

249

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-31933-2019(O&M)
Date of Decision:05.12.2023

HARJINDER KAUR

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Harbans Lal Sharma, Advocate for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The petitioner by way of this Writ Petition claims family pension stating that her husband while in service expired and she was granted the benefit family pension. After the death of her husband, she married the real brother of his late husband and therefore, the family pension was stopped and it was paid to the son of the petitioner which has been stopped after he attained the age of 25 years.

2. Learned counsel for the petitioner submits that the petitioner has approached this Court on the ground that after the death of her first husband, even her second husband (younger brother of her first husband) has expired on 04.06.2012. She, therefore, claims that she has become widow and would, therefore, be entitled to family pension on account of her first husband.

3. The Rule relating to Pensions Rules provides as under:-

“6.17(4)

(4) The pension will be admissible—

*(i) (a) in the case of widow or widower up to the date of death
or remarriage whichever is earlier;*

(b) in the case of a son until he attains the age of twenty-five years or till he starts earning his livelihood, whichever is earlier; and

(c) to a daughter upto the age of twenty-five years irrespective of her marriage. However, an unmarried daughter shall be entitled to family pension irrespective of her age. But, family pension shall not be admissible to a daughter, if she starts earning her livelihood:

Provided that if the son or daughter of a Government employee is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after becoming ineligible for family pension under sub-clauses (b) and (c), the family pension shall be payable to such son or daughter for life subject, to the following conditions, namely:—

(i) if such son or daughter is one among two or more children of the Government employee, the family pension shall be initially payable to the children in the order set out in the sub-rule (3) until the last child becomes ineligible for family pension under sub-clauses (b) and (c) and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him or her as the case may be, for life;

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind or they are physically crippled or disabled, the family pension shall be paid in the following order, namely:—

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the life time of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the life time of the elder;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from

earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out as far as possible, the exact mental or physical condition of the child; (v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continued to suffer disorder or disability of mind or continues to be physically crippled or disabled.”

4. From the perusal of the aforesaid, it is apparent that the family pension is not available to the widow after she gets remarried. The said Rule has not been challenged by the petitioner. It is also noticed that the petitioner has been provided compassionate appointment and she is getting regular salary also.

5. Learned counsel for the petitioner submits that there is no bar on a widow to get family pension who has also been given the benefit of compassionate appointment. The issue in this regard is left open as the same is not a question to be decided in the present case.

6. Learned counsel for the petitioner has placed reliance on the judgments passed by this Court in the cases of **Kamaljit Kaur** Vs. **Union of India**; 1998(1) SCT 312 and **Kiran Kumar** Vs **State of Haryana and Others**; 2004(2) SLR 694. The first one is relating to the services of the Union of India and the other relating to the services under the State of Haryana. In the opinion of this Court, the same will have no relevance as each and every case is to be governed by the specific Rules of the State. The present case is relating to the Punjab Civil Services, would have to be examined in relation to the said Rules alone. The citation of the said judgments is wholly misconceived and the same is rejected.

7. Be that as it may, this Court is satisfied that the claim of the petitioner is not made as she got remarried after she was granted family pension and therefore, the family pension was shifted to the son of the petitioner who received the family pension w.e.f. 2010 to 2017.

8. Merely because her subsequent second husband expired, she cannot claim herself to be reverted back to the position which existed as a widow of her first husband because now, she will be treated as a widow of her second husband. Moreover, he was already in employment. No claim is made out and this Writ Petition is dismissed accordingly.

9. All the pending applications in this Writ Petition stand disposed of accordingly.

December 5, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>