

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-13356-CWP-2021 in/and
CWP No.37455 of 2019
Date of Decision: 27.04.2022**

Sunita Kumari

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jasbir Singh Mohri, Advocate,
for the applicant-petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

Mr. Pankaj Sharma, Advocate,
for respondent No.7.

HARSIMRAN SINGH SETHI, J. (Oral)

CM-13356-CWP-2021

This is an application for preponing the date of hearing in the main case.

The application is disposed of as main case is listed today.

Main Case

In the present petition, the grievance which is being raised by the petitioner is that her family pension, for which she is admissible after the death of her husband, namely, Kamal Dev is not being extended to her as per her entitlement.

Learned counsel for the petitioner argues that Sh. Kamal Dev was working as Head Constable with the Punjab Police, was initially married with one Asha Devi and respondent No.7, is the son, who was born out of the said wedlock. After the death of said Asha Devi on 09.04.1999,

Sh. Kamal Dev married the petitioner on 29.08.2000 and out of said wedlock,

two daughters, namely, Anjali and Palvi were born in the year 2001 and 2004, respectively. Sh. Kamal Dev unfortunately died while in service on 13.02.2019. The prayer of the petitioner is that as of now, the respondents have not given the complete family pension for which she is entitled for.

Learned counsel for the petitioner argues that in the present case, the petitioner has only been paid 50% of the total family pension calculated by the respondents on the ground that the other 50% was to be paid to the children born out of the first marriage of the deceased. He further argues that the children born out of the first marriage, namely, Munish Kumar-respondent No.7 was already above 25 years of age at the time of death of the deceased employee and therefore, he was not entitled for the grant of family pension and therefore, the respondents were under obligation to give 100% family pension to the petitioner and the 50% family pension, being ceased by the respondents is contrary to the settled principles of law settled by the Co-ordinate Bench while passing order in CWP No.14654 of 2015 decided on 15.03.2017 titled as '*Tripta Devi vs State of Punjab and others*'. The respondents have filed the reply to the petition and in the said petition, the same stand is being taken that 50% of the family pension will go to the children from the first wife and thereafter, the same will cease.

Learned counsel for respondent No.7 submits that as the petitioner is restricting her claim with regard to the family pension only, the petitioner is not opposing the said plea, keeping in view the facts and circumstances of the present case, coupled with the rules governing the grant of said family pension but submits that the rest of the service benefits

be released in accordance with the rules governing the service to all the legal heirs including the petitioner as well as respondent No.7 and the other children of the deceased employee.

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

The claim of the petitioner in the present petition is for the grant of 100% family pension being the sole surviving claimant seeking said family pension. It is conceded before this Court that respondent No.7 and the other child born out of the first wedlock of the deceased employee were already above 25 years of age at the time of death of the deceased and hence, were ineligible for the grant of family pension.

That being so, keeping in view the law settled by the Coordinate Bench in *Triptā Devi's* case (supra), the petitioner being the sole survivor, is entitled for the grant of 100% family pension from the date of death of her deceased husband, namely, Kamal Dev. No fact or law has been brought to the notice of this Court so as to deny the said claim to the petitioner by either of the respondents. Rather rule governing the aspect of grant of family pension has been considered by the Coordinate Bench while passing orders in *Triptā Devi's* case (supra).

Keeping in view the above facts, the claim of the petitioner for the grant of 100% family pension is covered by *Triptā Devi's* case (supra) hence her claim accordingly allowed in her favour.

Let 100% family pension amount be given to the petitioner along with arrears from the date of death of her husband.

With regard to the grant of other service benefits/pensionary

benefits, this Court is not opining anything on the claim of the respective parties as the department will be free to decide the claim of the respective parties in accordance with the rules governing therein as and when any claim is made by the respective parties. It is made clear that even in the absence of any claim by the respective parties, the department is free to disburse the said claim/service benefits by following due process in accordance with rules governing the said aspect.

The present petition is disposed of in the above terms.

27.04.2022
manju

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No