

232

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

**CWP No.10884 of 2020 (O&M)
Date of Decision: 21.02.2023**

RAM RATI DEVI

.....Petitioner

Vs

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: Mr. Anurag Goyal, Advocate with
Mr. Shivam Malik, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, D.A.G., Haryana.

Mr. APS Sekhon, Advocate
for the respondent No.6.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari quashing the order dated 29.01.2020 passed by the respondent No.2 whereby the claim of the petitioner for grant of family pension has been rejected on the grounds that husband of the petitioner had expired without being regularized as his services were temporary and were being renewed further after every six months. Besides the

aforesaid grounds, the claim of the petitioner has been rejected on the ground of delay and latches.

[2]. Learned counsel for the petitioner submits that husband of the petitioner was appointed to the post of JBT Teacher on contract basis in the respondent-Department on 24.07.1969. On 15.10.1970, his services were converted to temporary and thereafter he joined the post on 17.10.1970. The husband of the petitioner had served the department for a period of 7 years 3 months and 10 days and he had died on 27.01.1978 after rendering about 8 years of service including the contract service. The husband of the petitioner died during service leaving behind the petitioner as widow and other family members.

[3]. The petitioner applied for family pension before the respondent No.2 on 27.08.1980. Owing to the inaction on behalf of the department, the petitioner had to file CWP No.10721 of 2019 for grant of family pension under the Family Pension Scheme, 1964. Since the claim of the petitioner was not decided by the competent authority, therefore, the said writ petition was disposed of vide order dated 03.05.2019 without going into the merits of the case or expressing any opinion to the entitlement of the petitioner in respect of the relief claimed. The said writ petition was disposed of with a direction to the respondents to

pass an appropriate speaking order on the claim raised by the petitioner within a period of three months from the date of receipt of certified copy of that order.

[4]. Thereafter the order dated 29.01.2020 came to be passed thereby rejecting the claim of the petitioner firstly on the ground that only such employee who renders service in pensionable service would be entitled to pension on the strength of meaning of substantive and permanent employment. Secondly the family pension in favour of the petitioner was declined on the ratio of **Uttar Haryana Bijli Vitran Nigam Ltd. And others vs. Surji Devi, 2008(2) SCC 310** in which the deceased was appointed on work-charge basis and his services were not regularized. It was held that the statutory provisions debarred grant of family pension in favour of the family members as the deceased employee was not a permanent or temporary employee. It was held that the sentiments and sympathy alone cannot be a ground for taking a lenient view. Thirdly, the claim of the petitioner for grant of family pension has been rejected on the ground of delay and laches and fourthly the petitioner has failed to submit any order of his substantive appointment as well medical certificate of fitness to join the service.

[5]. Learned counsel for the petitioner refers to the para 4(i)

of the Family Pension Scheme, 1964 which provides for provision for family pension in case of death while in service or after retirement on or after the 1st July 1964. It provides that if at the time of death the retired officer was in receipt of a compensation, invalid, retiring or superannuating pension, the family pension will be admissible in case of death after retirement if the retired employee at the time of death was in receipt of the gratuity alone. In case of death while in service, a Government employee should have completed a minimum period of one year of continuous service without break. The term one year continuous service used in Para 4(i) of the aforesaid Scheme is inclusive of Permanent/Temporary service in a pensionable establishment but does not include period of Extraordinary Leaves, Boy Service and Suspension Period unless that is regularized by the competent authority or before completion of one year continuous service provided the deceased government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.

[6]. Learned counsel further submits that the husband of the petitioner after joining the post in question on temporary basis continued in service for more than seven years and the

employer did not find any such medical disability of the husband of the petitioner at any point of time. Learned counsel very candidly made a statement that at the most the objection as regards delay and latches can be squarely met by allowing the entitlement of the petitioner towards the arrears of family pension for 38 months prior to filing of CWP No.10721 of 2019.

[7]. By referring to **Kanta Devi vs. State of Haryana and others, 2000(2) SCT 32**, learned counsel for the petitioner submits that the husband of the petitioner was a temporary employee and, therefore, Family Pension Scheme, 1964 in terms of para 4(1) squarely applies to the case of the petitioner. In **S.K. Mastan Bee vs. The General Manager, South Central Railway, 2002(7) SLR 1**, it was observed by the Hon'ble Apex Court that after the demise of husband of the petitioner, it was the onerous duty of the respondent to prepare all the necessary papers towards service benefits of the deceased employee. Para no.6 of the said judgment reads as under:-

“6. We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family

pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in

view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992.”

[8]. In the present case, learned counsel for the petitioner made a very fair statement that the entitlement of the petitioner as regards arrears of family pension be restricted to 38 months prior to filing of CWP No.10721 of 2019. As regards objection of the respondents/State based on the ratio of **State of Haryana and others vs. Shakuntala Devi, 2008(15) SCC 380**, it can be noticed that husband of the petitioner was a temporary employee and had rendered service in the pensionable establishment, therefore, the ratio of said judgment is not attracted to the facts of the present case. Similarly as per ratio of **Uttar Haryana Bijli Vitran Nigam Ltd. and others'** case (supra), the husband of the petitioner being temporary employee is exempted from the applicability of the said judgment as in that case also, the claim for grant of family pension was declined as the deceased employee was not the permanent/temporary employee. The deceased was a work-charged employee. Since the husband of the petitioner was temporary employee in the present case, therefore, the ratio of

the aforesaid judgment is also not applicable.

[9]. The objection as regards the medical certificate is very far fetched objection particularly in view of the fact that husband of the petitioner had served the department for more than 7 years. His services were extended from time to time and the medical disability, if any, could not be pointed out by the employer at any point of time. The Family Pension Scheme, 1964 being a welfare scheme, therefore, the factum of non-production of medical fitness certificate in the year 1970 cannot be visualized as on date after more than 51 years. Even on the subject of clarification of Family Pension Scheme, 1964, the Department of Finance, Haryana has clarified that where the Government servant dies before completion of one year of continuous service provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service, the family of the deceased shall be entitled to Family Pension Scheme, 1964 and the expression continuous one year of service wherever it occurs in this note shall be construed to include less than one year of continuous service. In the instant case, the husband of the petitioner had completed more than seven years of temporary service. No such objection was ever raised as

regards his medical disability, if any.

[10]. In view of facts and circumstances of this case, I deem it appropriate to allow this writ petition. The impugned order dated 29.01.2020 passed by the respondent No.2 is set aside. The respondent No.2 is directed to consider the claim of the petitioner for grant of family pension from the 38th month prior to filing of CWP No.10721 of 2019 and calculate the arrears thereof after fixation of monthly family pension. The petitioner would be entitled to regular family pension thereafter. There shall be no interest on the arrears of family pension in view of peculiar facts of the case. Let the needful in the aforesaid context be done within a period of two months from the date of receipt of certified copy of this order.

February 21, 2023

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No