below Rule 4 of Appendix II of Family Pension Scheme 1964, Devi Singh was being paid the share which his mother (i.e. the first wife of Ishwar Singh) would have received, had she been alive. This share had therefore ceased when Devi Singh attained the age of 21 years. Hence, once his share to the extent of 50% in the family pension ceased in the year 1984, plaintiff could not be held entitled to 100% of family pension and would only be entitled to 50% of family pension.

Heard learned counsel and perused the relevant material on

record.

This Court does not find any merit in the submissions made by the learned counsel for the appellant qua the suit being time barred. It is not disputed by either of the parties that the plaintiff was being paid 50% of the family pension. It is the act of the defendants themselves in withholding of 50% of the family pension from the date on which Devi Singh attained the age of 21 years has given a recurring cause of action to the plaintiff to file the suit. Therefore, the claim of the plaintiff would not be thwarted by limitation, who has since suffered due to the lapse on the part of the defendant.

Further, the question, which arises for consideration of this Court is whether the share of first wife i.e. 50% of the family pension could be apportioned by the State into its own account in lieu of disentitlement of her heir Devi Singh to receive pension on attaining the age of 21 years, instead of going to the plaintiff. It needs to be observed that had there been no surviving heir from the pre deceased wife of the husband of the plaintiff, the plaintiff in the circumstances, would then have received 100% of the family pension. No doubt, the defendants have relied upon Ex.D-2 and Ex.D-3, which states that Devi Singh's share to the extent of 50% of the family pension would cease on his attaining the age of 21 years, however, Family Pension Scheme being a social welfare legislation, cannot by any stretch of imagination be interpreted to mean that when the share of the child born out of the first marriage ceases after attaining a particular age, such share would then go into the account of the State/defendant-department instead of the entire share going to the second wife i.e. the only

surviving widow. In the opinion of this Court, the reliance by learned counsel on Note 3 (i) and (ii) below Rule 4 of Appendix II of Family Pension Scheme 1964 is completely misplaced as there is only one surviving widow in the present case.

A Division Bench of this Court while dealing with the similar issue in Ram Dulari vs. State of Haryana and others (CWP No.3359 of 2008) decided on 03.07.2009 has held 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.”

On being pointedly asked, learned counsel for the defendants failed to bring to the notice of this Court anything on record to show that the conclusions arrived at by the Courts below were either contrary to record or suffered from any material illegality.

In the circumstances, this Court does not find any error in the judgments and decree passed by the Courts below, which would warrant any interference. Accordingly, the appeal stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

15.12.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No