

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

(102) CM Nos.16975-16976 of 2023 in/and
CWP No.17554 of 2011 (O&M)
Date of Decision : 05.10.2023

Kaushlya Devi ...Petitioner

Versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. B.K. Bagri, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

CM No.16976 of 2023

Application is allowed.

Documents are taken on record.

CM No.16975 of 2023

The present application has been filed with a prayer that the petitioner is seeking the benefit of family pension and the present petition is pending for the last more than 12 years hence, the same should be heard at an actual date.

Notice of the application to the counsel opposite.

Mr. Pankaj Middha, Additional Advocate General, Haryana, who is present in the Court accepts notice and raises no objection for the grant of the prayer as made in the present application.

Application is allowed.

On the joint request of learned counsel for the parties, the main petition is taken up for hearing, which is already listed at Sr. No.1050 of Regular Board of this Court.

CWP No.17554 of 2011

In the present petition, the claim of the petitioner is that her husband, namely, Krishan Lal, should be treated as a regular employee of the respondent-department and after his death, the petitioner be granted the benefit of family pension.

Certain facts need to be noticed for the appreciation of the issue raised in the present petition.

The husband of the petitioner, namely, Krishan Lal, was appointed as a Counter Clerk on daily wage basis on 16.12.1983. He continued working as such till his services were terminated by the respondents in the year 1985 which action of the respondents was challenged by the petitioner's husband before the Labour Court and according to the award of the Labour Court dated 08.12.1986 termination of services was held to be bad and the husband of the petitioner was reinstated in service. Thereafter, in pursuance to the award of the Labour Court, the husband of the petitioner was allowed to rejoin the service on 25.08.1987 with continuity of services and full back wages. Unfortunately, while working on daily wage basis, the husband of the petitioner died on 08.06.1991 in an accident.

After the death of the husband of the petitioner, the petitioner raised a grievance that she has not been granted the ex-gratia employment after the death of her husband and as the said grievance was not being redressed, she filed a writ petition being CWP No.15893 of 1994, which was

ultimately dismissed by this Court on 28.05.2010 (Annexure P-6). The said judgment of the learned Single Judge was upheld in LPA No.1403 of 2010.

Thereafter, the present petition has been filed by the petitioner with a prayer that her husband should be treated as a regular employee so as to grant her the family pension. The present petition was filed by the petitioner after 20 years of the death of her late husband. The prayer of the petitioner is that as, there were policies of the Government of Haryana for regularization of the services of the employees who have completed 240 days in service and number of employees had already been regularized under the said policy, the benefit of which policy was not given to the husband of the petitioner hence, the husband of the petitioner be treated as a regular employee on the date of his death and consequently, the petitioner be granted the benefit of family pension after the death of her husband.

The claim of the petitioner is being contested by the respondents on the ground that once the husband of the petitioner, on the date of his death was not a regular employee, the claim of family pension cannot be raised. Further claim of the petitioner that her husband should be treated as regularized was also contested that once, on the date of the death, the husband of the petitioner was not a regular employee, granting of the benefit of regularization of his services to a dead employee is not maintainable hence, the same is liable to be rejected.

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

It is a settled principle of law that the family pension is to be granted keeping in view the Rules governing the service. It is also a conceded position that the family pension is only admissible in case, a Government

employee, who was working on a regular post and had a lien on the said post, either dies while in service or to a spouse of a pensioner. In the present case, none of the condition is satisfied by the petitioner to claim the benefit of family pension. Once on the date of the death of the husband of the petitioner, the husband of the petitioner was working on a daily wage basis, the claim that the petitioner is entitled for family pension is contrary to the Rules governing the service hence, the same cannot be accepted.

The second argument of learned counsel for the petitioner is that the husband of the petitioner be deemed to be a regular employee so as to grant her pension is also liable to be rejected. Once, the husband of the petitioner never raised any grievance with regard to the regularization of his services during his service career, filing the present petition after 20 years of death of an employee concerned with the prayer that the said employee should be treated as a regular employee by deemed regularization of his services so as to grant the consequential benefit of family pension to the petitioner, cannot be accepted. It is a settled principle of law settled by Hon'ble Supreme Court in CA No.7068 of 2022, titled as **Sunita Burman Vs. The Commissioner, M.P. Housing and Infrastructure Development Board and others**, decided on 14.10.2022 that the family pension can only be claimed in case the employee concerned was a regular employee either at the time of the death or was a pensioner at the time of death. The relevant para is reproduced as under:

“15. We therefore hold that the deceased husband of the appellant was not a regular employee of the respondent No.1 - Housing Board. He had remained a work charged employee in the establishment of the Housing Board till the date of his demise. Even while serving in the said capacity, the appellant's deceased husband could have opted for pension under the NPS that was made available to the work charged employees of the respondent No.1 - Housing Board in terms of the order dated 02nd July, 2015. But he did not opt for the said Scheme. The appellant is, therefore,

not entitled to receive family pension from the respondent No. 1 - Housing Board.”

Keeping in view the above, no ground is made out for any interference by this Court so as to grant the prayer as made in the present petition.

Dismissed.

October 05, 2023
jt

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No