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

CWP-20107-2012

Date of Decision: 05.08.2022

Ramsakhi (now deceased) Th. LRs.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagdish Manchanda, Advocate, and
Mr. Vishal, Advocate,
for the petitioner.

Mr. Harish Nain, AAG, Haryana.

Mr. Kunal Jain, Advocate, for
Mr. Ajay Ghangas, Advocate,
for respondent No.4.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, challenge is to the order dated 12.09.2012 (Annexure P-10), vide which order, claim of the petitioner for the grant of family pension after death of her husband has been declined by the respondents on the ground that late husband of the petitioner had never opted for the pension scheme which came into being in the year 1993.

As per the facts mentioned in the present petition, late husband of the petitioner, namely Itwari Lal, was appointed on the post of Boatman with the respondent-Department on 09.08.1982, but while working on the said post, he unfortunately died on 07.01.2004, leaving behind the

petitioner, i.e. his wife, and two sons. After his death, the petitioner claimed

for the grant of family pension but despite the fact that the Executive Officer, Municipal Corporation, Panipat had recommended the claim of the petitioner for the grant of family pension, vide letter dated 08.12.2004 (Annexure P-1), the respondents vide order dated 12.09.2012 (Annexure P-10) declined the grant of said benefit to the petitioner on the ground that Late Itwari Lal never opted for the pension scheme, and therefore, the petitioner is not entitled for the grant of family pension after death of her husband. The said order is under challenge in the present petition.

Learned counsel for the petitioner argues that the aforesaid ground which has been taken into account by the respondents vide order dated 12.09.2012 (Annexure P-10) to reject the benefit of grant of family pension to the petitioner is factually incorrect.

Learned counsel for the petitioner relies upon the letter dated 08.12.2004 (Annexure P-1) of the Executive Officer, Municipal Corporation, Panipat, wherein the said Officer has recommended claim of the petitioner for the grant of family pension to her and along with the said letter, the pension case and the option form, where Late Itwari Lal had opted for the pension scheme, were also sent to the authorities concerned.

Learned counsel for the petitioner submits that in order to create a dispute, the petitioner is being denied the benefit of grant of family pension, for which she is entitled for after death of her husband.

After notice of motion, the respondents have filed the reply, wherein it has been stated that after death of Itwari Lal, i.e. late husband of the petitioner, the record was perused by the respondent-Department and no option form was found, wherein the deceased-employee had opted for the pension scheme, which had came into being in the year 1993, and therefore,

claim of the petitioner for the grant of family pension to her is not sustainable. As per the respondents, the letter dated 08.12.2004 (Annexure P-1), which depicts the Option Form of late husband of the petitioner, is only a typographical error.

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

The question which arises for consideration before this Court is whether keeping in view the facts and circumstances of the present case, the petitioner is entitled for the grant of family pension after death of her husband, who unfortunately died while in service on 07.01.2004, or not.

It is a conceded fact that respondent No.4 had sent letter dated 08.12.2004 (Annexure P-1) to the authorities concerned, wherein claim of the petitioner for the grant of family pension was recommended. It is also a conceded position that along with the said letter, the pension case, the Option Form and the pension contribution statement of the late husband of the petitioner were also attached, so as to substantiate the claim of the petitioner for the grant of family pension to her. Once the said documents were enclosed with the letter dated 08.12.2004, the same cannot be treated as typographical error, as being now stated by the respondents in their reply. In case, late husband of the petitioner had not opted for the concerned pension scheme, no reason has been given as to why the pension contribution was being deducted from his salary, the statement of which was also appended along with the said letter dated 08.12.2004. Once the pension contribution was being deducted from the salary of the late husband of the petitioner, which is now being disputed by the respondents, merely on the ground that the Option Form filled by Late Itwari Lal is now not

available on record with the respondents, the same will not defeat claim of the petitioner for the grant of family pension to her.

Further, the impugned order which has been passed by the respondents is of the year 2012, whereas the letter issued by respondent No.4 to the authorities concerned is of the year 2004, i.e. about eight years prior to the rejection of claim of the petitioner for the grant of family pension by the respondents.

Nothing has been brought to the notice of this Court as to how the respondents are treating letter dated 08.12.2004 (Annexure P-1) issued by respondent No.4, where the Option Form filled by the late husband of the petitioner was also enclosed for considering claim of the petitioner for the grant of family pension to her, as typographical error. While submitting the case of the petitioner for the grant of family pension, respondent No.4 must have gone through her case, including all the documents, and in case the Option Form of Late Itwari Lal was not available on record in the year 2004 then there could be no possibility of respondent No.4 enclosing the said Form, while recommending claim of the petitioner for the grant of family pension.

That being so, the ground which is now being taken into account by the respondents to deny the benefit of family pension to the petitioner is totally arbitrary and illegal in the eyes of law and the same seems to be an afterthought.

Keeping in view the above, claim of the petitioner for the grant of family pension is allowed and the petitioner is held entitled for the grant of the said benefit to her along with the arrears, in respect of the services rendered by her late husband.

Learned counsel for the petitioner submits that unfortunately, during pendency of the present petition, the petitioner has also died on 14.09.2016.

That being so, the legal representatives of the petitioner, who have been impleaded in the present petition, are held entitled for the grant of family pension, as revised from time to time, starting from 08.04.2004 till 14.09.2016, along with the arrears, keeping in view the total length of service rendered by late husband of the petitioner and the last pay drawn by him at the time of his death.

The said calculation be done by the respondents within a period of two months from the date of receipt of the copy of this order and the amount so calculated be extended in favour of the legal representatives of the petitioner within a period of four weeks thereafter.

At this stage, learned counsel for the petitioner submits that the interest on the aforesaid amount may also be extended in favour of the legal representatives of the petitioner, as the petitioner was not at fault in any manner.

Learned counsels for the respondents controvert the aforesaid submission made on behalf of the petitioner and rely upon the judgment passed by the Hon'ble Supreme Court of India in **Civil Appeal Nos.6325-6326-2015**, titled as ***“Mrs. Akella Lalitha Vs. Sri Konda Hanumantha Rao and another”***, decided on 28.07.2022, to submit that as there is no prayer being made for the grant of interest in the present petition, therefore, the said claim is not sustainable.

Learned counsel for the petitioner concedes with the aforesaid submission of learned counsel for the respondents and further submits that

he does not press the aforesaid prayer for the grant of interest to the legal representatives of the petitioner any further at all.

Allowed in the above terms.

05.08.2022

Apurva

(HARSIMRAN SINGH SETHI)
JUDGE

1. Whether speaking/reasoned : Yes
2. Whether reportable : Yes