

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(101) CM-1305-C-2024 in/and
RSA-906-2003
Date of Decision : April 02nd 2024

State of Haryana and others .. Appellants

Versus

Ram Kali .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Harish Nain, Assistant Advocate General, Haryana,
for the non-applicant/appellants.

Mr. Pawan Kumar Hooda, Advocate,
for the applicant-respondent.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-1305-C-2024

Present application has been filed for fixing the main Regular
Second Appeal at an early actual date, which is pending for the last more
than two decades.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General, Haryana,
who is present in the Court, accepts notice on behalf of
non-applicant/appellants. He raises no objection for the grant of prayer as
made in the present application.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the application is allowed.

On joint request of learned counsel for the parties, the main
Regular Second Appeal is taken up for hearing today itself.

RSA-906-2003

1. Present appeal has been filed by the State of Haryana challenging the judgments and decrees of the Courts below by which, the suit filed by the respondent-plaintiff for the grant of pension has been allowed.

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. The husband of respondent-plaintiff namely Umed Singh was working as Beldar on work charge basis with the Irrigation Department, Haryana and while in service, he unfortunately died on 13.01.1981. Thereafter, as per the evidence, which has come on record, the respondent-plaintiff married the brother of the deceased namely Ved Pal. After a period of 17 years of the death of Umed Singh, the respondent-plaintiff filed a civil suit claiming the benefit of family pension. The said civil suit has been allowed by the trial Court vide judgment and decree dated 04.06.2001 holding that to claim the family pension, there is no limitation provided as the same is a continuous wrong and further held that despite the fact that the respondent-plaintiff had married the brother of the deceased, as she remained in the same family, the benefit of family pension is admissible to the respondent-plaintiff. The family pension was allowed along with arrears @ 18% per annum.

4. Feeling aggrieved against the said judgment and decree, the State filed an appeal, which also came to be dismissed on 30.09.2002. Hence, the present regular second appeal.

5. It may be noticed that while issuing the notice in the present appeal, the operation of the judgments and decrees of the Courts below was

stayed.

6. Learned counsel for the appellants argues that the family pension is to be made admissible on the basis of the Rules governing the service and as per the Family Pension Scheme of 1964, the widow/widower after the death of the spouse who was in service, are only entitled for family pension upto the date of remarriage and in the present case, even before filing of the civil suit, the respondent-plaintiff had married the brother of the deceased hence, the Court below without even advertng to the Rules governing the service on aspect of family pension allowed the claim in favour of the respondent-plaintiff, which finding is perverse to the facts and rules, which have already come on record.

7. Learned counsel for the respondent-plaintiff submits that though the respondent-plaintiff married the brother of the deceased but the same was performed by way of Kareva marriage hence, the said marriage cannot be treated as valid so as to decline the benefit of family pension to the respondent-plaintiff. Learned counsel for the respondent-plaintiff also relies upon the judgment of the Coordinate Bench of this Court in ***CWP No.17970 of 2008 titled as Shanti Devi vs. State of Haryana and others, decided on 05.09.2009.***

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

9. It is a settled principle of law that the family pension is to be granted as per the rules governing the service. It is also a conceded position that in the year 1981 when the husband of the respondent-plaintiff died, the Family Pension Scheme of 1964 was in operation. A bare perusal of the said Scheme of 1964 will reveal that the widow/widower is only entitled for family pension upto the date when she/he remarried. The relevant rules

governing the service is as under:-

“ Para 4 of the Family Pension Scheme, 1964 reads in the following terms:

(iii) The pension is admissible:-

(a) in the case of widow/widower upto the date of death or remarriage whichever is earlier.

(v) In the event of remarriage or death of the widow/widower the pension will be granted to the minor children through their natural guardian, if any, otherwise through their defacto guardian on production of indemnity bond, etc. on the analogy of the orders contained in F.D. circular letter No.6837- (5) FRI-61/8358, dated the 29th July, 1961. In disputed cases, however, payments will be made through a legal guardian (i.e. guardian appointed by a court of law).

10. Once, as per the Rules, the family pension is only admissible upto the date of marriage, the respondent-plaintiff, who has already re-married the younger brother of her late husband namely Umed Singh, cannot claim that she is entitled for the family pension. The Courts below without advertng to the Rules governing the service on the aspect of the grant of family pension have allowed the claim of respondent-plaintiff, which findings of the Courts below cannot be sustained in the eyes of law.

11. Learned counsel for the respondent-plaintiff has placed reliance upon the judgment of the Coordinate Bench of this Court in ***Shanti Devi's case (supra)***.

12. The said judgment will not come to the rescue of the respondent-plaintiff in order to claim the benefit of family pension. In ***Shanti Devi's case (supra)***, the second marriage was being disputed and

nothing had come on record that the respondent-plaintiff therein had re-married the brother of the deceased. In the absence of any such record/evidence before the Court, the benefit was allowed in the case of ***Shanti Devi's case (supra)***. The observations were also made that nothing was brought to the notice of this Court that there is any prohibition for the grant of family pension after the re-marriage.

13. In the present case, the rules which govern the service, have already been reproduced hereinbefore, according to which, the family pension is only admissible upto the date of re-marriage and it is a conceded fact that on the date when the respondent-plaintiff filed suit after the 17 years of the death of her husband Umed Singh, she had already remarried with younger brother of the deceased. That being so, the judgment in ***Shanti Devi's case (supra)*** will not be applicable in the facts and circumstances of the present case so as to claim the benefit of family pension.

14. No other argument has been raised.

15. Keeping in view the above, as the judgments and decrees of the Courts below are contrary to the Rules governing the service and the said Rules have not been even adverted to, the judgments and decrees of the Courts below cannot be sustained being perverse to the Rules governing the aspect of grant of family pension and are accordingly set aside. Consequently, even the suit filed by the respondent-plaintiff is also dismissed.

April 02nd, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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