IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

299 **CWP-1604-2023 (O&M)**
Date of Decision :11.12.2024

Kulwant Kaur **...Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Jagdish Singh Mahal, Advocate for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

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Harsimran Singh Sethi, J. (Oral)

Learned counsel for the petitioner argues that the petitioner married Balwinder Singh, who was working with the respondent-department.

As per the petitioner, Balwinder Singh was married to one Amarjit Kaur, who unfortunately died on 21.08.1989 and after the death of Amarjit Kaur, Balwinder Singh married petitioner Kulwant Kaur. Balwinder Singh retired from service on attaining the age of superannuation on 31.01.2013 and thereafter, he died as pensioner on 16.01.2016.

Petitioner raised a claim for the grant of family pension but the respondents only granted the benefit of family pension to the tune of 50% of the entitlement on the ground that as the petitioner is a second wife, 50% of the family pension will be ceased as there is no claimant from the first marriage of Balwinder Singh.

Learned counsel for the petitioner submits that the issue whether 100% family pension is to be given to the surviving legal heir or not, has already been settled by this Court while passing order in ***CWP-21138-2017 titled as Ravinder Kaur vs. State of Punjab and others, decided 09.7.2019*** wherein, it has been held that the surviving member of the family will get 100% family pension and ceasing of the same to the tune of 50% is bad.

Leaned counsel for the respondents submits that as per the rules governing the service, once, the deceased employee was married more than once, benefit of family pension is to be divided between the two families of the deceased employee and if one of the claimant dies, the share of the said claimant gets ceased and cannot be transferred to other claimant.

Learned counsel for the respondents concedes the factum that keeping in view the fact that there was no other surviving member except the claimant, this Court has already allowed 100% family pension while deciding the claim in ***Ravinder Kaur (supra).***

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

The issue whether the surviving member will be entitled for 100% family pension or 50% will cease, is no longer res integra. As per the judgment of this Court in ***Ravinder Kaur (supra),*** a surviving member will be entitled for 100% of the family pension. Once, the law has already been settled on the issue and was noticed when the petitioner earlier approached this Court by way of filing CWP-4822-2022, still the respondents declined the said claim and that too by citing a reason that pension is being paid by the bank and not by the department.

It may be noticed that the Bank is only paying the pension which the department sanctions. The sanctioning of the pension by the administrative department is must before the bank releases the same hence, the action of the respondent rejecting the claim of the petitioner on a frivolous ground that too without noticing the settled principle of law settled by this Court in ***Ravinder Kaur (supra)*** is arbitrary and illegal. Relevant paragraph of the judgment is as under:-

> 8. "The only question of law arising for determination in this writ petition is as to whether, the share of the first wife will be transferred to the second wife after the legal heirs of the first wife becomes ineligible to receive family pension, keeping in view the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II. The said question has already been decided by the Hon'ble Division Bench of this Court while deciding ***LPA No.1434 of 2014, titled as The State of Punjab and others Vs. Harpal Kaur, on 01.09.2014***. In the said case, the same objection was taken by the respondents that as per Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II, the share of the first wife ceases when the minor children who were granted the benefit of family pension after the death of the first wife, becomes ineligible for the grant of family pension. After considering the said Rule, this Court has held that 100% share of the family pension is to be given to the legal heirs and any portion of the same cannot be retained by the Government. The Division Bench has held that in case, the children of the first wife on attaining the age of 25 years become ineligible for the grant of the family pension, the said share is to be transferred to the other eligible legal heirs, which could be the second wife or the parents as the case may be and the same does not cease. The relevant portion of the said judgment is as under:-
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> *"In this case, Jit Singh was an employee of the Punjab Government. He died in harness on February 15, 2004, leaving behind one son from his pre-deceased wife and one son born to respondent Harpal Kaur (the second wife). In accordance with the provisions of Rule 6.17 of the Punjab Civil Service Rules Volume II (hereinafter referred to as `the Rules'), the respondent and son of pre-deceased wife of the deceased employee were granted family pension in equal share. The son of pre-deceased wife of the deceased employee attained the age of 25 years on October*

28, 2005 and as per the instructions dated March 07, 2005 (Annexure P-3) issued by the appellants, payment of half share of the family pension was stopped to him with effect from October 29, 2005. At that stage, the respondent moved an application (Annexure P-5) to the Accountant General, Punjab (appellant No.4 herein) for grant of full family pension, in view of Note 1 and 2 of Rule 6.17 of the Rules, which read as under :

"Note 1 – When a government employee is survived by more than one widow the pension will be paid to them in equal shares. On the death of the widow her share of the pension will become payable to her eligible minor child. If at the time of death widow leaves no eligible minor child, the payment of her pension shall cease.

Note 2 – When a government employee is survived by a widow but has left behind eligible minor child from another wife, the eligible minor child will be paid the share of the pension which the mother would have received if she had been alive at the time of the death of the government employee."

The claim of the respondent was rejected by the appellants on the ground that after attaining the age of 25 years, the right of son of the pre-deceased wife of the deceased employee to draw 50% of the family pension ceased and the said share could not have been granted to the respondent. This interpretation was given by the appellants in view of Note 1 and 2, as quoted above. The contention of the appellants is without any substance and the same cannot be accepted, as earlier in the similar circumstances, exactly the similar Rule was interpreted by a Division Bench of this Court in the case of Ram Dulari versus State of Haryana and others (CWP No. 3359 of 2008, decided on July 03, 2009). Copy of thejudgment rendered in the said case was annexed with the writ petition as Annexure P-1. In that case, it was held that widow of the deceased employee, in absence of any eligible heir from her and from the first wife of the deceased employee, is entitled to get full family pension. The observations of the Division Bench read as under :

"11. The argument of the respondents is wholly misconceived when they argued that according to Note (I) of sub-clause (iii) of clause 4 of the 'Pension Scheme' once the minor children have stopped getting their share on account of attaining majority then the 50% share wouldcease. A perusal of Note (i) would show that the aforesaid provision is applicable only in a case where an employee is survived by more than one widow. In the present case there was only one widow on the date of death of Shri Mehar Singh. It has come on record that Shri Mehar Singh died on 27.8.1980 and his earlier wife Smt. Sona Devi had predeceased him in the year 1976 leaving behind three children, namely, Raj Singh, Manju Rani and Braham Singh, who were born on 5.1.1972, 20.3.1974 and 13.5.1974 respectively. Then he married the petitioner. It is further appropriate to mention that the petitioner also had a minor child, namely, Megh Raj, who was born on 8.12.1980. Therefore, Note (i) would have no application in the absence of at least two widows.

The present is a case of one widow who had a minor child of her own and three minor children of her husband, born out of his wedlock with Smt. Sona Devi, who had predeceased him. The respondents have totally misdirected themselves in applying Note (i) to the case of the petitioner whereas the matter is covered by Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme', which does not contemplate ceasing of pension. Therefore, there is no substance in the argument of the respondents and the same is rejected.

12. For the reasons aforementioned, this petition succeeds. Order dated 17.7.2007 (P-7) passed by the Director General of Police respondent No. 2 is set aside.

The respondents are directed to release 50% share of the family pension to the petitioner, which was being paid to the minor children of deceased wife of Shri Mehar Singh, namely, Smt. Sona Devi, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner shall also be entitled to all the arrears with effect from May 2001 till date along with interest at the rate of nine percent per annum."

Learned counsel for the appellants argued that even after the said judgment, in the State of Punjab, there is dichotomy about the interpretation of the aforesaid provisions. But we do not find any dichotomy in Punjab also, because the Punjab Civil Service Rules are exactly the same, and the situation as well as the facts and circumstances in Ram Dulari's case (supra) were also exactly the same. The reason is obvious. On the date of death of the deceased employee, his eligible dependents are to be identified, to whom the family pension is to be granted. If from the pre-deceased wife, children are there, they are eligible legal heirs and are entitled to get family pension till they attain the age of 25 years. In the instant case, son of the pre-deceased wife of the deceased employee being eligible legal heir was entitled to have family pension upto the date of his attaining the age of 25 years and thereafter, his share was to be restored or to be given to the remaining legal heirs of the deceased employee. In this case, widow of the deceased employee and her son survive and both of them are entitled to have family pension in equal shares. In any case, the State is liable to pay 100% family pension, which can be shared by any number of legal heirs of the deceased employee, but the State cannot retain the share of one legal heir on the ground that he has attained the age of 25 years and his right to have family pension has ceased. The family pension is an estate of the legal heirs of the deceased employee. The apportionment of the family pension of a deceased employee is not the business of the State. Right in the family pension will devolve according to the Hindu Succession Act, 1956. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge ."

9. Counsel for the respondents is unable to distinguish the present case from the decision of the Division Bench in LPA No.1434 of 2014 decided on 01.09.2014. Division

> Bench of this Court interpreted the Note (I) below Rule 6.17 (4) of the Punjab Civil Services Rules Volume-II while giving the finding that the family pension is estate of the legal heirs of the deceased employee and hence cannot be ceased in any manner by the State as the State is liable to pay 100% family pension which can be shared by any number of the legal heirs of the deceased employee but the State cannot retain the same on the ground that one of the recipients of the family pension has become ineligible and therefore, the same is ceased and cannot be transferred to the other legal heirs."

Keeping in view the same, impugned order is set aside, The petitioner is held entitled for 100% family pension from the date her late husband died along with arrears. As there was no valid justification in declining the petitioner benefit, petitioner will also be entitled for interest on the arrears of family pension which will be paid under this order from the date the petitioner became entitled for the release of the 100% family pension i.e from the date of death of her husband till the actual payment of the same.

Present petition is allowed in above terms.

Civil miscellaneous application pending, if any, is also disposed of.

December 11, 2024 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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