2024:PHHC:085192

226 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-17548-2021 (O&M)
Date of decision : 10.07.2024

PURAN SINGH ....Petitioner

Versus

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. P.S. Goraya, Advocate
for the petitioner.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Instant writ petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari seeking direction to respondent No.2 to determine the family pension *qua* petitioner/ pensioner after the death of the petitioner and sanction 100% family pension to Smt. Paramjit Kaur in the event of her survivor.

2. Counsel for the petitioner relies upon Annexure P-9 i.e. the judgment passed by Co-ordinate Bench in CWP No.21138 of 2017 titled as Ravinder Kaur vs. State of Punjab and others to submit that his case will be fully covered by the ratio of law laid down by this Court.

3. State Counsel admits that the issue in hand would be fully covered by the same.

4. The present writ petition is at the behest of retired employee of department of Punjab Police whose first wife namely Sukhraj Kaur died on 10.04.2018 suffering from a prolonged illness. The petitioner married second time with one Paramjit Kaur. Marriage was registered on 31.07.2009 under the Punjab Compulsory Registration of Marriage Act, 2012. Vide Annexure P-1, it was ordered that Paramjit Kaur will be entitled to 50% of the family pension. It being a case of two series of family.

5. Petitioner filed appeal claiming that he is a pensioner with one single living wife, his right to choose nomination in favour of his living wife Paramjit Kaur be accepted and she be allowed to be nominated for fully family pension in case the petitioner pre-deceases her. The said appeal stands rejected relying upon Rule 6.17(3), Note 1 of the Punjab Civil Service Rules, Volume II.

6. Counsel for the petitioner has drawn attention of this Court to the rule relied upon by the respondents to deny the claim of the petitioner. The same reads as under:-

> "When a government employee is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child if, at the time of her death, if a widow left no eligible minor child, the payment of her share of the pension will cease."

7. In the considered opinion of this Court, the rule is inapplicable to the present case, as it is not a case wherein the retiree can be survived by more than one widow.

8. His first wife namely Sukhraj Kaur has already expired on 10.04.2018. As per him, he married second time and the said marriage now stands registered on 31.07.2019. Thus, the matter already stands answered by Division Bench of this Court in **LPA No.1434 of 2014, titled as 'The State of Punjab vs. Harpal Kaur',** wherein the Bench held as under:-

> *"In this case, Jit Singh was an employee of the Punjab Government. He died in harness on February 15, 2004, leaving behind one son from his pre-deceased wife and one son born to respondent Harpal Kaur (the second wife). In accordance with the provisions of Rule 6.17 of the Punjab Civil Service Rules Volume II (hereinafter referred to as `the Rules'), the respondent and son of pre-deceased wife of the deceased employee were granted family pension in equal share. The son of pre-deceased wife of the deceased employee attained the age of 25 years on October 28, 2005 and as per the instructions dated March 07, 2005 (Annexure P-3) issued by the appellants, payment of half share of the family pension was stopped to him with effect from October 29, 2005. At that stage, the respondent moved an application (Annexure P-5) to the Accountant General, Punjab (appellant No.4 herein) for grant of full family pension, in view of Note 1 and 2 of Rule 6.17 of the Rules, which read as under :*
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> *"Note 1 – When a government employee is survived by more than one widow the pension will be paid to them in equal shares. On the death of the widow her share of the pension will become payable to her eligible minor child. If at the time of death*

widow leaves no eligible minor child, the payment of her pension shall cease.

Note 2 – When a government employee is survived by a widow but has left behind eligible minor child from another wife, the eligible minor child will be paid the share of the pension which the mother would have received if she had been alive at the time of the death of the government employee."

The claim of the respondent was rejected by the appellants on the ground that after attaining the age of 25 years, the right of son of the pre-deceased wife of the deceased employee to draw 50% of the family pension ceased and the said share could not have been granted to the respondent. This interpretation was given by the appellants in view of Note 1 and 2, as quoted above.

The contention of the appellants is without any substance and the same cannot be accepted, as earlier in the similar circumstances, exactly the similar Rule was interpreted by a Division Bench of this Court in the case of Ram Dulari versus State of Haryana and others (CWP No. 3359 of 2008, decided on July 03, 2009). Copy of the judgment rendered in the said case was annexed with the writ petition as Annexure P-1. In that case, it was held that widow of the deceased employee, in absence of any eligible heir from her and from the first wife of the deceased employee, is entitled to get full family pension. The observations of the Division Bench read as under :

"11. The argument of the respondents is wholly misconceived when they argued that according to Note (i) of sub-clause (iii) of clause 4 of the 'Pension Scheme' once the minor children have stopped getting their share on account of attaining majority then the 50% share would cease. A perusal of Note (i) would show that the aforesaid provision is applicable only in a case where an employee is survived by more than one widow. In the present case there was only one widow on the date of death of Shri Mehar Singh. It has come on record that Shri Mehar Singh died on 27.8.1980 and his earlier wife Smt. Sona Devi had

predeceased him in the year 1976 leaving behind three children, namely, Raj Singh, Manju Rani and Braham Singh, who were born on 5.1.1972, 20.3.1974 and 13.5.1974 respectively. Then he married the petitioner. It is further appropriate to mention that the petitioner also had a minor child, namely, Megh Raj, who was born on 8.12.1980. Therefore, Note (i) would have no application in the absence of at least two widows. The present is a case of one widow who had a minor child of her own and three minor children of her husband, born out of his wedlock with Smt. Sona Devi, who had predeceased him. The respondents have totally misdirected themselves in applying Note (i) to the case of the petitioner whereas the matter is covered by Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme', which does not contemplate ceasing of pension. Therefore, there is no substance in the argument of the respondents and the same is rejected.

12. For the reasons aforementioned, this petition succeeds. Order dated 17.7.2007 (P-7) passed by the Director General of Police respondent No. 2 is set aside. The respondents are directed to release 50% share of the family pension to the petitioner, which was being paid to the minor children of deceased wife of Shri Mehar Singh, namely, Smt. Sona Devi, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner shall also be entitled to all the arrears with effect from May 2001 till date along with interest at the rate of nine percent per annum." Learned counsel for the appellants argued that even after the said judgment, in the State of Punjab, there is dichotomy about the interpretation of the aforesaid provisions. But we do not find any dichotomy in Punjab also, because the Punjab Civil Service Rules are exactly the same, and the situation as well as the facts and circumstances in Ram Dulari's case (supra) were also exactly the same. The reason is obvious. On the date of death of the deceased employee, his eligible dependents are to be identified, to whom the family pension is to be granted. If from the pre-deceased wife, children are there, they are eligible legal heirs *and are entitled to get family pension till they attain the age of 25 years. In the instant case, son of the pre-deceased wife of the deceased employee being eligible legal heir was entitled to have family pension upto the date of his attaining the age of 25 years and thereafter, his share was to be restored or to be given to the remaining legal heirs of the deceased employee. In this case, widow of the deceased employee and her son survive and both of them are entitled to have family pension in equal shares. In any case, the State is liable to pay 100% family pension, which can be shared by any number of legal heirs of the deceased employee, but the State cannot retain the share of one legal heir on the ground that he has attained the age of 25 years and his right to have family pension has ceased. The family pension is an estate of the legal heirs of the deceased employee. The apportionment of the family pension of a deceased employee is not the business of the State. Right in the family pension will devolve according to the Hindu Succession Act, 1956. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge ."*

9. In view of the above, present petition is allowed. The petitioner is thus held entitled to nominate his surviving wife to receive 100 % family pension.

10. Pending application, if any, shall also stand disposed off.

July 10, 2024 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No