

Date of decision : 14.11.2023

- ## Respondents

Mr. Aman Sharma, Advocate
for respondent Nos.3 and 4
in CWP-28133-2019 and CWP-4112-2020,
for respondent Nos.3 to 5 in CWP-18041-2023 and

for respondent No.4 in CWP-16099-2020.

DEEPAK MANCHANDA, J.(Oral)

1. This judgment shall decide the aforementioned four writ petitions as the issue involved in all the petitions is common and similar facts have been stated in all the petitions. To decide the controversy the facts of CWP-28133-2019 have been extracted for adjudication of all the writ petitions.

2. Above mentioned writ petitions have been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus for issuing directions to respondents to grant the family pension to the petitioners, who are widows, of retirees/deceased, alongwith interest @18% per annum with all consequential benefits w.e.f. the day when the husband(s) of the petitioner(s) expired.

3. It is the case of the petitioners that husbands of the petitioners were appointed as Regular Tubewell Operator in Malerkotla Division, Tubewell Circle of Irrigation Branch in the states of Punjab and they were permanently absorbed in the Punjab State Tubewell Corporation under the orders of Hon'ble Supreme Court of India. They all opted for being governed under Rule 5.3(1)(2)(a) of Volume II Chapter V Punjab Civil Services Rules for monthly pension and death-cum-retirement gratuity under the usual Government arrangements. It is pleaded in the petition that when the petitioners claimed the family pension on account of death of their husbands, who were retirees, the same was rejected on the ground that the family pension is not admissible to the widows of Tubewell Operators under Rule 5.3(3) of Civil Services Rules (CSR) Vol.II.

4. Learned counsel for the petitioners at the very outset submits that the

case of the petitioners is squarely covered by the judgment passed by the Division Bench of this Court in CWP-13555-1994, titled as “Phulan Rani Vs. State of Punjab and others” decided on 09.12.2004 (Annexure P-12), wherein it was held that the family pension is admissible under Rule 5.3 read with Rule 6.17. He submits even the civil appeal bearing No.4951-52-2009 filed against the aforesaid judgment dated 09.12.2004 was dismissed by Hon’ble Apex Court vide common judgment dated 17.08.2017 (Annexure P-13). As such he prays for issuance of necessary directions to respondents to grant family pension to the petitioner(s).

5. Learned State counsel while referring to short reply dated 22.03.2023 submits that in view of the representation for grant of family pension, the office of the respondent No. 3 issued a letter dated 18.03.2019 (Annexure R-1) to the office of the Accountant General, Punjab i.e. respondent No. 2 and in response to the same, respondent No. 2 replied through letter dated 29.05.2019 (Annexure R-2), wherein it is stated that family pension is admissible to those employees, who were alive on 01.01.2006 or were drawing pension on 01.01.2006. Further, in the reply dated 20.10.2022, as per the stand taken by respondent Nos.3 and 4 in para No.10, it was mentioned that after decision of the judgement dated 17.08.2017 (Annexure P-13) by the Apex Court, the respondent No. 3 and 4 sought clarification from respondent No. 2 vide their letters dated 18.03.2019 (Annexures R-1, R-3, R- 5, R-9), who endorsed the stand as mentioned above by the learned State counsel, and mentioned in the reply that though similar query was sent to the Government for the purpose of seeking clarification in light of the Apex Court’s judgement, and in the said case, service book alongwith pension papers were returned with

the remarks that government has not decided regarding the pensionary benefits for the service rendered in PSTC and that Punjab Govt. has also not issued any instructions regarding finalization of pensionary benefits of retirees, who were merged in the PSTC.

6. I have heard learned counsel for the parties and have perused the material available on record.

7. Hon'ble the Supreme Court decided Civil Appeal Nos. 4951 and 4952 of 2009 on 17.08.2017. By a detailed judgment, Hon'ble the Supreme Court held that the employees, who after retirement were getting pension, their families are entitled for family pension as well under Rule 6.17 of the Punjab Civil Services Rules. The relevant judgment of Hon'ble the Supreme Court is as under:-

“These appeals are filed by the State aggrieved by the judgment of the High Court, wherein the High Court has taken a stand that the employees transferred to non-pensionable establishments will also be entitled to family pension in case they are covered under Rule 5.3 of the Punjab Service Rules. The said Rule reads as follows:-

“5.3(1) When a Government employee is transferred from pensionable Government service to a nonpensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.

(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a corporation or a company wholly or substantially owned or controlled by Government or in or under a body controlled by Government or in or under a body controlled or financed by Government, or Municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Government to be in the public interest, be deemed to have retired from the Government service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from the date of such absorption or the date of his voluntary retirement, whichever is later. Each such Government employee is required to exercise an option within six months of his absorption for either of the alternative indicated below:-

*(a) receiving the monthly pension and death-cumretirement-gratuity under the usual government arrangements; or
(b)receiving the death-cum-retirement gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.*

(3) Where no option is exercised within the specified period, the

employee will be automatically governed by alternative (b). An employee opting for alternative

(a) is entitled to commutation of a portion of the pension admissible to him in accordance with the provisions of rules contained in Chapter XI:

Provided that Government shall have no liability for the payment of family pension in such a case:

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company, Municipality, Panchayat Samiti or Zila Parishad shall be required in respect of Government employee whom Government may, by order declare to be a scientific employee.”

2. *It is the persuasive submission of the learned counsel appearing for the State that the proviso under Rule 5.3 is applicable only in case of the pensioners covered under Rule 5.3(2)(a). In other words, it is the case of the appellants that in the case of Government employees transferred to nonpensionable establishments, even if they are in receipt of monthly pension, after their death, the surviving family members will not be entitled for family pension since the proviso under Rule 5.3(3) has carved out an exception, whereby the Government has been exempted from the liability.*

3. *We find it difficult to appreciate the submission. Family Pension Scheme is provided under Rule 6.17, which reads as follows:-*

“6.17. The provisions of this rule shall apply:

(a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and

(b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provision of Family Pension Scheme, 1964, for Punjab government Employees.”

4. *It is not in dispute that the pensioners in these appeals are covered under the Scheme under Rule 6.17(b). Nowhere under the Family Pension Scheme is there a provision carving out the class of pensioners in receipt of monthly pension so as to deny the benefit of family pension. The Scheme having granted the benefit of family pension to such pensioners, the proviso, even assuming it applies to everybody, under the general rules cannot take away the benefit since the Family Pension Scheme is a special benefit granted to the pensioners.*

5. *Thus, we wholly agree with the view taken by the High Court. These appeals are, accordingly, dismissed.*

6. *The arrears of pension shall be disbursed to the respondents within a period of twelve weeks from today and if not, the same shall carry interest @ 12% from the date of the judgment of the High Court and the officers responsible for the delay shall be personally liable for the same.*

7. *Pending applications, if any, shall stand disposed of.*

8. *There shall be no orders as to costs.”*

8. This Court finds that learned counsel for the State as well as respondent Nos. 3 and 4 have not disputed the detailed judgement passed by the Hon’ble Apex Court with regard to similarly situated employees, but have taken a stand in light of the communication received from the respondent No. 2 stating therein that the family pension is admissible to those employees who were alive on 01.01.2006 were drawing pension on 01.01.2006, whereas as per

reply of respondent Nos. 3 and 4, the respondent No. 2 also sought clarification from the government with regard to above-mentioned judgement passed by the Hon’ble Apex Court, where as per reply of respondent Nos.3 and 4, the State Govt. returned the papers with remarks that issue has not been decided regarding the pensionary benefit for service rendered in P.S.T.C. according to the judgement of Hon’ble Apex Court. The stand of the respondents is without any justification and reasoning and is contrary to the settled proposition of law as decided by the Hon’ble Apex Court in Phulan Rani’s case (supra). Apart from it, the Coordinate Bench of this Court, also disposed of the writ petition bearing CWP No.15772-2005, titled as “Harbans Kaur Vs. State of Punjab and others” vide order dated 20.02.2019 in the same terms as in CWP No. 13555-1994, decided on 09.12.2004.

9. In view of the above, admittedly the case of the petitioners is squarely covered by the aforesaid judgment dated 09.12.2004 (Annexure P-12) passed in Phulan Rani’s case (supra) as upheld by the Hon’ble Apex Court vide judgment dated 17.08.2017 (Annexure P-13), all the above mentioned writ petitions are allowed in the same terms.

10. The pending application(s), if any, also stand(s) disposed of.

(DEEPAK MANCHANDA)

JUDGE

14.11.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No