

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

CWP-9749-2019 (O&M)

Date of Decision: 19.04.2023

Manjit Kaur

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jagjit Singh, Advocate, for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J.

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari*, prohibition etc. for quashing of order dated 20.03.2019 (Annexure P-6) passed by respondent No.3 and for directing the respondents to grant full family pension to the petitioner as per Rule 6.17 Volume-II, Punjab Civil Services Rules alongwith interest as the petitioner is the widow of deceased employee.

2. The brief facts of the present case are that the husband of the petitioner namely Balwinder Singh joined the Police Department on 24.01.1994 and he was promoted to the rank of Head Constable. After completing qualifying service of 21 years and 5 months, unfortunately he passed away on 11.10.2015 leaving behind two legal heirs i.e. petitioner

Manjit Kaur being widow and Amanjit Singh who is the son of first wife of Balwinder Singh. After the death of the husband of the petitioner, a civil suit was filed by the petitioner for declaration to the effect that the petitioner and defendant No.3 are the legal heirs and are entitled to inherit the moveable and immovable properties and pensionary benefits of deceased Balwinder Singh. In the civil suit, both the parties suffered statement on 11.02.2016 after arriving at an agreement by stating that the aforesaid Amanjit Singh will have no objection if the family pension is given to the petitioner and that the petitioner will have no objection if Amanjit Singh is given the benefit of compassionate appointment. The said civil suit was dismissed as withdrawn vide Annexure P-2 and it was directed that the parties will be bound by their statement suffered in the Court. Thereafter, the respondent-State sanctioned only 50% of the total family pension to the petitioner being second wife. The husband of the petitioner had an earlier wife whose son is aforesaid Amanjit Singh and the earlier wife namely Kulwinder Kaur had died on 08.09.2006. Since only 50% of the pension was sanctioned to the petitioner, she served a legal notice dated 14.08.2018 vide Annexure P-4 but no action was taken in this regard and therefore the petitioner was constrained to file a civil writ petition No. 30143 of 2018 before this Court which was disposed of vide Annexure P-5 with a direction to the respondents to decide the legal notice by passing a speaking order. Thereafter, the impugned order has been passed vide Annexure P-6 in which the Senior Superintendent of Police, Patiala while passing the order relied upon Rule 6.17, Volume-II of the Punjab Civil Services Rules and came to the conclusion that since the petitioner is the second wife and earlier wife

of the husband of the petitioner had died on 08.09.2006, the proportionate pension as admissible to the first wife would be ceased because had there been any eligible child from the first wife, then he would have been entitled for the same but in the present case, the petitioner would not be entitled for full family pension.

3. Mr. Jagjit Singh, Advocate appearing on behalf of the petitioner submitted that the reasoning given in the impugned order Annexure P-6 is totally contrary to law and especially Rule 6.17 of the Punjab Civil Services Rules, Volume II. He submitted that first wife of the husband of the petitioner had died on 08.09.2006 and at the time when the husband of the petitioner had died on 11.10.2015, she was the only widow surviving and therefore in view of provisions of Rule 6.17 and the definition of family which includes the wife, she was entitled for full family pension. He submitted that in the impugned order, a reliance which has been made upon Note- 1, 2 and 3 appended alongwith Rule 6.17 (4) of the Punjab Civil Services Rules was not applicable to the present petitioner especially in view of the fact that there was no minor child available from the first wife at the time when the husband of the petitioner had died and the petitioner was only the sole surviving widow and therefore the impugned order Annexure P-6 is liable to be set aside and a direction be issued to the respondents to grant full family pension to the petitioner with all the consequential benefits.

4. Learned counsel further submitted that once the earlier wife of the husband of the petitioner had died much before the death of husband of the petitioner and no other eligible legal heir of the earlier wife of the

husband of the petitioner was available, then the pension which could have been otherwise available to any other widow could not cease under Note-1 in view of the law laid down by a Division Bench of this Court in ***State of Punjab and others Versus Harpal Kaur, LPA No.1434 of 2014, decided on 01.09.2014*** and followed by another judgment of this Court in ***CWP No.20374 of 2017, titled Jaspal Kaur Versus State of Punjab and others*** wherein it was held that the remaining share cannot be retained by the Government and widow would be entitled for the family pension of 100% share.

5. On the other hand, Ms. Akshita Chauhan, learned DAG, Punjab while referring to the reply filed by the State submitted that in view of Notes appended with Rule 6.17(4) of the Punjab Civil Services Rules, the petitioner was entitled only to 50% of the share and the remaining 50% would cease. She submitted that there was no eligible legal heir available from the first wife who had earlier died and therefore by virtue of Note-1, the share of the earlier wife will cease and so far as the present petitioner is concerned who is the second wife, only 50% of the share will be admissible to her.

6. I have heard the learned counsel for the parties.

7. The husband of the petitioner was having his first wife namely Kulwinder Kaur who died on 08.09.2006. Thereafter, the husband of the petitioner married with the petitioner and husband of the petitioner unfortunately died on 11.10.2015. There was one son from the first wife whose name is Amanjit Singh. It is not the case of either of the parties nor it has been brought on record to show that the aforesaid Amanjit Singh was

minor at time of death of Balwinder Singh. Even a compromise has also been arrived at between the aforesaid Amanjit Singh and the present petitioner in the Civil Court. The petitioner after the death of her husband has been sanctioned only 50% of the pension of Balwinder Singh. The impugned order has been passed on the strength of Notes appended to Rule 6.17 (4) of the Punjab Civil Services Rules. Therefore for the purpose of further understanding the effect of the aforesaid appended Notes on the facts and circumstances of the present case, they are reproduced as under:-

Note 1.—When a Government employee is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child, if at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.

Note 2.—Where a Government employee is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received if she had been alive at the time of the death of the Government employee.

Note 3.—Except as provided in Note 1, pension awarded under this scheme will not be payable to more than one member of the family of a Government employee at the same time. It will first be admissible to the widow or widower and thereafter to the eligible minor children.

8. A perusal of the Note-1 would show that it provides that when a Government employee is survived by more than one widow, then the pension would be paid to them in equal shares and on the death of a widow, her share of the pension will become payable to her eligible minor child and if at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease. In other words, for the

purpose of invoking Note-1, there has to be more than one widow surviving of a Government employee. The opening lines of Note-1 would show that it will apply only when a Government employee is survived by more than widow. In the present case, aforesaid Balwinder Singh employee at the time of his death was survived by only one widow who is the present petitioner and not more than one widow since his earlier wife had already died in the year 2006, whereas Balwinder Singh had died in the year 2015 and therefore clearly Note-1 would not apply in the facts and circumstances of the present case. However, assumingly for the sake of arguments, Note-1 applies in the present case even then it further provided that on the death of a widow, her share of the pension will be payable to her eligible minor child, whereas there was no minor child available of his first wife. It further provides that if there is no minor child, then the payment of her share of the pension will cease. This issue has already been decided by a Division Bench of this Court in *State of Punjab and others versus Harpal Kaur (Supra)* and followed by another judgment of this Court in *Jaspal Kaur Versus State of Punjab and others(Supra)* wherein it has been so provided that in such a situation the right would not cease and the surviving widow would get 100% of the pension. Therefore, so far as the applicability of Note-1 is concerned, this Court is of the view that Note-1 is not applicable in the facts and circumstances of the present case and in either case, there was no question of ceasing of any right and the present petitioner who is the sole surviving widow is entitled for the grant of full pension.

9. Note-2 provides that where a Government employee is survived by a widow but has left behind an eligible minor child from another wife, the

eligible minor child will be paid the share of pension which the mother would have received if she had been alive at the time of the death of the Government employee. In the present case, in case Note-2 is made applicable to the present case, then from the first wife who had already died, there was no eligible minor child to whom the share of pension is to be paid and therefore in the facts and circumstances of the present case even Note-2 will not apply in the present case.

10. The petitioner has been denied full pension by invoking Note-1 of Rule 6.17 (4) of Punjab Civil Services Rules which is not applicable to the present case. Therefore, the present petition deserves to succeed.

11. Consequently, the present petition is allowed. The impugned order dated 20.03.2019 (Annexure P-6) is hereby set aside. The petitioner shall be entitled for the grant of full pension. Consequently, a direction is issued to the respondents to grant the petitioner 100% family pension w.e.f. the date of death of the husband of the petitioner alongwith arrears of family pension. The arrears of pension shall carry an interest @ 6 % per annum (simple). The aforesaid payment shall be made to the petitioner within a period of three months from the date of receipt of certified copy of this order. The petitioner shall also be entitled for costs which are assessed at Rs.10,000/- which shall also be paid within aforesaid period.

19.04.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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