

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106+270)

CM-684-C & 685-C of 2020
CM-3332-C-2022,
CM-3335-C-2022,
CM-2919-C-2022,
CM-3359-C-2021 in/and
RSA-258-2020 (O&M)
Date of Decision : February 16, 2023

Commamnant 3rd Battalion Hry Armed Police and others
.. Appellants

Versus

Smt. Bimlesh .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana,
for the appellants.

Mr. Vimal Kumar Gupta, Advocate, for
Mr. Arjun Dhingra, Advocate, for respondent No.6.

Mr. Devender Kumar, Advocate, for the

HARSIMRAN SINGH SETHI J. (ORAL)

CM-684-C-2020

This is an application under Section 5 of the Limitation Act for
condonation of delay of 319 days in filing the appeal.

Notice of the application was issued to the respondent on
07.05.2022.

Mr. Vimal Kumar Gupta, Advocate and Mr. Devender Kumar,

Advocate appears on behalf of the respondents. No reply to the application

has been filed by the respondent raising any objection for the grant of prayer as raised in the present application.

Keeping in view the facts mentioned in the application, which are duly supported by an affidavit coupled with the fact that even respondent has not raised any objection for the grant of prayer as raised in this application, the same is allowed and delay of 319 days in filing the appeal is condoned.

CM-3332-C-2022

Present application has been filed for early hearing of the main appeal i.e. RSA No.258 of 2020.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of non-applicant/appellants and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the facts mentioned in the application, the same is allowed and the main appeal i.e. RSA No.258 of 2020 is taken up for hearing today.

RSA-258-2020

In the present Regular Second Appeal, the challenge is to the judgment and decree passed by the lower Appellate Court dated 30.10.2018 by which, judgment and decree passed by the trial Court dated 30.01.2016 dismissing the suit filed by the respondent-plaintiff has been set aside and the respondent-plaintiff has been held entitled for 50% of the financial assistance as envisaged under 2006 Rules w.e.f the date the widow

of the deceased got married i.e. 19.12.2014.

Brief facts needs to be stated herein for the correct appreciation of the facts and Rules which have come on record.

In the suit filed by the respondent-plaintiff, she had claimed that her son namely Anil Kumar, who was employed with Haryana Armed Police, unfortunately died after he met with a fatal accident on 03.12.2010. As per the respondent-plaintiff, at the time of the death, deceased Anil Kumar was married to one Sunder Kaur and was blessed with a daughter, who was born about 4 days prior to his death but as the widow of Anil Kumar namely Sunder Kaur re-married on 19.02.2014, hence, after the said date, all the benefits in respect of the service rendered by the deceased employee should be bifurcated in the ratio of 50-50% between the daughter of the deceased and the mother of the deceased i.e. respondent-plaintiff. The civil suit filed by the respondent-plaintiff was dismissed on the ground that there was no such provision under 1964 Rules which makes a parent eligible for the release of benefit either pensionary or the financial assistance which the family of the employee is entitled for under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules 2006 and the suit filed by the respondent-plaintiff was dismissed.

Feeling aggrieved against the judgment and decree of the trial Court dated 30.01.2016, only the respondent-plaintiff No.2 namely Bimlesh filed an appeal, which appeal was partly allowed by the lower Appellate Court vide judgment and decree dated 30.10.2018 and the respondent-plaintiff Bimlesh was held entitled for 50% of the financial assistance as

admissible under 2006 Rules w.e.f. 19.02.2014 when the widow of the deceased employee got remarried. The said judgment and decree of the trial Court dated 30.10.2018 has been assailed in the present Regular Second Appeal.

Learned counsel for the appellants argues that the judgment and decree passed by the lower Appellate Court dated 30.10.2018 has been passed without even appreciating 2006 Rules governing the aspect of release of the financial assistance to the dependent of the deceased employee, which was notified on 01.08.2006 under which, the benefit has been awarded to respondent-Bimlesh. Learned counsel for the appellants further argues that as per the notification dated 01.08.2006 which is already on record, the eligibility to receive the financial assistance under the said rules is the same as envisaged under the pension/family pension Scheme of 1964. Hence, once the parents of only unmarried deceased employees are eligible for the said benefit, granting of the benefit of financial assistance to the tune of 50% in favour of the respondent-plaintiff who claimed the said benefit being the mother of the deceased, was totally contrary to the 2006 Rules governing the said issue, hence, the findings recorded by the lower Appellate court are contrary to the rules governing the service and are perverse and are liable to be set aside and the judgment and decree of the trial Court by which the suit filed by the respondent-plaintiff be maintained.

Learned counsel for the respondents submits that being the mother of the deceased and being a legal heir of the deceased, she was entitled for the benefit of 50% of the financial assistance after the widow of the deceased got married, hence, there is no infirmity in the judgment and

decree passed by the lower Appellate Court dated 30.10.2018 and the same may kindly be maintained and Regular Second Appeal filed by the appellant may kindly be dismissed.

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

The question which is to be decided in the present Regular Second Appeal is whether the claim of the respondent-plaintiff for the grant of 50% of assistance is admissible under 2006 Rules, as awarded by the lower Appellate Court is inconsonance with 2006 Rules or not.

Before proceeding further, Haryana Compassionate Assistant to the Dependents of Deceased Government Employees 2006 Rules needs to be reproduced hereunder for the ready reference:

“ 1. (1) These rules may be called the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006.

(2) They shall come into force at once.

2. The object of the rules is to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance.

3. The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/family pension scheme, 1964.”

A bare perusal of the above would show that for assessing the eligibility, the definition of family as given in the pension/family pension Scheme of 1964 is to be made applicable.

The definition of family as given in 1964 Family Pension

Scheme is as under:-

“(ii) Family for the purpose of this scheme includes the following relatives of the officer:-

- (a) wife, in the case of a male officer;*
- (b) husband, in the case of a female officer;*
- (c) minor sons;*
- (d) unmarried minor daughters;*
- (e) widowed/legally divorced daughters; and*
- (f) the parents of an unmarried officer.”*

A bare perusal of the above would show that the parents of the unmarried deceased officer are only eligible. Where the deceased was married, in case of a female officer, her husband is entitled and in case of a male officer, the widow is entitled, minor son and minor daughters are entitled and even the widow and legally divorced daughters are also entitled for the financial assistance under 2006 Rules. Parents of the deceased employee are only entitled in case the deceased employee was un-married, which clearly shows that in the facts and circumstances of the present case, where concededly deceased Anil Kumar was married and was also having a minor daughter, the parents i.e. respondent-plaintiff, who is the mother of the deceased, was not entitled for any benefit under 2006 Rules under which financial assistance is to be paid. After the widow of the deceased employee remarries, the minor daughter will be entitled for 100% assistance under 2006 Rules, which benefit cannot be taken away from the minor so as to be extended to the mother of the deceased.

The lower Appellate Court while passing the judgment and decree dated 30.10.2018 has totally ignored the provisions of the said 2006 Rules under which the benefit was being granted rather benefit under 2006

Rules has granted the benefit of financial assistance on the basis of the succession. The lower Appellate Court totally misread the 2006 Rules under which the financial assistance is to be paid to the family of the deceased, according to which, the definition of the family which will be entitled for the benefits under 2006 Rules is in accordance with pension/family pension Scheme 1964 and parents of unmarried deceased employee are not entitled for the benefits. The findings of the lower Appellate Court are totally perverse to 2006 Rules as the same has been rendered without even going through the relevant rules for which the benefit was being extended to the respondent-plaintiff, hence, the findings and the order passed by the lower Appellate Court cannot be sustained in the eyes of law and are accordingly set aside.

Even otherwise, the question whether the parents of the deceased employee are entitled to get family pension under 1964 Scheme, has already been settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.9823 of 2016 titled as Nitu vs. Sheela Rani and others, decided on 28.09.2016***. The Hon'ble Supreme Court of India has held that the definition of “family” does not include mother when the deceased employee is married. The relevant paragraph of the judgment in ***Nitu's case (supra)*** is as under:-

“16. So far as the respondent mother is concerned, she has not been included in the definition of the terms “family” for the reason that as per the provisions of sub-clause (f), parents of an unmarried officer would be a part of the family and therefore, the respondent mother would not be included in the family of late Shri Yash Pal as he was married.

17. So far as the provisions of the Hindu Succession Act,

1956, are concerned, it is true that the properties of a Hindu, who dies interstate would first of all go to the persons enumerated in class I of the schedule as per the provisions of Section 8 of the said Act and therefore, so far as the properties of late Shri Yash Pal are concerned, they would be divided among the respondent mother and the appellant wife, provided there is no other family member of late Shri Yash Pal alive, who would fall within class I heirs, but position in this case, with regard to pension, is different.

18. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this court in the case of Violet Issaac (Smt.) vs. Union of India (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.”

Keeping in view the above, the judgment and decree of the lower Appellate Court dated 30.10.2018 is not only against 2006 Rules but also against the settled principle of law noticed hereinbefore, hence, same cannot be sustained and is accordingly set aside. The judgment and decree

of the trial Court dated 30.01.2016 is brought in operation.

The Regular Second Appeal is allowed in above terms.

As the main appeal is allowed, pending applications i.e CM-685-C of 2022, CM No. 3335-C of 2022, 3359-C of 2021 and 2919-C of 2022, also stand disposed of.

February 16, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No