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

CWP-28479-2018

Date of Decision: 27.01.2023

Uma Devi

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Dilpreet Singh Gandhi, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of *mandamus* for directing the respondents to release the retirement benefits of the deceased husband of the petitioner.

Learned counsel for the petitioner has submitted that it is a case where one Phool Chand son of Chokelal Kashyap retired as Supervisor from Ranjit Sagar Dam Workshop at Shahpur Kandi, Pathankot and he was earlier married with one Santosh Kashyap but the aforesaid Santosh Kashyap had died on 08.05.1993, thereafter, the petitioner-Uma Devi solemnized marriage with the aforesaid Phool Chand in the year 1994 and in this way, the petitioner became the legally wedded wife of the aforesaid Phool Chand. He further submitted that thereafter a matrimonial dispute arose between the petitioner and the aforesaid Phool Chand and in this

regard, the petitioner had filed a petition under Section 125 of the Code of Criminal Procedure for grant of maintenance in which a dispute arose as to whether the petitioner is the legally wedded wife of the aforesaid Phool Chand or not. Learned counsel for the petitioner has referred to the Ration Card (Annexure P-3) in this regard and has also submitted that vide Annexure P-4 when the petition under Section 125 of the Code of Criminal Procedure was decided by the learned Principal Magistrate, Family Court, Jhansi on 01.10.2015, the learned Family Court came to the conclusion and it was so observed and held that the petitioner, namely, Smt. Uma Devi is the legally wedded wife of Phool Chand and her son, namely, Happy is the legitimate child/issue of Phool Chand. Thereafter, from the salary of Phool Chand, the maintenance amount was also deducted by way of the aforesaid order for some time. Phool Chand retired on 31.08.2016 and he received all the pensionary benefits which accrued to him regarding which there is no dispute. However, since the petitioner, who is the legally wedded wife of the aforesaid Phool Chand was entitled for family pension, she represented to the State Government for release of the family pension and also issued a legal notice which was replied by the State vide Annexure P-9 in which it was stated that the Government is helpless in granting family pension to the petitioner because there is no information to the Department regarding the dispute between Phool Chand and the petitioner-Uma Devi or any order of the Court and also on the ground that as per the pension papers submitted by the aforesaid Phool Chand, he has stated that his legal nominee should be his son, namely, Nitin Kumar Kashyap.

Learned counsel for the petitioner further submitted that

although no order has been passed by any authority till date but a perusal of the aforesaid reply to the legal notice would show that there was no ground available with the Department to have not granted the benefit of family pension to the petitioner on the ground that there was no information with regard to the aforesaid judgment which was granted in favour of the petitioner under Section 125 of the Cr.P.C. So far as the other ground stated in the reply to legal notice that the aforesaid Phool Chand has given the name of his son as his legal heir, it is also not sustainable because the wife is entitled for grant of family pension and since there was a matrimonial dispute between the petitioner and the aforesaid Phool Chand, he deliberately did not enter the name of the petitioner in that document which is at Annexure R-1 attached with the reply filed by the State, and therefore, reply filed by the Department to the legal notice was not proper and in accordance with law. He also submitted that the family pension is a vested right and such a right cannot be taken away on the aforesaid two grounds. He further submitted that the petitioner will be satisfied in case at this stage, the competent authority is directed to pass a well-reasoned speaking order on the claim of the petitioner by considering the rules and instructions which are applicable to the petitioner and also taking into account the aforesaid two documents i.e. order under Section 125 Cr.P.C. passed by the learned Family Court (Annexure P-4) and Ration Card (Annexure P-3) which have been attached along with the present petition.

On the other hand, Ms. Akshita Chauhan, DAG, Punjab has stated that proper reasoning has been given by the Department while replying to the legal notice. She has however stated that she has no

objection in case the competent authority passes a detailed speaking order after considering the rules and procedure apart from any document which is to be supplied by the petitioner in accordance with law.

I have heard the learned counsel for the parties.

The grievance of the petitioner is that she is a legally wedded wife of the aforesaid Phool Chand but the Department has not granted her family pension since she was not able to satisfy the Government that she was the legally wedded wife of Phool Chand. The orders pertaining to Section 125 Cr.P.C. have been appended with the present petition and as per the learned counsel for the petitioner, even maintenance amount was also deducted from the salary of the aforesaid Phool Chand and there had been a recording of finding of facts by the learned Family Court that the petitioner is the legally wedded wife of Phool Chand. Apart from the above, Ration Card (Annexure P-3) has also been attached wherein the name of the petitioner is also figuring. This Court is of the view that since as of date no conscious decision has been taken by the Government with regard to the entitlement of the petitioner for family pension, appropriate directions are required to be issued in this regard.

In view of the aforesaid factual position, this Court is of the view that the present writ petition can be disposed of with the following directions:-

1. The petitioner shall supply all the requisite documents in support of her claim to respondent No.5 within a period of three weeks from today.
2. On the receipt of the aforesaid documents, the respondent

No.5 shall issue notice to all the stakeholders including the private respondents and fix a date for hearing of not only the petitioner but any other stakeholder.

3. Thereafter, respondent No.5 shall pass a well-reasoned speaking order after taking into consideration all the facts and circumstances, documents supplied and the law applicable in this regard within a period of four weeks thereafter.
4. In case, respondent No.5 comes to the conclusion that the petitioner is entitled for grant of family pension then, necessary payment shall be made to the petitioner along with interest @6% within a period of next four weeks.
5. In case, respondent No.5 comes to the conclusion that the petitioner is not entitled for the grant of family pension, then the petitioner shall be at liberty to challenge the aforesaid order before any appropriate forum in accordance with law.
6. For the sake of clarity, in case the competent authority to take a decision is other than respondent No.5, then the aforesaid directions shall be deemed to be made to that competent authority.

The present petition stands disposed of.

27.01.2023

Bhumika

(JASGURPREET SINGH PURI)

JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |