

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(218)

CWP No. 1398 of 2019
Date of Decision : 07.02.2024

Divya

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Ashutosh Kaushik, Advocate for the petitioner.
Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.
Mr. Abhishek Bansal, Advocate for
Mr. Ravinder Malik (Ravi), Advocate for respondent No. 6.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the petitioner is claiming the service benefits in respect of the service rendered by her father as well as ex-gratia benefits after the death of her father in preference to respondent No. 6, who is the grandmother of the petitioner i.e. mother of the deceased employee.
2. As per the facts mentioned in the petition, the father of the petitioner, namely, Sh. Mukesh Kumar unfortunately died while in service on 07.08.2018. At the time of the death, Mukesh Kumar had already taken divorce from his wife, namely, Parveen Kumari, who was already living separately and father of Mukesh Kumar, namely, Dharampal was a shopkeeper and respondent No. 6, who is the mother of the deceased employee, was already a pensioner being a retired government servant.

3. Keeping in view the fact that father and mother of the petitioner were divorced on 09.02.2017 i.e. before the death of Mukesh Kumar, the petitioner claimed the service benefits in respect of the service rendered by her father including the family pension and also the ex-gratia financial assistance, which is available to the dependents of the deceased employee.

4. Learned counsel for the petitioner submits that none of the service benefits has been given to the petitioner on the ground that mother of the petitioner though divorced wife but was alive and she is the only one, who can claim the said benefits.

5. Learned counsel for the petitioner argues that the said stand taken by the respondent-department is contrary to the rules governing the service, wherein, only the separated wife is entitled for the service benefits and not a divorced wife and as there is no other claimant except the petitioner, being the daughter of the deceased employee, the petitioner was entitled for all the service benefits including the family pension upto the age of 25 years.

6. Learned counsel for the respondents submits that only a representation was submitted by the petitioner but no prescribed form to receive the said benefits was ever filled by the petitioner.

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

8. The question which arise for adjudication before this Court is whether, the petitioner who is the daughter of the deceased employee, is entitled for the service benefits being claimed or the divorced wife of the

deceased employee had a preferential right over the petitioner to claim the said benefits.

9. The aspect of grant of family pension is covered by the Haryana Civil Services (Pension) Rules 2016, which rules were applicable on the date of death of the employee. The same has been reproduced by the respondents in their reply in paragraph 6, which are also reproduced hereunder for the ready reference :-

“6. That State Government vide notification dated 19.07.2016 notified the Haryana Civil Services (Pension) Rules, 2016 wherein definition of family is defined in Rule 8(10) of Chapter II, which is reproduced as under :-

(10) “family” means-

(A) for the purpose of death-cum-retirement gratuity means-

1(a). wife or wives (wherever permissible under personal law) including judicially separated wife or wives, in the case of male Government employee;

1(b). husband including judicially separated husband in the case of female Government employee; Provided that if she by notice in writing to the Head of office expresses her desire to exclude her husband from her family, the husband shall henceforth be deemed to be no longer a member of the employee’s family in matters to which these rules relate, unless the employee subsequently cancels such desire by express notice in writing to the Head of office;

1(c). sons and daughters including legally adopted children, widowed/divorced daughter(s);

1(d). widow(s) of predeceased son provided not remarried, otherwise the children of predeceased son in equal shares;

2(a). failing (1) above, brother(s) below the age of 18 years, dependent un-married/widowed/divorced sister(s);

- 2(b). *failing (1) and 2(a) above, mother, including adoptive/step mother in case of individuals whose personal law permits adoption;*
- 2(c) *failing (1) and 2(a) & (b) above, father including adoptive/step father in case of individuals whose personal law permits adoption;*
3. *failing (1) & (2) above, major brother(s) and sister (s).*

Notie 1.- *For the purpose of this rule, wife means legally wedded wife of deceased Government employee.*

Note 2.- *Divorce by the Panchayat or Social Organizations shall constitute a legal divorce. not*

Note 3.- *Son/daughter includes children legally adopted under the Hindu Law or personal law of the Government employee residing with and wholly dependent upon his/her parent but does not include step children.*

(B) *for the purpose of family pension means-*

- (i)(a) *widow (widows wherever permissible under personal law) or widower, upto the date of re-marriage or death, whichever is earlier;*
- (i)(b) *judicial separated wife husband of a Government employee, deceased such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery:*
- (i) (c) *childless widow of a deceased Government employee who has got remarried independent provided income from her all other sources is less than the minimum prescribed family by pension State the Government from time to time plus dearness relief thereon. In all such cases, she shall be required to give a declaration regarding her income from all other sources to the Pension Disbursing Authority once in a year in the month of March;*
- (ii) *failing (1) above, the eldest unmarried and dependent son(s) or daughter(s) upto the age of 25 years;*

- (iii) failing (i) and (ii) above, the dependent eldest divorced or widowed daughter(s) upto the age of 25 years, upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever is the earliest provided she should have been widowed or divorced before the date of expiry of eligibility of other existing family member for family pension:*
- (iv) failing (i) to (iii) above, the dependent amongst eldest unmarried/ daughter widowed/ divorced daughters of above 25 years upto the date of her marriage/re-marriage or till the date she starts earning livelihood, whichever earlier. In case of widowed/divorced daughter, she is widowed/ divorced before the date of expiry of eligibility of other family member for family pension;*
- (v) failing (i) to (iv) above, son and daughter suffering from disorder or disability of mind physically crippled disabled irrespective of his/her age provided they were wholly dependent upon the Government employee when he/she was alive:*
- (vi) failing (i) to (v) above parents who were wholly dependent on the Government employee when he/she was alive provided their present combined income is less than the minimum family pension, prescribed from time to time, plus dearness relief thereon:*
- (vii) failing (i) to (vi) above, unmarried physically disabled sibling (brother and sister) provided they were wholly dependent upon the deceased Government employee when he/she was alive;*

Note 1.- For the purpose of this rule, “widow” means legally wedded wife of deceased Government employee;

Note 2.- Divorce by the Panchayat or Social Organizations shall not constitute a legal divorce;

Note 3.- Son/daughter includes children legally adopted under the Hindu Law or personal law of the Government employee residing with and wholly dependent upon his/her parent but does not include step children;

Note 4.- *Dependent childless widow, children or parents who is drawing family pension shall submit a certificate to the pension disbursing authority once after every six months regarding their income, if any. Guardian shall also submit certificate on behalf of eligible family member regarding his income, if any;”*

10. As per the provisions of 2016 Rules, only a legally wedded wife of a deceased employee is entitled for the service benefits as well as family pension in preference to the other claimants including the children of the deceased employee. It may be mentioned that even a judicially separated wife is also entitled for the service benefits including the family pension in case, the judicial separation is not on the ground of adultery.

11. In the present case, the action of the respondents in treating a divorced wife equivalent to a judicially separated wife is totally incorrect. The respondents are adding word ‘divorced wife’ to the Rule, which is not mentioned in the 2016 Rules. It is a settled principle of law that no word can be added to a Rule to change the intention of the legislation.

12. Once only a judicially separated wife has been made entitled for the service benefits in preference to the children of the deceased, the interpretation being given by the respondents that even the divorced wife will be covered by the said Rules is totally incorrect and false.

13. It is not disputed by the respondents that the deceased Mukesh Kumar and his wife had already taken divorce much before the death of the employee hence, the children are next in line for entitlement of the service benefits and it is also come on record that the petitioner is the only child of the late Mukesh Kumar. That being so, she was entitled for all the service

benefits including the ex-gratia financial assistance as well as the family pension upto the age of 25 years as envisaged under the Rules.

14. It may be noticed that after the petitioner attains the age of 25 years, there only the claim of mother of the deceased employee i.e. respondent No. 6 for the grant of family pension has to be considered in case she claims the said benefit.

15. Keeping in view the above, the present petition is allowed. The respondents are directed to grant the petitioner all the benefits in respect of the service rendered by late Mukesh Kumar including the family pension and ex-gratia financial assistance. The petitioner will also be entitled for the family pension upto the age of 25 years and thereafter, in case respondent No. 6 raises her claim for the grant of family pension, the same be adjudicated and appropriate order be passed. Let the respondents release all the service benefits in favour of the petitioner within a period of four weeks from the date of receipt of copy of this order. Respondents will get all the formalities completed from the petitioner within the time frame granted so as to release all the entitled benefits to the petitioner.

February 7th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No