

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104)

CM-3490-C-2022 in/and
RSA-3636-2003
Date of Decision : 23.01.2023

Smt. Shanti Devi and another

...Appellants

Versus

Government of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Yadav, Advocate for the appellants.

Mr. Ramesh Chand Sharma, Advocate for the respondents.

Harsimran Singh Sethi J. (Oral)

CM-3490-C-2022

Present application has been filed for fixing the RSA No. 3636 of 2003 for an early actual date of hearing.

Notice of the application to the counsel opposite.

Mr. Ramesh Chand Sharma, Advocate appears and accepts notice on behalf of respondents and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the above, application is allowed and the RSA No. 3636 of 2003 is taken up for hearing today.

RSA-3636-2003

The present regular second appeal has been filed challenging the order dated 19.10.2002 passed by the trial court by which, the suit filed

by the appellant-plaintiffs claiming the family pension in respect of the service rendered by her deceased son, Dharamvir Singh, has been dismissed on the ground that though, the parties have compromised their issue and the widow of Dharamvir Singh has relinquished her right qua the family pension but the said compromise cannot be taken into consideration being not in accordance with law. The appeal filed against the judgment of the trial court was also dismissed by the lower appellate court on 09.05.2003 holding that the compromise between the parties is not within the ambit of the Rules and Law and the Service Rule cannot be ignored for the convenience of the parties.

Certain facts need to be mentioned here so as to appreciate the controversy in the correct perspective.

The appellant-plaintiff no. 1 is the mother of deceased Dharamvir, who was employed with the Border Security Force as Constable. While in active service and in a combat operation against the terrorists, Dharamvir laid down his life for the nation. After the death of Dharamvir, his widow Babli claimed the service benefits but as later on she married Sukhvir @ Billu, she relinquished her right in the family pension in favour of her mother-in-law i.e. the appellant-plaintiff No. 1.

On the basis of the said relinquishment of right to claim the family pension upon re-marriage of the widow, the appellant-plaintiffs filed a civil suit claiming the family pension after the death of their son keeping in view the fact that the widow of Dharamvir had re-married and there was no other claimant to claim the said family pension.

The trial court though recorded the said fact but mentioned that

as per the rules governing the service i.e. Central Civil Services (Pension)

Rules, 1972, the parents of the deceased are not entitled for family pension as the same is only admissible to the widow till her death or re-marriage, whichever is earlier. Even the appeal filed by the appellant-plaintiffs before the lower appellate court, wherein the judgment of the trial court was impugned, was dismissed on the same ground. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiffs submits that the wife has already re-married as far back as in June, 1998. For the last approximately 24 years, she is living her own life in her new matrimonial home and has already given in writing that she will not claim the benefit of family pension, which should be given to the mother of the deceased.

The question is whether, the said relinquishment of right to claim pension by the widow of the deceased in favour of the mother of the deceased employee is contrary to the settled principle of law or is against 1972 Rules governing the aspect of grant of family pension, is to be examined in the present regular second appeal.

In somewhat similar circumstances, one Somwati filed a writ petition being CWP No. 14472 of 2012 which was decided by a Co-ordinate Bench on 04.11.2014 holding that the Central Civil Services (Pension) Rules, 1972 do not get violated, once a widow re-marries and gives no objection for the grant of family pension to the mother of the deceased, who is Class-I heir and the mother of the deceased employee was held entitled to the family pension. The relevant paragraphs 6 to 10 of the said judgment are as under :-

“6. It is a matter of record and not in dispute that late Sh.Rajesh Kumar son of the petitioner was serving with the

respondent authorities. He died on 15.05.2007, leaving behind his widow Smt.Amita Devi. It is the own pleaded and argued case on behalf of the respondents that Smt.Amita Devi has given a written undertaking that since she has already re-married with Mr. Arvind on 01.03.2009 and will not be staying with her in-laws, she has no objection in case the claim of the petitioner for family pension is accepted and the same is granted in her favour.

7. *In this regard, averments taken in para 3 of preliminary objections in the written statement, read as under :-*

“That Smt.Amita Devi gave an undertaking that she has remarried with one Arvind on 01.03.2009 and thus she will not be staying with her in-laws.

She also gave an affidavit that she has no issue from Rajesh Kumar and she has no objection, if the amount what-so-ever is due to her from the BSF is paid to the petitioner/Somwati, mother of Rajesh Kumar since deceased and she will not claim any amount from the BSF of any kind.”

8. *Once the above said undertaking was already been submitted by Smt.Amita Devi, widow of Late Rajesh Kumar, it clearly entitles the petitioner for grant of family pension under Rule 54 of the Rules of 1972. This factual aspect of the matter has gone undisputed on record. Having said that, this Court feels no hesitation to conclude that the impugned orders are patently illegal and the same can not be sustained.*

9. *A bare reading of the impugned order (Annexure P-2) shows that the above said material aspect of the matter, has not been considered, by the respondent authorities, before passing the impugned order. Similarly, the impugned order (Annexure P-4) is also patently illegal in this regard. It is undisputed on record that the petitioner, being the mother, was Class-I heir of deceased employee. When a pointed question was put to learned counsel for the respondents that once the*

petitioner falls in Category II Clause (d) of Rule 54 of the Rules of 1972 and comes within the definition of family then why she was not entitled for family pension, he had no answer and rightly so because it was a matter of record.

10. In the above said circumstances of the case, petitioner may not be entitled for extra ordinary pension or special family pension but she is certainly entitled for grant of family pension under Rule 54 of the Rules of 1972. Thus, the petitioner is declared entitled for receiving the family pension on account of death of her late son Rajesh Kumar.”

Not only this, the same question again came up for consideration before this Court in CWP No. 19106 of 2004 titled as **Anguri Vs. Union of India**, decided on 17.12.2014 and right of the mother of the deceased employee was held to be valid after the re-marriage of the widow and upon relinquishing of her right in favour of the mother of the deceased employee. The relevant paragraphs 9 to 13 of the said judgment are as under :-

“9. In view of the above said undisputed facts on record, it has been duly established that no other dependent of the deceased employee is either interested or coming forward to put any claim for family pension on account of the death of late Sh. Suresh Kumar. It is only the petitioner, being dependent mother of the deceased employee, who is fighting for her genuine cause. Under these peculiar circumstances, this does not appeal to reason, as to why the petitioner should not be held entitled for full family pension, particularly when she is ready to furnish an undertaking before the respondent authorities that if Smt. Babli Devi, widow of deceased employee namely late Sh. Suresh Kumar, comes forward for claiming her share in the family pension, petitioner would have no objection.

10. *If at all, widow of late Sh. Suresh Kumar comes forward to claim any share in the family pension, she would at the most be entitled for her share in the family pension only from that date, when she applies for it. However, since she had already relinquished her claim in this regard before the learned civil court at the time of issuance of succession certificate in favour of the petitioner, there does not seem to be any possibility that she would ever put her claim for any share in the family pension. Since the family pension scheme Annexure P-6 is a beneficial scheme for the dependents of deceased employees, there is no reason as to why dependent mother of the deceased employee must not get full family pension, particularly when there is no other claimant coupled with the fact that she is ready to furnish an undertaking indicated above.*

11. *This court is conscious of the fact that the peculiar fact situation, as obtaining in the present case, is not envisaged in the Pension Scheme of 2000 (Annexure P-6). The reason is obvious that the scheme making authority could not visualise this kind of given situation. Since the scheme is a beneficial scheme, it must get liberal interpretation from the courts as well. Since this scheme has been formulated under the CCS (Pension) Rules 1972 and also on the basis of recommendations of Fifth Central Pay Commission, it is a scheme, statutory in nature.*

The relevant extract of this statutory scheme is as under :-

“Subject : Special benefits in cases of death and disability in service – payment of disability pension/family pension recommendations of the Fifth Central Pay Commission.

The undersigned is directed to say that the Fifth Central Pay Commission, inter alia, recommended that for determining the compensation payable for death or disability under different circumstances, the cases could be broadly categorized in five different categories as under : ”

XXX XXX XXX

2. *The Fifth Central Pay Commission recommended various relief packages for the above categories, in modification of the existing provisions on the subject.*

3. *The recommendations of the Commission have been under consideration of the Government for some time. Orders have already been issued regarding ex-gratia payment in case of death in service vide this Dept.'s OM No.45/55/97-P & PW (C) 11.9.98. In respect of disability pension/family pension, the President is now pleased to decide as under :-*

(i) Cases covered under the Category (A) would continue to be covered under normal existing provisions of CCS (Pension) Rules.

(ii) In cases covered under category (B), (C), (D) & (E) the scales of the family pension/disability pension would be as under : ”

XXX XXX XXX ”

12. *A careful perusal of the scheme will show that the Commission put the cases in five broad categories whereas the category of parents covering the fact situation like the present one could not be envisaged under the scheme. Under the circumstances noticed above, this court is of the view that dependent parent like the petitioner cannot be denied full pension and she is hereby declared entitled for full pension, being mother of deceased employee, so as to achieve the object of the scheme.”*

Keeping in view the above settled principle of law, it is clear that while interpreting Central Civil Services (Pension) Rules, 1972, this Court has already held that the mother of the deceased will be entitled for family pension in case the widow re-marries and relinquish her right upon the family pension, the same is admissible and there is no violation of 1972 Rules, hence, the said relinquishment, which has been done by the widow of deceased Dharamvir in favour of the mother of the deceased Dharamvir, which is being held to be against the 1972 rules by the courts below, is contrary to the settled principle of law settled by this Court in ***Somwati's***

case (supra) as well as in *Anguri's case (supra)*.

Learned counsel for the respondents has not been able to show that the facts in the present case or in the case of *Somwati's case (supra)* and *Anguri's case (supra)* are different in any manner so as to deny the benefit of these judgments to the appellants. Once, the facts in the present case are identical to that of *Somwati's case (supra)* and *Anguri's case (supra)*, the benefit extended by the Co-ordinate Bench of this Court, is to be treated as a settled principle of law, to be made applicable in the present case so as to return a finding that the mother will be entitled for the family pension after the re-marriage of the widow in case, the widow relinquish her right to get family pension in favour of the mother of the deceased employee.

Learned counsel for the respondents has not been able to show that the judgments in *Somwati's case (supra)* and *Anguri's case (supra)*, have not attained the finality or the relief, as granted by this Court, has not been extended to them. In the absence of any such evidence being placed on record, it can be safely said that the benefit to the petitioner Somwati in CWP No. 14472 of 2012 and to the petitioner Anguri in CWP No. 19106 of 2004 have already been extended, therefore, the appellant-plaintiff No. 1 is also held entitled for the same relief as appellant-plaintiff no. 2 has died during the pendency of the suit.

Keeping in view the above, the judgment of the trial court dated 19.10.2002 and judgment of the lower appellate court dated 09.05.2003 are set-aside being contrary to the settled principle of law as noticed hereinbefore. The appellant-plaintiff no. 1 is held entitled for the grant of family pension after the re-marriage of defendant No. 5-Babli with effect

from the date, relinquishment of the right by respondent no. 5 in favour of the appellant-plaintiff no. 1. Let the arrears of pension be calculated and be released in favour of the appellant-plaintiff no. 1 within a period of eight weeks of the receipt of copy of this order.

Suit filed by the appellant-plaintiffs is decreed, as prayed for.

Present regular second appeal is allowed of in above stated terms. Decree sheet be prepared accordingly.

January 23, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No