

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 02.02.2023

**CWP No.1540 of 2020(O&M)
Date of Decision: 17.02.2023**

Parveen Rohilla

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.K. Chauhan, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate
for respondents No.2 to 9.

RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari, quashing the impugned orders dated 22.11.2017

(Annexure P-9), 06.02.2018 (Annexure P-12), 24.07.2018 (Annexure P-16), 18.12.2018 (Annexure P-21) and 13.12.2019 (Annexure P-31) passed by the respondents-Department by virtue of which, payment of cash financial assistance of the petitioner was stopped in an arbitrary manner on the ground of remarriage of the petitioner.

[2]. The husband of the petitioner was working as Lineman in Uttar Haryana Bijli Vitran Nigam Limited (hereinafter known as UHBVN). The husband of the petitioner died on 19.05.2012, leaving behind the petitioner as widow and minor daughter Bhavika.

[3]. The petitioner applied for release of dues/pension, thereby giving details of the family and disclosing other information. The petitioner executed an affidavit dated 23.07.2012 in this regard. The respondent No.6 accorded sanction for grant of monthly finance assistance to the petitioner vide order dated 26.10.2012, thereby ordering that the family will continue to receive monthly financial assistance equal to pay and grade pay last drawn by the husband of the petitioner with dearness allowance and medical allowance as applicable from time to time for a period of 15 years from the date of death of the husband of the petitioner. The family of the deceased was also entitled for family pension thereafter as per Rules. The mother-in-law of the petitioner filed a civil suit for partition,

declaration, permanent and mandatory injunction against the petitioner qua the property acquired by the husband of the petitioner. The petitioner was compelled to arrive at a compromise and she ultimately paid an amount of Rs.8 lacs to the mother-in-law and got vacant the possession of the suit premises. An order to this effect was passed by the Additional District Judge, Rohini Courts, Delhi on 24.11.2015. The mother-in-law of the petitioner ultimately expired on 06.09.2016. The brother-in-law of the petitioner submitted a false information to the bank to claim the assets of his brother and mother. A fraud came to the notice of the petitioner and on enquiry, the petitioner found that her brother-in-law has siphoned huge money from the account of her mother-in-law.

[4]. Suman Lata wife of brother-in-law of the petitioner made a complaint to XEN, Sub Urban Divn. No.2, Rohtak/respondent No.7, submitting that the petitioner has remarried on 13.07.2016 and is not entitled to financial assistance in future. The complaint was made on 01.03.2017. The brother-in-law of the petitioner in connivance with the respondent No.9, made an attempt to stop financial assistance of the petitioner. On 16.03.2017, the petitioner was served with a memo for stoppage of financial compassionate assistance on the basis of complaint submitted by Suman Lata wife of Dinesh Kumar (brother-in-law of the petitioner). In the year 2017, the

monthly financial compassionate assistance of the petitioner was stopped from the month of March, 2017 onwards.

[5]. The petitioner filed a representation on 04.07.2017 in response to the memo dated 16.03.2017, stating that she has remarried with Sh. Satya Mandal on 24.01.2017 and requested to grant financial assistance to her minor daughter Bhavika living with her. The daughter of the petitioner also served a legal notice to the respondent No.6 to provide financial assistance as well as other benefits to her. On 22.11.2017, the respondent No.6 informed the petitioner that the daughter of the petitioner is entitled for claim, but the same would be paid through legal guardian. The requirement of holding legal guardian certificate by the competent Court was insisted.

[6]. Sworn off unnecessary details, it is relevant to mention here that the fact remains that the financial compassionate assistance of the petitioner has been stopped on the ground of her remarriage. The eligibility to receive financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees, Rules 2006 shall be as per the provisions in the Pension/Family Pension Scheme, 1964. Following provisions have been made in Rule 5(1):-

“5.(1) On the death of any Government employee, the family of the employee would continue to receive as

financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course without raising a specific claim-

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty-five years;

(b) for a period of twelve years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee at the time of his death had attained the age of thirty-five years but had not attained the age of forty-eight years;

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if the employee had attained the age of forty-eight years.”

The family shall be eligible to receive family pension as per the normal Rules only after the period during which the petitioner receives the financial assistance as narrated above.

[7]. The Rules were amended on 24.11.2006 and the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment), Rules, 2006 came into force.

[8]. As per Family Pension Scheme, 1964, the family pension will be admissible in case of death while in service or after retirement on or after 1st July, 1964, if at the time of death, the retired officer was in receipt of compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government employee should have completed a minimum period of five years of continuous service, without break. The definition of 'Family' for the purposes of this scheme will include the following relatives of the officer:-

- (a) wife, in the case of a male officer;
- (b) husband, in the case of a female officer;
- (c) minor sons; and
- (d) unmarried minor daughters.

[9]. As per Note (2) attached to Clause (4) of the Family Pension Scheme, marriage after retirement will not be recognised for the purpose of the scheme. The pension will be admissible in case of widow/widower up to the date of death or remarriage, whichever is earlier. In case of minor son, until he attains the age of 18 years and in case of unmarried daughter, until she attains the age of 21 years or marriage, whichever is

earlier.

[10]. Evidently, the family pension has to be considered as per normal Rule only after the period during which the petitioner receives the financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment), Rules, 2006.

[11]. It is relevant to mention here that the petitioner and Satya Mandal had already obtained mutual divorce by a decree of divorce under Section 13-B of the Hindu Marriage Act vide judgment dated 07.09.2019 passed by the Additional Principal Judge, Family Court, Sonapat. The issue of entitlement of the daughter of the petitioner is pending in the Court(s) at Rohini in Delhi. The issue as regards the disentitlement of the claimants on the ground of remarriage has been considered in **CWP No.17970 of 2008** titled **Shanti Devi Vs. State of Haryana and others** decided on 05.09.2009. A question was framed by the Court for consideration that if remarriage is to disentitle a family to claim family pension, then would not it mean that widow has to live this life with tragedy staring at her and a discouragement to start life afresh.

[12]. After discussing the law on the subject, it was held that the order of discontinuing the family pension to the wife cannot be sustained. The directions were issued to the respondents therein to release the family pension from the date it was

withheld with all the arrears and interest till the date of payment.

The cost(s) was also imposed on the respondents.

[13]. Learned counsel for the petitioner refers to judgment passed by the Division Bench of this Court in **Kiran Kumar Vs. State of Haryana and others, 2004(2) SLR 694** and contended that the remarried widow, who continuous to live common life and contributes to support her heirs, is entitled to family pension. Learned counsel also refers to **CWP No.15585 of 2010** titled **Smt. Sarla Devi Vs. State of Haryana and others** decided on 31.08.2010, **Kamla Devi Vs. State of Haryana, 2018(2) SCT 685, Namrata Pandit Vs. Union of India and others, 2017(2) SCT 798, Sarwani Devi Vs. Union of India and others, 2016(2) Apex Court Judgments (SC) 760** and **CWP No.4688 of 2016** titled **Rajpati Devi Vs. State of Haryana and others** decided on 06.02.2020 and contended that even in case of shifting the family pension in favour of minor daughter of the deceased on remarriage of the widow, the same cannot be stopped in favour of the widow on marriage of the daughter. The dependency of the family still continuous in such a situation.

[14]. In the instant case, the benefit under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment), Rules, 2006 was

granted in favour of the petitioner being widow for a period of 15 years and even in the event of marriage of minor daughter, such benefit cannot be stopped as the provisions of the Family Pension Scheme, 1964 have been made applicable under 2006 Rules. The financial assistance after remarriage of the petitioner, particularly when the minor is living with her, cannot be withheld as the same would lead to serious ill-effects and cause grave damage to the institution of marriage of widow, who is the most vulnerable section of the society. Even in the present case, a mutual divorce has taken place between the petitioner and Satya Mandal vide judgment dated 07.09.2019. The minor daughter is still living under the care and guardianship of the petitioner. Even the respondent-Nigam has wrote a letter memo dated 13.12.2019 to the petitioner that the family compassionate assistance of the deceased is admissible to her minor daughter in terms of Rule 4 of Family Pension Scheme, 1964 subject to fulfillment of other conditions contained in Family Pension Scheme, 1964.

[15]. Since the petitioner has already parted with Satya Mandal by way of a decree of divorce under Section 13-B of the Hindu Marriage Act, therefore, old status of the petitioner has to be maintained, particularly when the minor daughter is living under the custody of the petitioner. The right of the petitioner is indefeasible in such a situation. In **Rajpati Devi's case (supra)**,

similar situation arose for consideration of this Court when the family pension of the widow was ceased on remarriage, but when the remarriage was annulled by a decree of divorce, then the same was restored. As per the definition of 'Family' provided under the Haryana Civil Services (Pension) Rules 2016, Rule 10(B((i)(c), a remarried widow is entitled to pension in case the independent income from all other sources is less or not equal to the minimum family pension prescribed by the State Government.

[16]. Learned State counsel, however, opposes the prayer with reference to the disability in terms of Clause (4) Note (2) of the Family Pension Scheme, 1964, wherein the widow was entitled to family pension only till the date of remarriage or death, whichever is earlier.

[17]. After hearing learned counsel for the parties and after perusing the aforesaid precedents on the subject, I find that the welfare legislature has been enacted in favour of the widow and minor children of the deceased employee in order to prevent vagrancies and destitution. In the instant case, the petitioner cannot be made to suffer on account of her initial remarriage with Satya Mandal from whom, the petitioner has already got mutual divorce in a petition under Section 13-B of the Hindu Marriage Act on 07.09.2019. The minor daughter of the petitioner is living with the petitioner and being nurtured by the

petitioner only. The economic dependence of the family in its entirety is on the petitioner and after mutual divorce dated 07.09.2019 from Satya Mandal, the petitioner is entitled for restoration of monthly payment of cash financial assistance in terms of Rule 5(2) and Note (2) attached to Clause (4) of the Family Pension Scheme, 1964, which has been made applicable in case to determine eligibility of the petitioner to receive financial assistance under the Rules of 2006.

[18]. Having considered the issue in entirety, I find that the entitlement of the petitioner or dependent daughter is not disputed by the respondents. The only stand taken by the respondents-Department is that the relief has been declined to the petitioner only on the ground of remarriage, which according to the petitioner, with reference to a decree of divorce, has to be restored. Secondly, the minor daughter is living with the petitioner and the entitlement of the minor daughter has been established by the respondents-Department with reference to memo dated 13.12.2019 subject to production of legal guardianship certificate issued by the competent Court. In my considered opinion, the divorce of the petitioner with her second husband by a decree of divorce under Section 13-B of the Hindu Marriage Act, would entitle the petitioner for restoration of the financial assistance granted to her in terms of Rules 2006.

[19]. For the reasons recorded hereinabove, impugned

actions on behalf of the respondents-Department are set aside.

This writ petition is accordingly allowed. The petitioner is entitled for restoration of the financial assistance under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment), Rules, 2006 forthwith along with the arrears. There shall be an interest component for the withheld amount @ 6% per annum from the date of withholding the amount till final realisation of the same.

17.02.2023

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No