

RSA-2499-2017 (O&M)

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2023:PHHC:064067

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2499-2017 (O&M)

Date of Decision :03.05.2023

Suresh Devi

....Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sachmeet Singh Randhawa, Advocate for
Mr. Samrat Malik, Advocate for appellant.

Ms. Vibha Tewari, AAG, Haryana.

* * *

Harsimran Singh Sethi, J. (Oral)

The present regular second appeal has been filed by the appellant-plaintiff challenging the judgment and decree of the trial Court dated 18.12.2014 by which, a civil suit filed by the appellant-plaintiff seeking family pension in respect of the services rendered by her late husband namely, Amir Singh has been dismissed as well as judgment and decree passed by the lower Appellate Court dated 07.11.2016 by which, judgment and decree of the trial Court dated 18.12.2014 was upheld.

Certain facts need to be noticed for the correct appreciation of the controversy in question.

The husband of the appellant-plaintiff namely, Amir Singh was appointed as Physical Training Instructor (PTI) in the Government High School Mandola, District Mahendergarh on 31.12.1993. It is the case of the appellant-plaintiff that at the time of joining the service medical fitness of

her husband Amir Singh was checked and after being found medically fit, he joined his duty on the same day. While working on the said post, on 03.02.1994 services of the husband of the appellant i.e. Amir Singh were regularized from the date of joining. Unfortunately, Amir Singh died while in service on 06.02.1994.

After the death of Amir Singh, certain benefits including compassionate appointment were extended in favour of the appellant-plaintiff being a legal heir but the family pension was not extended to her on the ground that Amir Singh did not had required regular service as required under the Pension Rules, 1964 to his credit up to the date of his death.

As the family pension was not extended to the appellant-plaintiff, a civil suit was filed by the appellant-plaintiff claiming family pension in respect of service rendered by her late husband-Amir Singh, which suit was dismissed by the trial Court vide judgment and decree dated 18.12.2014 by appreciating the evidence and facts, which had come on record by recording a finding that no medical certificate has been proved on record so as to hold that at the time of joining the service, Amir Singh was medically examined and found to be fit so as to entitle the appellant-plaintiff for the grant of family pension after the death of her husband-Amir Singh.

Feeling aggrieved against the judgment and decree dated 18.12.2014 of the trial Court, appellant-plaintiff preferred an appeal which appeal has also been dismissed vide judgment and decree dated 07.11.2016 on the same ground. Hence, the present regular second appeal.

Learned counsel for the appellant-plaintiff argues that judgments and decrees of the Courts below are perverse to the evidence and

facts, which had already come on record.

Learned counsel for the appellant-plaintiff, argues that the ground taken for denial of benefit of family pension is that no medical certificate was brought on record to show that at the time of joining the service, husband of the appellant-plaintiff-Amir Singh was medically examined and was found to be fit to join service, whereas, it has already come on record in the statement of PW-5 Shiv Kumar, Clerk from the office of Civil Surgeon, Narnaul, who has categorically stated that as per the record, Amir Singh s/o Sarjit Singh R/o village Mundaheda upon his appointment as PTI was medically examined on 31.12.1993 and found fit which fact has been recorded in the register at Serial No.453. The said original record was also exhibited as Ex.PW-5/A.

Learned counsel for the respondent has not been able to rebut the said argument of the learned counsel for the appellant but submits that in the absence of any medical certificate brought on record, the said statement of the PW-5 was not good enough to record the finding hence, opinion of the Court below that no medical certificate was brought on record to prove the fact that Amir Singh was medically fit at the time of joining service on 31.12.1993, cannot be faulted with.

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

It may be noticed that grant of family pension is regulated under Family Pension Scheme, 1964. Further, in Clause 4(i) of the said scheme, it has been mentioned that in case of death while in service, a Government employee who has worked for a minimum period of one year without break,

he/she is entitled for the benefit of family pension and in case an employee has not been able to complete one year of service up to the date of death but he was medically examined and found fit to join the service still the widow of the said employee will be entitled for family pension. Relevant clause is as under:-

(i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.

Note 1. The term one year continuous service used in para-4(i) above 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 that 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.”

This Court is to examine as to whether keeping in view the rules governing the service, appellant-plaintiff is entitled for family pension keeping in view the evidence and facts, which had come on record before the Courts below.

The statement of PW-5, Shiv Kumar, Clerk, who had appeared from the office of the Civil Surgeon, Narnaul is considered and as per the said statement, Amir Singh was medically examined on 31.12.1993 and

found fit which was duly recorded in the register being maintained by the said department, copy of the said register was also produced and the same was exhibited as Ex.PW-5/A.

That being so, appellant-plaintiff has been able to prove the fact that her late husband-Amir Singh was medically examined and found fit to join service by the department itself, for the reason that it is not denied by the respondent-department that Amir Singh was allowed to join service on 31.12.1993. Only a person, who is medically fit and proves the same at the time of joining, is allowed to join the service. Relevant evidence, which has already on record keeping in view the statement of the prosecution witness PW-5, has been ignored by both the Courts below. Once, it has already come on record that Amir Singh was medically examined and found to be fit to join service, denial of the relief on the ground that medical certificate was not produced, is not correct finding returned by the Courts below and is rather perverse to the evidence on record.

As per the settled principle of law settled by Division Bench of this Court in CWP-10208-1995 titled as Savitri Devi vs. State of Haryana and others decided on 13.03.1996, if an employee dies before completion of one year of service but was found medically fit at the time of joining, widow is entitled for family pension under the Family Pension Scheme, 1964. Relevant paras of the judgment are as under:-

“3. The learned counsel for the petitioner has argued that it was not at all necessary for the deceased to complete one year of continuous service for the grant of family pension. He has further argued that the Family Pension Scheme, 1964 clearly lays down that if an employee was medically fit at the time of entry into Government Service and dies

within less than one year, his dependants would be entitled to the grant of family pension.

4. In order to appreciate the contention raised by the learned counsel for the petitioner, it is necessary at this stage to advert to the relevant provisions as contained in Note-1 to para 4(i) of Appendix 1 to The Punjab Civil Services Rules Volume II (as applicable to Haryana State), relating to Family Pension Scheme, 1964. The said para is reproduced hereinbelow :

"4. This scheme is administered as below : (i) The family pensions is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in Service a Government employee should have completed a minimum period of one year of continuous service without break.

Note 1 : The term one year continuous service used in para 4(i) above 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 regularised 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."

3. The mandate of the aforementioned provision appears to be that in case the Government Servant at the time of entry into service produces a Medical Certificate of Fitness, the family would be entitled to Family Pension even if he dies within less than one year. Concededly, the husband of the petitioner did submit the Medical Certificate of Fitness, Copy Annexure P1.

4. The only interpretation which can be placed upon the Scheme as reproduced above is that even if the deceased

Government employee does not complete one year of continuous service, his dependents would nevertheless be entitled to the grant of family pension provided the deceased was medically examined and found fit and a Medical Certificate of Fitness is produced before entry into Government Service from a competent Medical Officer. The completion of one year continuous service is, therefore, wholly irrelevant in view of the phraseology of the Family Pension Scheme.”

The claim of the appellant-plaintiff is covered by the law settled by the Division Bench of this Court in Savitri Devi’s case (supra).

Keeping in view the facts and circumstances recorded hereinbefore, judgments and decrees of the Courts below are perverse to the evidence and facts on record and are accordingly set aside.

Suit filed by the appellant-plaintiff is allowed. Appellant-plaintiff is held entitled for the grant of family pension from the date of the death of her husband-Amir Singh along with the arrears.

Learned counsel for the appellant-plaintiff submits that though, in the suit interest was claimed but the appellant-plaintiff will be happy to be granted interest from the date of filing of the civil suit i.e. 01.11.2009 onward till the actual arrears are released. Ordered accordingly.

Present regular second appeal stands allowed in above terms.

Any civil miscellaneous application pending is also disposed of.

May 03, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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