IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-21272-2022
Date of decision: 10.01.2024

FAQIR SINGH @ FAKIRIA SINGH AND ORS ….PETITIONERS

Vs.

STATE OF PUNJAB AND ORS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Simranjit Singh, Advocate
for the petitioner.

Mr. Inderpreet Singh Kang, AAG, Punjab.

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<u>JAGMOHAN BANSAL, J (ORAL)</u>

1. The petitioners through the instant petition under Articles 226/227 of the Constitution of India are seeking directions to respondents to grant family pension on account of death of son of petitioner No.1.

2. Hakam Singh son of petitioner No.1 joined Punjab Police as Constable in 1992. The said employee, on 22.12.1994, died in harness. He was unmarried at that point of time. He was survived by his parents and 3 siblings. The petitioners claimed family pension, however, respondents on one account or another declined the claim of the petitioners. Mother of said employee has already passed away and petitioner No. 1 i.e. father of the deceased employee at present is 76 years old. The petitioners are claiming family pension in terms of Rule 6.17 of Punjab Civil Services Rules (Volume-II) (for short **'the Rules'**).

3. Counsel for petitioners submits that petitioner Nos. 2 to 4 being siblings of deceased employee are not entitled to family pension, however, petitioner No.1 being father, in terms of Rule 6.17 of the Rules is entitled to

family pension. Counsel for the petitioners concedes that benefit of family pension may be restricted to 38 months prior to date of filing of present petition before this Court.

4. Mr. Inderpreet Singh Kang, AAG, Punjab pointing out the averments made in the additional affidavit dated 11.07.2023 of Superintendent of Police, Head Quarter, District Amritsar Rural submits that as per dependency certificate dated 03.04.1995 issued by Deputy Commissioner, Fatehgarh Sahib, the parents and siblings of the deceased employee were dependent upon him. Father of the deceased employee is a labourer. The reliance placed upon Rule 6.17 of the Rules is misplaced because deceased employee was unmarried, thus, petitioners are not entitled to family pension.

5. I have heard counsel for the parties and perused the record.

6. The entire controversy is centered around Rule 6.17 of the Rules. The said rule is reproduced as below:-

"***6.17***. *The provisions of this rule shall apply:*

(a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and

(b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provisions of Family Pension Scheme, 1964, for Punjab Government employees.

Note.- *In the case of a Government employee who retired from service or died at any time before the publication of this rule, the provisions of Family Pension Scheme, 1964 as in force on the date that Government employee retired or died shall apply.*

(1) The rate of family pension in respect of a Government employee who dies after retirement shall be as under:-

(a) forty per cent of the pay subject to a minimum of three thousand and five hundred rupees if the pay of the deceased on the date of his retirement does not exceed ten thousand rupees.

(b) thirty per cent of the pay subject to a minimum of four thousand rupees, if the pay of the deceased on the date of retirement exceeds ten thousand rupees.

***Note**.- The above rates are effective from the 1st day of January, 2006.*

***Note 1**.- "pay" for this purpose means the pay as defined in rule 2.44 of the Punjab Civil Services Rules, Volume I, Part I, which the person was drawing on the date of his death while in service or immediately before his retirement. If on the date of his death while in service or immediately before his retirement, a person has been absent from duty on leave, including extraordinary leave, or under suspension, "pay" means the pay which he draws immediately before proceeding on such leave or such suspension and the term "pay" shall also include dearness pay.*

***Note 2**.- The amount of family pension shall be fixed at monthly rates and be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee:*

Provided that in no case a family pension in excess of the maximum determined under this rule shall be allowed.

(2) The Scheme will be administered as below:-

(i) The family pension will be admissible in case of death while in service or after retirement if at the time of death the retired Government employee was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government employee should have completed a minimum period of one year of continuous service, without break. The family pension will not be admissible in cases of death after retirement, if the retired employee at the time of death was in receipt of gratuity only:

Provided that the condition of completing a minimum period of one year of continuous service will not be applicable in the case of Government employee who has been medically examined and declared fit for entry into Government service.

(ii) The term "one year continuous service" used in clause (i) is inclusive of permanent and temporary service in a pensionable establishment and any period of leave including extraordinary

leave but does not include Boy Service and suspension period unless that is regularised by the competent authority.

(iii) In the cases of persons who are transferred to Punjab State from the Central Government or other State Governments and in whose case it has been agreed to count their previous service for pension the Family Pension Scheme would be applicable in the event of their death/retirement without putting in one year continuous service under the State Government, if their total service at the time of death (inclusive of service rendered under the previous Government) exceeds one year.

(3) "Family" for purposes of this Scheme will include the following relatives of the Government employee:-

(a) wife in the case of a male Government employee and husband in the case of a female Government employee;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

(c) sons upto the age of twenty-five years;

(d) daughters upto the age of twenty-five years irrespective of their marriage but unmarried daughters shall be included in the family irrespective of their age; and

(e) parents who were wholly dependent on the Government employee, when he/she was alive provided the deceased employee had left behind neither a widow nor a child."

7. From the perusal of the above said Rule, it is quite evident that family for the purpose of pension scheme includes parents provided that they were wholly dependent upon the government employee, when he was alive and deceased employee had left behind neither a widow nor a child. In the case in hand, the deceased employee was unmarried and as per dependency certificate dated 03.04.1995 issued by Deputy Commissioner, the father of the petitioner was dependent upon the said employee. The petitioner No. 1 was entitled to

family pension from the date of death of his son. The respondents-State, at that point of time, did not extend benefit of family pension to the petitioners and petitioners also opted to remain silent from 1995 to 2022 and they have filed writ petition before this Court only on 12.09.2022.

8. In the wake of mandate of family pension scheme envisaged under Rule 6.17 of Punjab Civil Services Rules (Volume-II), petitioner No. 1 is entitled to family pension. The arrears shall be restricted to 38 months prior to date of filing of writ petition. The respondents are directed to do the needful within two months from today.

9. Disposed of accordingly.

10.01.2024 **[JAGMOHAN BANSAL]**
manoj **JUDGE**

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