

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-7234-CWP-2022 in/and
CWP-24453-2021
Date of Decision :09.09.2022

Preety Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jindal, Senior Advocate with
Mr. Amandeep Singh Meho, Advocate for the petitioner.

Mr. R.S. Budhwar, Addl. A.G. Haryana.

Mr. Shreenath A. Khemka Advocate for Respondent-2.

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Harsimran Singh Sethi, J. (Oral)

CM-7234-CWP-2022

As prayed for, application is allowed.

Replication to the written statement filed on behalf of the
respondents is taken on record.

CWP-24453-2021

In the present writ petition, the prayer of the petitioner is for the
grant of family pension, being a widowed daughter, in respect of the
services rendered by her late mother namely, Harsharan Kaur with the
respondent-University, who after taking voluntary retirement in the year
2002 unfortunately died on 04.08.2006.

The facts leading to the filing of the present writ petition are

that the petitioner, who is a widow lady since 19.02.1999 was dependant upon her mother and was residing with her mother alongwith her children while her mother was working as Assistant Hostel Warden at Chaudhary Charan Singh Haryana Agricultural University, Hisar. The petitioner after becoming widow started living with her mother, who was in service at that time but keeping in view the deteriorating health, mother of the petitioner took voluntary retirement on 30.11.2002 and started getting pension. The petitioner, who was not gainfully employed and did not have enough financial resources was not only living and dependant upon her mother but her children were also residing with her grandmother (mother of the petitioner). Unfortunately, the mother of the petitioner died on 04.08.2006 and as the mother of the petitioner was divorcee and father of the petitioner had also contracted second marriage, the family pension in respect of the services rendered by the mother of the petitioner, has not been extended in the name of anyone. The claim for the grant of family pension was raised by the father of the petitioner before the authorities concerned, which was rejected on the ground that he had already remarried and has no entitlement to get family pension. The petitioner came to know that even widowed daughter, who is dependent upon the deceased pensioner is also entitled for the grant of family pension, keeping in view the Notification dated 01.01.2014 issued by the Government of Haryana.

After gaining knowledge of her being entitled for the grant of family pension, the petitioner approached the respondent-University for the grant of the family pension but the same was not being granted to her, which has led to filing of the present writ petition by the petitioner. Prayer

of the petitioner is for issuance of a direction to the respondent-University to grant the petitioner the benefit of family pension in respect of the services rendered by her late mother after her mother unfortunately died on 04.08.2006.

After notice of motion, the respondents have filed reply wherein, the facts are not in dispute. The only objection, which has been taken by the respondents is that the mother of the petitioner never nominated her as a nominee for the family pension before her death and therefore, in the absence of any nomination, no benefit could be extended to the petitioner for the grant of family pension.

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

Keeping in view the facts, which have been recorded hereinbefore and also after hearing the arguments of the learned counsel for both the parties, it needs to be recorded here that entitlement of the widowed daughter for family pension after the death of the pensioner is not in dispute. Learned counsel for the respondents very fairly submits that keeping in view the instructions issued by the Government of Haryana, which have been adopted by the respondent-University, widowed daughter, who is dependent upon the pensioner is entitled for the grant of family pension. The only objection is whether the same can be granted in the absence of nomination by the pensioner while seeking pensionary benefits.

In the present case, the mother of the petitioner was divorcee at the time when she sought voluntary retirement in the year 2002. Nomination of a person, who would receive the family pension is mere a formality for

the reason that grant of family pension is to be adjudged on the basis of rules governing the service and the Instructions issued in this regard. Merely that the name of the nominee does not find mention in the pension record of pensioner, does not take away the right of the legal heirs, entitled under the rules and regulations governing the service. In the facts and circumstances of the present case, the objections being raised by the respondents are not material to adjudge the eligibility of the petitioner to seek family pension. Even if the name of the petitioner does not find mentioned in the pension record of her late mother, the same could have been verified by the respondents and once proved, the benefit should have been extended to the petitioner.

Nothing has come on record so far even in the pleadings or during the course of arguments that the petitioner is not a widowed daughter of Harsharn Kaur, whose family pension is being claimed by the petitioner.

Further, averments of the petitioner that after becoming widow in the year 1999, she was living and was dependent upon her mother for the maintenance of herself and her children, have gone un rebutted. That being so, the claim of the petitioner is squarely covered by the instructions, which have been issued by the respondent-University itself.

It is a conceded position that as per the regulations dealing with the family pension, an unmarried/widowed/divorcee daughter, till the date of the marriage/remarriage or till the date she starts earning or till the date of death, whichever is earlier, is entitled for the grant of family pension.

Hence, the claim of the petitioner for the grant of family pension is squarely covered by the said clause of the instructions issued by

the respondent-University and petitioner is held entitled for the grant of family pension after the death of her mother being a widowed daughter, who was dependent upon her mother.

Now the question arises as to from which date, the benefit should be extended to the petitioner.

Mother of the petitioner had died on 04.08.2006 but the prayer for the grant of family pension was made by the petitioner only in the year 2016 i.e. after the period of approximately 10 years.

Learned counsel for the respondents submits that though, the petitioner has already been held entitled for the grant of family pension but the same be restricted from the date, she has raised the claim i.e. 2016 only and not from the date her mother died.

Learned counsel for the petitioner submits that once under the rules governing the service, the petitioner was entitled for the grant of family pension after the death of her mother on 04.08.2006, being a welfare University, the same should have been extended to the petitioner, who was not only widow but was dependant upon her mother so as to maintain herself as well as her children and as the petitioner is still suffering financial difficulties, the petitioner be granted the benefit from the date, she became eligible for the grant of the same.

Though, the petitioner raised her claim for the grant of family pension in the year 2016, it is a matter of fact that under the rules governing the service of the respondent-University, the petitioner was fully entitled for the grant of family pension when her mother died on 04.08.2006. That being so, it was incumbent upon the respondents to grant the petitioner benefit of

family pension.

Hon'ble Supreme Court of India while passing order in **Civil Appeal No.4100/2022** titled as **M.L. Patil (Dead) though LRs vs. The State of Goa and another** decided on **20.05.2022** has held that where an entitlement to claim a pension is not in a dispute, arrears should not be denied to a pensioner. Relevant paragraph is as under:-

“Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void. We are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under these circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.”

Keeping in view the said proposition of law, once the petitioner was held entitled for the grant of family pension on the date when her mother died, denying her the arrears for the same will be a harsh action and ~~that~~ too on a widow lady, who is living in penury and is facing financial

difficulties.

Hence, the prayer of the petitioner for the grant of family pension is allowed with effect from the date her mother had died.

Respondents are directed to fix the family pension of the petitioner from 05.08.2006 onwards and release her the arrears within a period of two months from the date of receipt of copy of this order.

September 09, 2022
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No