2024:PHHC:104971

103+219 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-9180-CWP-2023 in/and
CWP-21932 of 2015
Date of Decision : 07-08-2024

JASVIR KAUR ....Petitioner

VERSUS

MAHARAJA RANJIT SINGH STATE TECH.UNIV. & ORS.

........Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Sukhdeep Singh Bhinder,
Advocate for the respondent Nos.1 and 2.

Mr. Amarpreet Singh Bains, AAG Punjab.

Mr. Madhur Singh, Legal Aid Counsel of respondent No.4.

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HARSIMRAN SINGH SETHI, J. (Oral)

CM-9180-CWP-2023

This is an application for placing on record judgment dated 11.07.2022 passed by Ld. District Judge Hoshiarpur appended as Annexure R-8 and undertaking given to hospital by respondeent No.4 appended as Annexure P-9.

In view of the contents mentioned in the application, the application is allowed.

Judgment dated 11.07.2022 passed by Ld. District Judge Hoshiarpur appended as Annexure R-8 and undertaking given to hospital by respondent No.4 appended as Annexure P-9 are taken on record.

<u>CWP-21932 of 2015</u>

In the present petition, the grievance being raised by the petitioner is that she is the legally wedded wife of Mohan Singh Bhella, who retired as an Associate Professor from the respondent-University and after his death, the petitioner has already been given the legal heirs certificate by the competent authority but the benefits after the death of her husband have not been given to her by the respondents on the ground that the petitioner is not entitled for family pension.

Upon notice of motion, the respondents have filed reply. The respondent-University has come up with the plea that there is a dispute that with regard to the claim as, the deceased employee had given an affidavit in favour of respondent No.4, who is the wife of his brother that after his death, all the benefits be extended to respondent No.4.

Learned counsel appearing on behalf of respondent No.4 submits that once the deceased employee himself had given an affidavit in favour of respendent No.4 entitling the service benefit in respect of service rendered by the deceased employee including the family pension, the respondent No.4 is entitled to get the said benefit instead of the petitioner.

I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

It may be noticed that the grant of the family pension is governed by the Rules. The 1964 Scheme, which governs the grant of the family pension after the death of a pensioner, envisages as to who will be granted the family pension.

Learned counsel for the parties concedes that as per the Rules governing the service after the death of an employee, widow/widower as the case may be, is the first claimant of the family pension and in case, the widow/widower is not available, then the said family pension is to be granted to the children keeping in view of the Rules envisaged in the said report.

In the present case, the petitioner is the widow of the deceased pensioner. Once the widow is claiming the family pension on the basis of the Rules, the Department cannot deny her benefit merely on the ground that respondent No.4 is claiming the benefit on the basis of some affidavit given by the deceased employee. The family pension which is to be admissible only to the claimants envisaged under the Rules, will not be governed by the affidavit issued by the employee concerned.

Even, a nominee, who has been nominated by the deceased employee in his service record, only facilitates the transfer of the amount to a person who is entitled under the Rules. Therefore, the claim of respondent No.4 that on the basis of the an affidavit, she is also entitled for the family pension, cannot be upheld.

Further, there is no dispute that the petitioner is the legally wedded wife of the deceased employee even if the wife was living separately and was not living with the deceased husband, still, under the Rules, the petitioner remains the wife of the deceased employee and will be entitled for the benefits envisaged which are admissible to the widow of the deceased employee.

It is a conceded position that the family pension is being paid under 1964 Scheme. Learned State counsel as well as private respondent have not been able to rebut that under 1964 Scheme, after the death of an employee, the spouse becomes eligible for the grant of service benefits and in the absence of spouse, the children gets the benefit and in the absence of children, the parents of the deceased employee becomes entitled for the benefit. There is no other claim envisaged under 1964 Scheme to get the service benefit of the deceased. Once, the benefit is to be extended under 1964 Scheme, the same has to be relatable to the provisions therein. In an affidavit given by a deceased or Will have brought into operation by any other person than the one who have been made eligible under the Rules cannot claim preference to claim the service benefits of the deceased employee. Hence, the affidavit given by the deceased employee cannot be a ground to deny the legitimate right of the petitioner who is the spouse of the deceased employee.

Not only this, the said issue stands settled as to whether, the service benefit of a deceased employee including the family pension can be decided on the basis of the said Will of the deceased or the same is to be governed by the Rules governing the service. Hon'ble Supreme Court of India while passing order in SLP No.7254 of 1980 titled ***"Jodh Singh Vs. Union of India and ors."*** decided on 09.10.1980, held that the Will of a deceased employee cannot be brought into operation so as to claim the service benefits including the pensionary benefits so as to dis-entitle the once, who are to get the benefit under the Rules governing the service. The relevant paragraphs Nos.9, 10-12 are held are under:-

"9. Pension is a retirement benefit. It is admissible under the relevant rules on superannuation. It is payable on superannuation to the employee himself during his lifetime after retirement. Special family pension is not admissible to the employee but to the specified members of the employee's family and that too in the event of his death while in service or after his retirement as provided in the Regulations. It is in the nature of a compensation because the death was due to or hastened by either a wound, injury or disease which was attributable to Air Force service or the aggravation by Air Force service of a wound, injury or disease which existed before or arose during Air Force service, etc. (see Rule 74). If death is not referable to any of the events mentioned in Rule 74, special family pension is not admissible. To compensate for death on account of hazards of service rendering dependents destitute that benefit of special family pension is conferred on certain persons having a certain status arising out of and directly attributable to relation with the deceased. Special family pension under Rule 74 is admissible, amongst others, to widow of an officer. It is not that the deceased gets pension or earns special family pension. It is the untimely death of the deceased, the process of death having been hastened or accelerated by the hazards of service that the widow who is rendered destitute is granted special family pension. Whether the widow qualifies for special family pension is to be determined by the sanctioning authority, the President in this case. The special family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow.

10. Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of *the estate of the deceased it could never be the subject matter of testamentary disposition.*

11. It was, however, said that not all widows are entitled to special family pension but only the dependent wife who becomes widow on the death of an officer alone becomes eligible for pension and in this case the deceased had not shown his wife as one of his dependents but on the contrary the parents, the sisters and the brothers were shown as dependents of the officer. Rule 74 envisages a special family pension to the widow, a special children allowance to his legitimate children or dependents pension to his parents, brothers or sisters. To each one of them, if he or she qualifies for special family pension, the benefit is admissible. Rule 75 envisages ordinary family pension to widow and legitimate children of the deceased officer. Rule 79 confers discretion on the President to grant a pension and/or gratuity to a widow who may not be eligible under Rule 74 or Rule 75 because she was separate from the husband at the time of his death. Thus, whether a widow has qualified for a special family pension, gratuity or ordinary family pension is a matter to be determined by the President. If the President is satisfied that the widow is eligible for pension, she cannot be denied the benefit by some other dependents of the deceased claiming that instead of the widow he or she should have been held eligible for special family pension. Therefore, it is irrelevant whether the deceased had shown his wife as his dependent or not if the President is satisfied that she as the widow of the deceased officer was eligible for special family pension.

12. The real controversy is whether a special family pension admissible to a widow in her capacity as widow could ever form a part of the estate of the deceased which could be disposed of by testamentary disposition? Special family pension is payable to the widow on the death of the officer. It is not payable in his lifetime. What is not payable during lifetime of *the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the deceased albeit related to the deceased, cannot from part of the estate of the deceased which he can dispose of by testamentary disposition. Therefore, it is unquestionably established that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 of the Rules could not be subject matter of testamentary disposition."*

The said question again came up for consideration before Co-ordinate Bench of this Court in Regular Second Appeal No.2586 of 1997 titled as ***"Chander Kanta Vs. Monika"*** decided on 18.05.2000, wherein it has been held that even the Hindu Succession Act would not apply with regard to the claim of the pension of the spouse after the death of the serving government employee and the same is to be regulated as per the rules governing the service.

Learned counsel for the respondent No.4 has not been able to dispute the settled principle of law so as to claim all service benefits as well as the pensionary benefits on the basis of the affidavit given by the deceased employee. Hence, keeping in view of the above, the respondents are directed to grant the petitioner the benefit of family pension from the date, the deceased pensioner had died. As there is no valid justification with the respondents to not to grant pension. Keeping in view the facts and circumstances of the present case, the petitioner will also be entitled for the interest on the arrears of family pension @ 6% per annum from the date the same becomes due till the actual date of payment.

The present writ petition is allowed.

Let the interest under this order be calculated and released to the petitioner within a period of 8 weeks from the receipt of copy of this order.

It is made clear that this Court is not deciding qua the applicability of the Will of the other properties of the dispute wherein, the Will can be brought into operation to secure the benefits admissible under the Will by respondent No.4.

Pending application, if any, also stands disposed off.

07-08-2024
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES/NO
Whether reportable: YES/NO