

CM-16477-CWP-2023 in/and
CWP No. 495 of 2020 (O&M)

2023:PHHC:142481

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(104+246)

CM-16477-CWP-2023 in/and
CWP No. 495 of 2020 (O&M)
Date of Decision : 08.11.2023

Sunderi Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vaishali Kamboj, Advocate for the petitioner.

Mr. Harish Nain, Assistant Advocate General, Haryana.

Mr. Aditya Singh, Advocate for
Mr. S.K. Malik, Advocate
for applicant/respondents No. 5 and 6
in CM-2507-CWP-2023.

Harsimran Singh Sethi J. (Oral)

CM-16477-CWP-2023

Present application has been filed for seeking exemption
from personal appearance of applicant-respondent No. 3.

Keeping in view the averments made in the application, the
present application is allowed and personal appearance of applicant-
respondent No. 3 is exempted.

CM-2506-CWP-2023

Application is allowed, as prayed for.

CM-2507-CWP-2023

Present application has been filed for impleading applicant-respondents No. 5 and 6 being Lrs of deceased Roshan Lal.

Keeping in view the averments made in the application, which are duly supported by an affidavit, present application is allowed. Applicant-respondents No. 5 and 6 are impleaded as legal heirs of deceased Roshan Lal. Amended memo of parties attached with the present application is taken on record.

CM stands allowed.

CWP-495-2020

In the present petition, the prayer of the petitioner is for directing the respondents to release the family pension to her, which has not been released w.e.f. 01.05.2018 onwards.

Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.

The husband of the petitioner, namely, Late Sh. Roshan Lal was working as a Patwari but he, unfortunately, expired while in service on 16.10.2007. After the death of Roshan Lal, the petitioner raised a claim for the grant of ex-gratia amount as admissible to the petitioner under 2006 Rules, according to which, the last drawn salary of the deceased employee was to be given to the dependent family members upto the age, the deceased employee would have attained the age of superannuation.

The petitioner was found entitled for the said relief by considering her the legally wedded wife of Roshan Lal. Roshan Lal would have attained the age of superannuation on 30.04.2018 and after the death on 16.10.2007, for a period of approximately nine and half years, the petitioner was given the salary, which her late husband was drawing upto 30.04.2018.

It may be noticed that prior to the marriage of Roshan Lal with the petitioner, he was married to one Kanta Devi. Out of the wedlock with Kanta Devi, the late husband of the petitioner had three sons, namely, Raman Kumar, Aman Kumar and Kali Charan. The said sons of late Sh. Roshan Lal filed a civil suit with a prayer that the petitioner is not the legally wedded wife of late Sh. Roshan Lal, hence, the benefit of family pension be not extended to her. The said civil suit was dismissed by the competent court of law, which judgment attained finality.

On the basis of one statement given by the petitioner before the Police Authority in connection with a complaint filed, the respondents termed the marriage of the petitioner with Roshan Lal as invalid and did not grant her the family pension on the ground that as per the said statement, the petitioner had mentioned that her marriage with Roshan Lal was during the subsistence of earlier marriage of Roshan Lal with Kanta Devi. On the basis of said statement, the family pension has not been released in favour of the petitioner, which action of the respondents is under challenge in the present petition.

Learned counsel for the petitioner argues that as per the averments made in the petition, the marriage of the petitioner with Roshan Lal was solemnized on 12.02.2005 for which, a certificate had also been issued by the Sarpanch of the Gram panchayat, whereas the first wife of Roshan Lal, namely, Kanta Devi had died on 15.08.2004. The said fact qua the marriage is only being disputed by the respondents on the ground that the Sarpanch was not competent to give the marriage certificate and only Tehsildar could have given the same.

Learned counsel for the petitioner submits that the petitioner being an illiterate lady does not know the niceties of the issuance of a marriage certificate but it is a matter of fact that the marriage between the petitioner and Roshan Lal had taken place on 12.02.2005. Learned counsel for the petitioner argues that in a similar claim raised by the children of Roshan Lal from the first marriage, the marriage of the petitioner with Roshan Lal has already been upheld and their civil suit has already been dismissed, hence, keeping in view all those facts coupled with the fact that petitioner has already been given the benefit of ex-gratia, denial of the family pension by treating the petitioner as not a legally wedded wife of Roshan Lal is totally arbitrary and illegal.

Learned State counsel submits that the factum of grant of ex-gratia amount in favour of the petitioner is a conceded fact. He also concedes the fact that there was a civil suit filed by the children born out of the first wedlock claiming that the petitioner is not the legally wedded wife of Roshan Lal, which claim remained unsuccessful but submits that

as per the statement, which was purported to have been given by the petitioner, wherein, she had conceded that her marriage was solemnized during the subsistence of first marriage of Roshan Lal, hence, the marriage of the petitioner with Roshan Lal is void, hence, the department has rightly withheld the family pension by treating the petitioner as ineligible to get the same.

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

It is an undisputed fact that after the death of Roshan Lal the respondents treated the petitioner as legally wedded wife while awarding the ex-gratia amount. Once, for the purpose of awarding ex-gratia amount, the respondents themselves have treated the petitioner as a legally wedded wife of Roshan Lal, the said fact now cannot be disputed for the grant of family pension. A fact remains a fact and once a particular benefit has been allowed by treating the petitioner as a legally wedded wife of Roshan Lal, the same has to be taken into consideration for the grant of family pension also.

Further, the only reason, which is being given by the respondents is a statement purported to have been given by the petitioner before some authorities in relation to some FIR registered. The said statement has never been proved before any competent court of law. Rather, the petitioner's claim, which is duly supported by an affidavit given by a Sarpanch, that her marriage was solemnized on 12.02.2005 i.e. much after the death of the first wife. That being so, coupled with the

fact that the petitioner has already been treated as a legally wedded wife of Roshan Lal for the grant of ex-gratia amount, the denial of benefit of family pension to the petitioner on the basis of any such statement, which statement cannot be treated as a valid under the eyes of law, is totally arbitrary and illegal.

For the purpose of grant of family pension, the petitioner is to be treated as a legally wedded wife and is held entitled for the family pension, hence, the family pension be released in favour of the petitioner from the date the petitioner became entitled for with all the arrears.

Now the question arises with regard to the grant of interest on the arrears of the family pension. As per the settled principle of law settled by a Coordinate Bench of this Court in ***J.S. Cheema Vs. State of Haryana, 2014(13) RCR (Civil) 355***, any amount of an employee, which has been retained by the Government, the interest is to be paid. The relevant paragraph of **J.S. Cheema's case (supra)** is as under: -

“In my opinion, even if the assertion made in the written statement is presumed to be correct it would not disentitle the petitioner for claiming interest. The jurisprudential basis for grant of interest is the fact that one person's money has been used by somebody else. It is in that sense rent for the usage of money. If the user is compounded by any negligence on the part of the person with whom the money is lying it may result in higher rate because then it can also include the component of damages (in the form of interest). In the circumstances, even if there is no negligence on the part of the State it cannot be denied that money which

rightly belonged to the petitioner was in the custody of the State and was being used by it.”

Keeping in view the above, the arrears will also carry interest @ 6% per annum from the date the amount became due till the actual release of the same.

Petition is allowed in above terms.

November 8th, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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