IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18277 of 2024
Date of Decision:28.08.2024

Lakhvir Kaur

….Petitioner

vs.

State of Punjab and others

….Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. B.S.Jaswal, Advocate
for the petitioner

Mr. Aman Dhir, DAG, Punjab

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of communication dated 21.06.2022 whereby respondent has rejected her claim of family pension.

2. The petitioner is widow of late Sh. Sukhwinder Singh who died in a terrorist attack on 12.06.1990. As per policy, she was extended benefit of special family pension on account of death of her husband. She got remarried with her brother-in-law. The special family pension sanctioned to her was transferred to her son, who became major in 2014, accordingly, respondent with effect from 28.01.2014 stopped family pension to her son. She applied for restoration of family pension which was transferred to her son after her second marriage.

3. Mr. B.S.Jaswal, Advocate submits that in view of judgment of this Court in **Amrit Kaur @ Paramjit Kaur vs. State of Punjab and**

others, 2014 (2) PLR 192 (Annexure P-11), the petitioner is entitled to restoration of family pension. The provisions qua family pension were amended in 2015 whereas petitioner became eligible to restoration of pension in February'2014. The jurisdictional authorities time to time recommended her case, however, respondent has wrongly rejected her claim.

4. Notice of motion.

5. Mr. Aman Dhir, DAG, Punjab, who on advance notice is present in Court, accepts notice and waives service.

6. With the consent of both sides, the petition is taken up for final disposal.

7. Mr. Aman Dhir, DAG, Punjab submits that there is no provision in the family pension rules which provides for restoration of family pension which was transferred in the name of petitioner's son. As per amended rules, on account of re-marriage, the petitioner is not entitled to family pension. He further submits that she is getting pension on account of her retirement.

8. I have heard counsel for the parties and perused the record with their able assistance.

9. A Division Bench of this Court in **Smt. Balwant Kaur and Another v. State of Punjab and Another, decided on 23.04.2008** as well as Single Bench of this Court in **Amrit Kaur @ Paramjit Kaur v. State of Punjab and Others, 2014 (2) PLR 192** has extended benefit of family pension to widow of a deceased employee though said lady solemnized marriage with her brother-in-law. The relevant extracts of the judgment in

Amrit Kaur (supra) read as:

> *"3. Counsel for the petitioner has relied upon a Division Bench decision of this Court in Smt Balwant Kaur v. State of Punjab, decided on 23.4.2008, wherein it was held as follows:—*
>
> > *"The short question that arises in this petition is whether the family pension of a widow, who has contracted a second marriage with the younger brother of her deceased husband, can be stopped and whether the recovery of the family pension, which has already been paid, can be effected from her. In this regard it would be relevant to reproduce rule 8.35 of the Punjab Civil Service Rules Vol. 2, Chapter VIII, which is as under:—*
> >
> > *'8.35 (1) A family pension will take effect, from the day following the death of the Government employee or from such other date as the competent authority may decide.*
> >
> > *(2) A family pension will ordinarily be tenable-*
> >
> > *(a)(i) in the case of widow or mother until death or remarriage whichever occurs earlier.*
> >
> > *(ii) in the case of a minor son, or minor brother, until he attains the age of 18;*
> >
> > *(iii) in the case of an unmarried daughter or minor sister, until marriage or until she attains the age of 21, whichever occurs earlier.*
> >
> > *(iv) in the case of a father, for life.*
> >
> > *(b) Notwithstanding anything contained in sub-clause—*
> >
> > *(a) a widow who re-marries her deceased husband's brother and continues to life a communal life with or contributes to the support of other dependents of her deceased husband shall*

not be disqualified for the grant of extraordinary pension otherwise admissible to her under these rules.

Note 1.—A family pension granted to a posthumous child should commence from the date of his/her birth and not from the date of death of his/her father.

Note 2.—The family pension of a widow will cease on remarriage but when such re-marriage is annulled by divorce, desertion or death of the second husband her pension may be restored upon proof that she is in necessitious circumstances and otherwise deserving.'

Clause 2(b) of rule 8.35 Punjab Civil Service Rules Vol. 2, Chapter VIII clearly stipulates that a widow, who has remarried her deceased husband's brother and continues to live a communal life and contributes to the support of other dependents of her deceased husband, shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under Civil Service Rules.

In the instant case, a perusal of Annexure R-2 written by the petitioner to the Administrative Officer, Punjab Mandi Board dated 25.07.2001 clearly shows that she has solemnized her marriage with the younger brother of her deceased husband. The petitioner is also supporting four children born out of her wedlock with her deceased husband. Although, the petitioner has averred in this writ petition that she has not contracted a marriage with the brother of her deceased husband and has only entered into an arrangement and continues to live a communal life with the family of her deceased husband, but this averment seems to

> *be an afterthought in order to protect her family pension. The remarriage of a widow with the younger brother of her deceased husband entitles her for the grant of family pension in terms of rule 8.35(2)(b) of the Punjab Civil Service Rules Vol. 2, Chapter VIII and hence, the order dated 04.01.2007 passed by the General Manager (Accounts) (Annexure P-1) holding that petitioner is not entitled to family pension and further ordering recovery from the petitioner for the amount already paid to her as family pension, cannot be sustained. Resultantly we quash Annexure P-1 and hold that the petitioner is entitled to family pension. We further hold that the respondents are not entitled to recover the family pension already paid to the petitioner."*

(4) Counsel for the respondents states that she does not dispute the proposition of law as laid down in Balwant kaur's case (supra), but the petitioner had specifically given up her claim for family pension. In my opinion, what the petitioner requested was for transfer of family pension in favour of her minor children and now the children are no more entitled for family pension, since the family pension is otherwise payable to the petitioner, her prayer for transfer of family pension in favour of her children cannot be treated as a waiver of her right of claiming family pension for all times to come, more-so when it is a beneficial provision. Resultantly, this writ petition is allowed and the respondents are directed to release the family pension to the petitioner with effect from the date her children were disentitled for the same. Necessary disbursal be made within three months from the receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with

interest @ 8% pa from the date/s the amount/s fell down."

10. The argument of State counsel that in view of amended provisions, the petitioner is not entitled to special family pension cannot be countenanced because petitioner, at the first instance, was granted special family pension in 1990 and thereafter she applied for restoration of family pension in February'2014 whereas amendment in the rules was carried out in 2015. The amended provisions came into force with effect from 22.12.2015.

11. In view of unamended Rules and afore-cited judgments, the petitioner is entitled to special family pension. The contention of State counsel that petitioner is getting pension on account of her pre-mature retirement is also misconceived. The benefit of special family cannot be rejected on the ground that she is getting pension on account of her retirement. The pension which she is getting on account of her own service cannot be clubbed with special family pension to which she was entitled on account of death of her husband in a terrorist attack.

12. In view of the above discussion and findings, the impugned order dated 21.06.2022 is set aside. The respondent is directed to release special family pension to petitioner with effect from 12.06.2018 i.e. the date on which she was recommended for family pension by SSP. The arrears shall not carry interest. The needful shall be done within three months from today.

28.08.2024 **(JAGMOHAN BANSAL)**
paramjit **JUDGE**

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	