



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

251

CWP-3128-2022(O&M)
Date of decision: 13.11.2024

Liza Paul

...Petitioner

Versus

National Insurance Company Limited and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Subhash Ahuja, Advocate for the petitioner.

Mr. Paul S. Saini, Advocate for the respondents.

AMAN CHAUDHARY, J. (Oral)

1. Prayer made in the present petition is for quashing the impugned order dated 30.12.2021, Annexure P-12 and directing the respondents to release the family pension of the petitioner.

2. Learned counsel contends that the claim of the petitioner has been denied on the solitary premise that her name does not figure in the list of “family” declared by Lajpat Rai Yadav, her father, in the nomination form so submitted; to which in accordance with the pension scheme, the respondents submit that they were not aware of him having solemnized a second marriage during the subsistence of his first and he states that the case in hand is squarely covered by the judgment of this Court in **Ritika and another vs. State of Haryana and others**¹, against which no appeal was filed, relevant paras of the same read thus:

“8. The only question of law, which needs to be determined in the present writ petition as to whether, the



children who are born out of void marriage, will be entitled for the benefits in respect of the service rendered by their mother or not?

9. Under the Hindu Marriage Act, 1955, the children, born out of a void marriage, have been treated to be as legitimate. Section 16 of the Hindu Marriage Act, 1955 is as under:-

"16. Legitimacy of children of void and voidable marriages.-

- (1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
- (2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
- (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."

10. A bare perusal of the above would show that the children of void and voidable marriages have been held to be the legitimate children and therefore, for all intents and purposes, both the petitioners, who are minors, are to be treated as the children of Smt. Neero Devi.

11. Once, the children born out of a void and voidable marriage are legitimate, then, those children are entitled for the benefits in respect of the service rendered by their mother/father, as the case may be.

12. In the present case, the claim of the petitioners, who are minors, is only in respect of the service which their mother Smt. Neero Devi rendered with the Haryana Police before she died. Their entitlement to be seen under the



provisions of Rules of 2006 as well as the Scheme of 1964, under which they are claiming benefits in the present writ petition.

13. Under Scheme of 1964, the 'family' has been defined and under the 'family', minor sons and unmarried minor daughters, are held to be entitled for the benefits of family pension, which is clear from Clause (4)(ii) of the 1964 Scheme, which is reproduced hereunder for the ready reference: -

[(ii) "Family" for the purposes 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."

14. Therefore, both the petitioners fit in the abovesaid definition for their entitlement for the grant of family pension after the death of their mother.

15. Similarly, under Rules of 2006, eligibility to receive the financial assistance is similar as that of in the Scheme of 1964. The relevant Rule 3, which deals with the eligibility, is as under:-

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

16. A bare perusal of the above would show that if a person is entitled for family pension under Scheme of 1964, he/she is entitled for the benefits under Rules of 2006 as well.

17. Keeping in view the above proposition, both the petitioners are entitled for the benefits under Rules of 2006 as well as Scheme of 1964 for the grant of benefits in respect of the service rendered by their mother Smt. Neero Devi.

18. Hon'ble the Supreme Court of India in case Rameshwari Devi Vs. State of Bihar and others, 2000(1) RSJ 580, has held that even the children born out of the second marriage during the subsistence of the first marriage, will be entitled for the benefits of family pension. The relevant paragraph of the judgment is as under:-

"It cannot be disputed that the marriage between Narayan Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow



and son. Among the widow and son, they all get equal shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narayan Lal, her marriage with Narayan Lal being void. Sons of the marriage between Narayan Lal and Yogmaya Devi being the legitimate sons of Narayan Lal would be entitled to the property of Narayan Lal for equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narayan Lal. Each would, therefore, would get 1/6th share in the property of Narayan Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment."

19. The case of the petitioners is squarely covered by the above said judgment for the grant of the benefits in respect of the service rendered by their late mother.

20. In view of the above facts, the present writ petition is allowed. Petitioners are held entitled for the benefit under Rules of 2006 as well as Scheme of 1964 from the date of the death of their mother Smt. Neero Devi.

21. Let the benefits for which the petitioners becomes entitled for be computed by the respondents within a period of two months from the date of receipt of certified copy of this order. Thereafter, whatever the petitioners becomes entitled for, will be released to them within a period of next two months.

22. Counsel for the respondents argues that the present writ petition has been filed by the minors through their legal guardian Sh. Sandeep Singh and case of Sh. Sandeep Singh was already rejected by the Government of Haryana. Therefore, in order to safeguard the interest of two minor children, certain conditions be laid down in this order itself.

23. Counsel for the petitioners has no objection to lay down of the conditions for safeguarding the interest of the minors so that amount to be paid under this order is only spent on the welfare of the minors.

24. It is directed that the amount for which minors will become entitled for under this order and also interest accrued thereon shall only be used for the welfare of the minor children and not for any other purpose and shall be deposited in FDR in a Nationalized Bank with the instructions that in case any amount is needed for welfare



of the children, the same can only be withdrawn after due permission from the District & Sessions Judge, Sonapat, in whose jurisdiction the petitioners are presently residing keeping in view the address given by them. Further, the District & Sessions Judge, shall pass the appropriate orders after satisfying as to whether the amount so being asked for is to be used for the interest and benefit of the children. Writ petition is allowed in the above terms.”

3. It would be beneficial to refer to the judgment of this Court in **Hira Singh vs. State of Punjab**², wherein it was held that, “A perusal of the above would show that as per Note-I clause (b), the only requirement as far as relation of a person to be 'dependent family member' would be 'son' which includes an 'adopted son'. As per the reply filed by the respondents, it is not disputed that the petitioner was born out of the wedlock between Santa Singh and Smt. Joginder Kaur. He is, therefore, natural son of deceased Santa Singh. The objection, which has been raised, with regard to the second marriage of Santa Singh that Smt. Joginder Kaur, which is termed as void also cannot be an impediment so far as the claim of the petitioner for being a son, is concerned, and that too under the policy/instructions dated 21.11.2002. It is not disputed by the respondents that there is no child born out of the first marriage between Santa Singh and Smt. Jaggo Bai. If that be so, except for the children who were born out of the second marriage of Santa Singh with Joginder Kaur, there cannot be any other claimant to be considered for appointment on compassionate grounds. Admittedly, Smt. Joginder Kaur and Smt. Jaggo Bai are illiterate and, therefore, cannot be considered for appointment on compassionate grounds. It needs to be added here that Smt. Jaggo Bai has also given an affidavit dated 20.10.2006 (Annexure P-13) that she has no objection, in case the petitioner, who is son of Santa Singh, is given



appointment in place of Santa Singh on compassionate grounds. Keeping in view the requirement of the policy instructions dated 21.11.2002, which does not qualify a son to be born out of a legal marriage it cannot be disputed or it cannot be said that the petitioner is not son of Santa Singh. If that be so, merely because he is born out of the wedlock, which is not in accordance with law, cannot be a ground for denying him the benefit of the policy instructions dated 21.11.2002. Further, under Section 16 of the Hindu Marriage Act, 1955 children of a void marriage are legitimate and under the Hindu Succession Act, 1956 also such children are entitled to a share in the property of their father. This view has been fortified by Hon'ble Supreme Court judgment **Rameshwari Devi v. State of Bihar and others** reported as 2000(1) RSJ 580 wherein it has been held that children born out of second marriage are entitled to share in the family pension also.”

4. Insofar as the undertaking by the petitioner is stated to have been given is concerned, reliance has been placed on the judgment in **G.L. Bhatia vs. Union of India and another**³, wherein Hon'ble the Supreme Court had held thus:

“1. Leave granted.

2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory



provisions, the individual nomination contrary to the statute will not operate.

3. Under Rule 54 sub-rule (14)(b)(i) the expression "family" has been defined thus:

"54. (14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant?"

4. Sub-rule (8) (ii) of Rule 54 states that:

"54. (8)(ii) If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant.

The impugned order is, accordingly, set aside and this appeal stands allowed."

5. Learned counsel for the respondents despite his best efforts is unable to controvert the factual position and draw out any distinctive aspects in the aforementioned judgments or cite any contrary law.

6. In wake of the above, the present petition is disposed of in terms of **Ritika and another** (supra).

(AMAN CHAUDHARY)
JUDGE

13.11.2024
Hemant

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