IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(105) **CM-1865-CWP-2024 in/and**
CWP-11642-2020
Date of Decision : 22.02.2024

Roshni Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sandeep Bansal, Advocate for the petitioner.

Mr. Harish Rathee, Senior Deputy Advocate General, Haryana.
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Harsimran Singh Sethi J. (Oral)

CM-1865-CWP-2024

Present application has been filed for recalling the order dated 29.01.2024, by which, the present writ petition was dismissed for non-prosecution.

Notice of the application to the counsel opposite.

Mr. Harish Rathee, learned Senior Deputy Advocate General, Haryana, who is present in Court, accepts notice on behalf of the respondents. He raises no objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which is duly supported by an affidavit, the same is allowed. The order dated 29.01.2024 is recalled and the writ petition is restored to its original number and status.

CWP-11642-2020

1. In the present petition, the grievance of the petitioner is that after the death of her husband, she has not been given the benefit of family pension though, keeping in view the pronouncement by this Court on the said issue, she is entitled for the benefit of family pension under Family Pension Scheme of 1964, which was applicable on the date when her husband died.

2. As per the facts mentioned in the petition, the husband of the petitioner was appointed on regular basis as Driver in Haryana Roadways and was posted in Rewari on 01.12.1979. At the time of the joining of the husband of the petitioner on regular basis, he was declared medically fit to discharge the duties for the post in question. While performing the duties on 17.01.1980, the rear tyre of the Bus which he was driving, got detached and in the accident, which occurred due to the said fact, the husband of the petitioner lost his life. After the death of the husband of the petitioner, only a sum of ₹5,000/- was given to the petitioner as ex-gratia amount.

3. The petitioner claims that after the death of her husband, she is entitled for the benefit of family pension, which benefit has not been extended to her, which is causing prejudice hence, appropriate direction needs to be issued to the department to grant the said benefit to the petitioner.

4. In response to the claim of the petitioner for the grant of family pension, the respondents have taken two objections so as to treat the petitioner not eligible for the grant of relief. Learned counsel for the respondents submits that on the day when the husband of the petitioner died on 17.01.1980 the post of Driver was not pensionable and it was only in the year 1982, the post was made pensionable hence, once the husband of the petitioner died while working on a post, which was not pensionable at the date of death, the question of grant of family pension does not arise.

5. The second objection to the claim of the petitioner is that even if 1964 Family Pension Scheme is operated qua the petitioner, at least one year service is required to be performed by the employee whereas, the husband of the petitioner had only worked for 17 days hence, the claim of the petitioner is liable to be dismissed.

6. The last argument raised is that the present petition was filed after 40 years of death of her husband hence, the claim of the petitioner should be rejected on this ground alone.

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

8. The fact that the husband of the petitioner was employed on regular basis with the Haryana Roadways and he died while performing the duties is a conceded fact. The question which arise for determination is whether, in the facts and circumstances of the present case, the petitioner is entitled for the grant of family pension or not.

9. The first argument, which has been raised by the learned State counsel to oppose the benefit of family pension to the petitioner is that on the date when the husband of the petitioner died on 17.01.1980 the post on which husband of the petitioner was working was non-pensionable as the Pension Scheme was only formulated by the Government of Haryana in the year 1982, which was made applicable from 01.07.1982 hence, the benefit of family pension could not be granted to the petitioner.

10. The question whether the employees, who retire prior to 01.07.1982 are entitled for the grant of family pension or not, was raised before this Court by similarly situated employees, who had retired before 01.07.1982 by challenging the Pension Scheme, which was made operational from 01.07.1982 only.

11. A Co-ordinate Bench of this Court while passing order in CWP No. 1646 of 1985, wherein the cut off date of bringing into operation the Pension Scheme as 01.07.1982, was set-aside holding that even the employees, who retired prior to 01.07.1982 are also to be treated covered under the Pension Scheme so as to grant them the pension and other pensionary benefits.

12. Learned counsel for the respondents has not been able to rebut the said fact that the judgment in CWP No. 1646 of 1985 has already attained finality and even the employees, who retired prior to 01.07.1982, have been granted the pensionary benefits. That being the factual position, the objection being raised by learned counsel for the

respondents that on the date of the death of the husband of the petitioner, the post was not pensionable, cannot be accepted as the cut off date fixed for the grant of pension as 01.07.1982 has already been set-aside, which judgment has attained finality hence, it has to be treated that on the date when the husband of the petitioner died on 17.01.1980, the post was pensionable.

13. The second argument, which has been raised by the learned counsel for the respondents is that even if 1964 Pension Scheme is made operational, minimum of one year service is required for the grant of family pension. The said issue is also no longer resintegra keeping in view the settled principle of law settled by the Division Bench of this Court in ***Savitri Devi Vs. State of Haryana and others,*** 1996(2) RSJ 854. It has already been held that in case an employee was got medically examined at the time of the employment and was found medically fit, even if the said employee dies before the completion of one year, the family pension will be admissible under 1964 Rules. The relevant paragraph of the said judgment is as under :-

> "*3. The mandate of the aforementioned provision appears to be that in case the Government Servant at the time of entry into service produces a Medical Certificate of Fitness, the family would be entitled to Family Pension even if he dies within less than one year. Concededly, the husband of the petitioner did submit the Medical Certificate of Fitness, Copy Annexure P1.*
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> *4. The only interpretation which can be placed upon the Scheme as reproduced above is that even if the deceased*

Government employee does not complete one year of continuous service, his dependents would nevertheless be entitled to the grant of family pension provided the deceased was medically examined and found fit and a Medical Certificate of Fitness is produced before entry into Government Service from a competent Medical Officer. The completion of one year continuous service is, therefore, wholly irrelevant in view of the phraseology of the Family Pension Scheme."

14. Thereafter, a Division Bench of this Court in ***Sundra Devi Vs. Uttar Haryana Bijli Vitran Nigam,*** again reiterated the same that in case an employee was medically fit at the time of the recruitment, the family will be entitled for the family pension after the death of the said employee even if the said employee is yet to complete one year of service.

15. Not only this, keeping in view the settled principle of law, the respondent-State has already issued Instructions clarifying the Family Pension Scheme of 1964 vide Instructions dated 23.04.2010. The relevant portion of the Instructions is as under :-

"From

The Financial Commissioner & Principal Secy, to Govt.. Haryana, Finance Department

To

All the Heads of Departments,
Commissioners of Divisions &
All the Deputy Commissioners &
Sub Divisional Officers (Civil) in Haryana.
The Registrar, Punjab & Haryana High Court, Chandigarh.

Dated, Chandigarh, the 23rd April, 2010

Subject: Family Pension Scheme, 1964- Clarification therein.

Sir,

I am directed to invite your attention on the subject cited above and to say that a number of communications have been received from various Associations/ Pensioners seeking clarification regarding Note-1 below para-4(i) Appendix I of Family Pension Scheme, 1964.

2. After careful consideration, it is clarified that where a Government servant dies before completion of one year of continuous service provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authonty for Government service, the family of the deceased shall be entitled to Family Pension Scheme, 1964 and the expression continuous one year of service wherever it occurs in this note shall be constructed to include less than one year of continuous service as defined above.

3. The above instructions may please be brought to the notice of all concerned officials/officers for strict compliance.

Sd/-
Under Secretary Finance (Pension)
for Financial Commissioner & Principal Secy, to Govt.,
Haryana, Finance Department."

16. A bare perusal of the above Instructions would show that once, the Family Pension Scheme has been clarified to mean that the employee, who was fit at the time of recruitment and was medically examined, the family pension will be admissible even if the said employee dies before one year of regular service, hence, the argument being raised by the learned counsel for the respondents that the husband of the petitioner has only worked for 17 days, cannot be accepted,

especially in view of the letter written by the General Manager of the Haryana Roadways dated 03.10.2018, a copy of which has been appended as Annexure P-1, according to which, the husband of the petitioner was medically examined and was declared fit and even the copy of the said medical certificate was sent to the Director General State Transport for considering the claim of the petitioner for the grant of benefit of family pension under the 1964 Scheme.

17. Learned counsel for the respondents submits that the judgment of the Co-ordinate Bench in CWP No. 885 of 1987 titled as ***Tulsi Dass and others Vs. State of Haryana and another*** (Annexure P-7) was only relating to the retirees who had retired prior to 01.07.1982 and does not deal with the person, who dies before the Pension Scheme came into operation. The said argument cannot be accepted. Once, an employee, who retired in January, 1980 has been held entitled for the pension, it cannot be said that the employee, who was working on the said date but dies, will not be entitled for the family pension. The distinction being drawn by the learned counsel for the respondents is not available to them and hence, cannot be accepted.

18. The last argument, which has been raised by the learned counsel for the respondents is that the husband of the petitioner died in January, 1980 whereas the petition has been filed after 40 years.

19. The said argument on the face of it, is appealing but cannot be made applicable in the case where demand is for family pension. The pension has to be held as a recurring cause even by the Hon'ble Supreme

Court of India. The Hon'ble Supreme Court of India in ***Civil Appeal No. 4100 of 2022 titled as Shri M.L. Patil (Dead) through LRs vs. State of Goa and another, decided on 20.05.2022***, held that claim of pension is a recurring cause and cannot be extinguished due to the lapse of time. Relevant paragraphs of the said judgment are as under :-

> *" 3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original 2 petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1 st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.*

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised rates only from 1st January, 2020 is hereby quashed and set aside. It is held and ordered that the appellant – 4 original writ petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs."

20. In the present case, the lady, who is claiming family pension, is an illiterate and did not know the niceties of rules governing the service and the settled principle of law. Further, the entitlement of the petitioner qua the applicable of the Pension Scheme was only settled in the year 1985 by the Co-ordinate Bench while passing order in ***Tulsi Dass (supra)*** and with regard to the grant of family pension even if an employee has not completed one year, as per the judgment rendered in the year 1996.

21. Keeping in view the said proposition of law, which came into being after the death of the husband of the petitioner coupled with the judgment of the Hon'ble Supreme Court of India in ***Shri M.L. Patil's case*** (supra), the claim of the petitioner cannot be rejected on the ground of delay keeping in view the fact that the same relates to the grant of family pension. Rather the State being a welfare state is required to extend benefit to the family of a deceased employee as per rules

governing the service coupled with settled principle of law rather than taking objection to justifiable the claim of dependants of deceased employee.

22. Consequently, the writ petition is allowed. The petitioner is held entitled for the grant of family pension from the date her husband died along with arrears/revision in the family pension as admissible. Let the respondents calculate the entitlement of the petitioner qua the grant of family pension and release the same along with the arrears within a period of eight weeks from the date of receipt of copy of this order.

23. No other argument was raised either on behalf of the petitioner or the respondents.

February 22nd, 2024 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes