



CWP-3510-2020

1

(216) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3510-2020

Date of Decision: 27.05.2024

VIKAS KUMAR

...Petitioner

Vs.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM:- HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Randeep Singh, Advocate for
Mr. H.S.Oberoi, Advocate for respondent No.4.

Mr. Rohit Arya, DAG, Haryana with
Mr. Ravi Partap Singh, DAG, Haryana.

TRIBHUVAN DAHIYA, J. (Oral)

The petition has been filed seeking a writ of *certiorari* quashing the order dated 14.02.2019, Annexure P-4, passed by the second respondent whereby the petitioner's claim for family pension has been rejected. Further, a writ of *mandamus* has been sought directing the respondents to release family pension with effect from 24.09.2012, with interest up to attaining twenty five years of age.

2. The petitioner's father was an ex-serviceman, who retired from military service on 04.07.1970, and was released military pension. Thereafter, he joined the respondent-Department on the post of Barkandaz on 27.09.1971, and was promoted to the rank of Daffedar. After superannuation from service on 31.07.1987, he adopted the petitioner as son vide registered adoption deed dated 01.03.2000, and later died on



26.01.2011. The petitioner claimed family pension from the Department, which was not granted without citing any reasons. This led to serving a demand notice on the respondents, dated 05.01.2019, Annexure P-3. It was replied to vide impugned communication dated 14.02.2019, Annexure P-4, that there was no provision for dual family pension for a son or daughter as the same was admissible only to widow/widower. In this background, the petitioner approached the Court by filing the instant petition.

3. In the written statement filed on behalf of respondents, the petitioner's claim for family pension has been contested on the ground that at the time of petitioner's father's demise, the Family Pension Scheme, 1964, was applicable. Rule 4(ii), Note 1, of the scheme clearly prescribes that family pension in case of an adopted child can only be granted where the adoption takes place before the employee's retirement. Since the petitioner was undisputedly adopted post- retirement, he could not be given dual family pension.

4. Learned counsel for the petitioner contends that a Division Bench of this Court in CWP-15387-2017 titled *Raj Bala v. State of Haryana and others*, decided on 11.05.2022, has struck down Note-I of clause (d) of sub-rule (ii) of Rule 4 of the Family Pension Scheme, 1964 (as applicable to the State of Haryana). Therefore, the family pension cannot be denied to the petitioner.

5. Learned State counsel is not in a position to distinguish the Division Bench judgment *vis-a-vis* facts of the instant case.

6. Heard.

7. The only ground on which the petitioner's claim for family pension has been declined by the respondents is, Note-I of clause (d) of sub-



rule (ii) of Rule 4 of the Family Pension Scheme, 1964, (as applicable to the State of Haryana). The provision has already read down in *Raj Bala* case *ibid*, holding that there cannot be any discrimination in granting family pension to legally adopted children merely on account of date of adoption, and the children who are adopted post-retirement cannot be deprived of the benefit. The relevant paragraphs of the judgment read as under:

In the present case, there is no such dispute regarding the validity of the adoption and that it is a registered adoption deed. The succession certificate has been duly issued in favour of the petitioner by a Court of competent jurisdiction. It is apparent that the State has also become wiser when it notified Rules of 2016 wherein, it has done away with the discriminatory provisions as such and granted the benefit to the legally adopted children irrespective of the fact that whether the adoption was before or after retirement.

Accordingly, the writ petition is allowed. Note-1 of Clause (d) of Sub-rule (ii) of Rule 4 of the Family Pension Scheme, 1964 (as applicable to the State of Haryana) is read down in as much as it qualifies the adoption with period of time and the order dated 30.03.2017 is quashed.

In view of the settled position of law and Note-I of clause (d) of sub-rule (ii) of Rule 4 of the Scheme having been read down, the petitioner becomes entitled to the benefit of family pension.

8. Resultantly, the petition is allowed and the impugned communication dated 14.02.2019, Annexure P-4, is set aside. Respondents are directed to release family pension to the petitioner from the date of his father's demise, i.e., 26.01.2011, up to attaining the age of twenty-five years, and release the arrears thereof with interest at the rate of six per cent per annum from the due date to actual payment. The direction is to be carried



CWP-3510-2020

out within a period of four weeks from the date of receiving a certified copy
of the order.

(TRIBHUVAN DAHIYA)
(JUDGE)

27.05.2024

kv

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