IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

227 **CWP-29408-2018**
Date of Decision: 12.12.2022

MAYA DEVI AND ORS

... Petitioners

VERSUS

STATE OF HARYANA AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Shashi Kumar Yadav, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

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VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of quashing the impugned orders, if any, vide which the old age pension as well as Ladli Pension of the petitioners have been cancelled without issuing any show cause notice or granting any opportunity of hearing.

Briefly summarized, the facts of the present case are that the petitioners except the petitioner No.5, who is 52 years old, claim to be more than 60 years old and entitled to old age pension under the various welfare schemes notified by the Department of Social Welfare and Empowerment by the Government of Haryana. It has been averred that the State of Haryana had initially issued notifications on 13.08.1992 (Annexure P-2) whereby the Haryana Old Age Pension Scheme was launched and a person who is 60 years of age and above and a domicile of Haryana and was receiving the pension of Rs.100/- per months, was held entitled to the said pension scheme. The relevant extract thereof would, however, be extracted in the later part of this order while adjudication upon the controversy. The grievance of the petitioners is that the pension which was being released to the petitioners was abruptly discontinued by the respondents.

Written statement on behalf of the respondents No.1 to 3 has been filed, wherein the respondent-Department has raised the following preliminary objections:

> *"1- That the old age pension/allowance/samman scheme is to provide social security to old persons, who are unable to sustain themselves from their own resources and are in need of financial assistance from the State. The eligible persons are of 60 years or more of age, domicile of Haryana State and income from all sources together with that of his/her spouse does not exceed Rs. 2,00,000/- per annum (Annexure P-6).*
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> *A scheme named as Ladli Social Security Allowance on the pattern of old age allowance scheme for the families having only girl child/children has started. As per notifications dated 18-09-2016 and 10-06-2011 the eligibility criteria is -*
>
> *(i) Any family where biological single parent/parents are domicile of Haryana or working for Govt. of Haryana having no son, biological or adopted but only daughter/daughters.*
>
> *(ii) The gross annual income from all sources of the family must not exceed Rs.2,00,000/-.*
>
> *(iii) Age of 45 years. The benefits will be paid to the mother. In case the mother is not surviving the benefits will be paid to the father.*
>
> *The petitioners No. 1 to 4, 6 to 9 and 11 were getting old age samman allowance and the petitioners No.5 and 10 were getting Ladli Social Security allowance. All the petitioners are having income of more than Rs.2,00,000/- per annum from all sources of the family. The husbands of the petitioners are*

pensioners and their pension is more than Rs.2,00,000/- per annum. Thus all the petitioners are not covered under eligibility criteria (Annexure P-5 and Annexure P-6). Hence, the benefits of schemes of the petitioners have been stopped w.e.f. 26-03-2018.

2- That on receipt of a complaint dated 01-01-2018 from Sh. Jagdish, against petitioners regarding eligibility of schemes, show cause notices were issued on 06-02-2018 through registered post, but no reply received, on verification it was found that the husbands of all the petitioners are getting pension from government and their pension is more than Rs. 2,00,000/- per annum, so the benefits of scheme old age samman allowance and Ladli allowance were stopped w.e.f. 26-03-2018. The copy of complaint is Annexure R-1 and notices are annexed as Annexure R-2 to Annexure R-12."

It has been specifically set out in the said written statement that show cause notices were duly issued to the respondents on 06.02.2018 through registered post, but no response was filed by them. It is not a case where opportunity to show cause had not been extended to the petitioners. Still further, even though the reply was filed by the respondent-State in March, 2019, however, no replication/counter-affidavit controverting the aforesaid statement of fact has been filed by the petitioner. Consequently, there is nothing to controvert or dispute the fact that notices to show cause were duly served upon the petitioners, however, they chose not to respond to the same. Even in the present petition, it is not the case set out by the petitioners that the family pension of their spouse is more than Rs.200,000/- per annum.

Learned counsel for the petitioners contends that the respondents have not validly construed the notification and have held the petitioners ineligible to the pension, even though an exemption to wives of Ex-Serviceman had been granted in the earlier scheme.

Per contra, learned counsel for the respondent-State contends that the claim is misconceived inasmuch as the said scheme prescribing eligibility criteria was substituted vide notification dated 10.06.2011and a new eligibility criteria has been prescribed therein . The said criteria deprived a person from claiming Old Age Samman Allowance in case the gross annual income from all family sources exceeded Rs.2,00,000/-. He contends that the said scheme as notified by the State of Haryana is not a subject matter of challenge and that the petitioners have nowhere disputed or controverted that their gross family income is less than Rs.2,00,000/- and that despite such evidence, they have been wrongly held disentitled to the grant of the allowance.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

Before proceeding further, it would be essential and appropriate to refer to the eligibility criteria prescribed in various notifications issued by the Social Defence and Security Department of Government of Haryana. The same are tabulated as under:

"Sr. No.	***Date of Notification***	***Eligibility Criteria***
1.	*13.08.1992 (Annexure P-2)*	***3. Eligibility Criteria.*** *(i) A person is eligible for the grant of Old Age Pension who:-* *(a) is aged 60 years or more* *(b) is a domicile of Haryana State and* *(c) is not receiving pension of Rs. 100 p.m. or more.* *(ii) For Rural Areas-* *The land holdings of the applicant, his spouse and dependent children taken together should not exceed 5*

		acres of Irrigated for 10 acres of unirrigated land. *The income of the applicant his spouse and dependent children from all sources taken together should not exceed Rs. 10,000 per annum (in case of landless applicants only.)* *(iii) For Urban Areas-* *The income of the applicant his spouse and dependent children from all sources taken together should not exceed Rs. 10,000 per annum;* *(iv) (a) If both husband and wife qualify for pension both of them will be entitled be receive pension separately;* *(b) If an ex-service man is getting military pension of more than Rs. 100 p.m. his wife will be entitled for grant of Old Age Pension if she is otherwise eligible.* *(v) The following persons shall be excluded for grant of old Age Pension:-* *(a) Those who themselves or their children are sales tax assesses.* *(b) Those whose children are Class 1/Class II Gazetted Officers in the service of the Government or hold an equivalent post in a Public Sector Undertaking or are employed under a private employer and draw a salary equivalent to that of a Class-11 Gazetted Officer (Rs.4,000 p.m. minimum).* *(c) Those whose children are professional i.e. (a) Doctor (b) Lawyer, (c) Chartered Accountant, (d) Income Tax Consultant, (e) Financial, or Management Consultant, (f) Dental Surgeon, and (g) Engineer or Architect, (h) Contractor, etc. (This is only illustrative and all such professions of a*

		similar nature may also be included). *(d) Those whose children are Income Tax Assesses;* *(e) Those who themselves /their children are ex-sitting Members of Parliament/ M.L.As./ Chairman of Boards/Corporation.*
2.	*20.09.2006 (Annexure P-3)*	***3. Eligibility Criteria:*** *(i) A person is eligible for the grant of Old Age Allowance who:-* *(a) is aged 60 years or more* *(b) is a domicile of Haryana State and* *(c) is not receiving pension of Rs. 300/- p.m. or more* *(ii) (a) If both husband and wife quality for allowance both of them will be entitled to receive allowance separately:-* *(b) If an ex-serviceman is getting military pension of more than Rs. 300/- p.m. his wife will be entitled for grant of Old Age Allowance if she is otherwise eligible.* *(iii) The following persons shall be excluded for grant of Old Age Allowance:-* *Those who themselves or their children are sales tax assesses.* *Those whose children are Class1/Class 11 Gazetted Officers in the service of the Government or hold an equivalent post in a Public Sector Undertaking or are employed under a private employer and draw a salary equivalent to that of a Class II Gazetted Officer (Rs.*

		4,000/-p.m. minimum) *Those whose children are professional ie. (a) Doctor (b) Lawyer (c) Chartered Accountant (d) Income Tax Consultant, (e) Financial Or Management Consultant, (f) Dental Surgeon, and (g) Engineer or Architect (h) Contractor etc. (This is only illustrative and all such professions of a similar nature may also be included)* *Those whose children are Income Tax Assesses.* *Those who themselves/their children are ex-sitting Members of Parliament/ M.L.As/ Chairman of Board/ Corporation.*
3.	*10.06.2011 (Annexure P-4)*	***3. Eligibility criteria:-*** *A person is eligible for the grant of Old Age Samman Allowance, if* *(i) the person is aged 60 years or more; and* *(ii) the person is a domicile and resident of Haryana State and* *(iii) his/her income from all sources together with that of his/her spouse does not exceed Rs.50,000/- per annum.* ***Exclusion:*** *Notwithstanding the above, in case the person is receiving pension from any Government or Local/Statutory Body or any organization substantially financed by any Government of Local/ Statutory Body will not be eligible to receive allowance under the Scheme."*

It is evident from the perusal of above that the eligibility criteria as notified by the State of Haryana in its notification dated 20.09.2006 relied upon by the petitioner was substituted vide notification dated 10.06.2011. No such exclusion to the wives of Ex-Serviceman has been carved out in the eligibility criteria so notified. The income from all sources was kept at Rs.50,000/- per annum and the same was thereafter increased to Rs.2,00,000/- vide notification dated 22.03.2012.

The very fact that the eligibility criteria has been substituted by a new criteria notified on 10.0-6.20211, the contention of the learned counsel for the petitioners that the earlier criteria prescribed for an exclusion in computing the pension received by an Ex-Serviceman for determining the eligibility cannot be reckoned into consideration. The entire criteria having been substituted, the respondent-State has to determine the eligibility on the basis of criteria in force. It cannot be lost sight that the substitution of the eligibility criteria is invariably a conscious departure and the respondent-State has consciously excluded the benefit that was earlier extended to the wives/widows of Ex-servicemen while determining the eligibility. The benefits being released under a scheme, the conditions of eligibility for availing benefits under the said scheme have to be read as a whole and a person claiming any benefit under the said scheme must necessarily fulfill the eligibility prescribed under the said scheme. As there is no challenge to the scheme or the eligibility criteria prescribed therein, it is not for this Court at this stage to enter into the domain with regard to the validity, legality, rationality or object of such exclusion.

It is also an undisputed fact that the show cause notices were duly issued by the respondent-Department to the petitioners through registered post, however, no response was filed thereto. No counter-affidavit to controvert the assertion of the State that the income of the petitioners from all sources exceeded Rs.2,00,000/- has been filed.

Consequently, I find that there is no illegality or infirmity in the decision taken by the respondent-Department to discontinue the Old Age Samman Allowance, which was being extended earlier to the petitioners, after the amended notification dated 10.06.2011.

The present petition is accordingly dismissed.

All the petitioners, would however, be at liberty to raise a challenge to the notification and/or any grievance arising therefrom.

(VINOD S. BHARDWAJ)
12.12.2022 **JUDGE**
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No