



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

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CWP-630-2024

Date of Decision: 12.11.2025

Union of India and others**....Petitioners****Versus****Smt. Phula Devi @ Phullan Devi and another****....Respondents**

**CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI
HON'BLE MR. JUSTICE VIKAS SURI**

Present: Mr. Rohit Verma, Advocate
for the petitioners – UOI.

Mr. Navdeep Singh, Senior Advocate with
Mr. Rajat Chauhan, Advocate
for respondent No.1.

Harsimran Singh Sethi, J. (Oral)

1. In the present petition, the challenge is to the impugned order dated 15.05.2023 (Annexure P-1) passed by respondent No.2 – Armed Forces Tribunal, Regional Bench, Chandigarh (hereinafter referred to as ‘the Tribunal), by which, the benefit of invalid pension has been allowed in favour of respondent No.1.

2. The learned counsel for the petitioners argues that after the respondent No.1 was discharged from service, he had filed a writ petition bearing No.7095 of 2002 before Hon’ble Delhi High Court, which was dismissed hence, the claim for grant of invalid pension which was raised in the year 2019, before the Tribunal has been allowed without appreciating the fact



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that the said claim was barred by constructive *res judicata*, as the said claim should have been raised while filing writ petition before the Hon'ble Delhi High Court.

3. Learned counsel for the petitioners further submits that even while filing the writ petition in the year 2002, the respondent No.1 could have claimed for grant of benefit of invalid pension, which was not done by the respondent and therefore, to claim the same subsequently by approaching Court of law, is not permissible as per law and same would amount to wasting precious time of this Court.

4. Keeping in view the notice of motion issued, the respondent No.1 has appeared. The Learned Senior Counsel appearing on behalf of respondent No.1 submits that the claim of respondent No.1 is based upon the instructions issued by the Government of India dated 12.02.2019 by which, the clarification regarding the grant of invalid pension under Rule 38 of the Central Civil Services (Pension) Rules, 1972 (for short "the 1972 Rules"), was given according to which, even if, the disability incurred by any army personnel, which has been the basis of discharge is not attributable or aggravated by the military service, still the invalid pension is to be granted to such personnel subject to just conditions, in accordance with law.

5. The Learned Senior Counsel for respondent No.1 further submits that though, the said instructions dated 12.02.2019 were made applicable prospectively but, by the judgment of the Hon'ble Supreme Court of India in **SLP(C) No.20330 of 2011** titled as ***Union of India and others vs.***



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P.A.Thomas, decided on 14.03.2019, the same has been read down and rather all such personnel have been held to be entitled for grant of invalid pension, who fall under the instructions dated 12.02.2019 irrespective of the date of invalidation of such army personnel.

6. The Learned Senior Counsel for respondent No.1 further submits that subsequently, the clause stipulating that the instructions dated 12.02.2019 are prospective in nature, and are to be applied only to cases arising after said date, has already been struck down by the Division Bench of this Court in **CWP-28442-2023** titled as ***Union of India and others vs. Sandeep Kumar and another***, decided on 07.01.2025.

7. We have heard learned counsel for the parties and have gone through the case file with their able assistance.

8. The argument of the learned counsel for the petitioners that the claim raised by respondent No.1 before the Tribunal in the year 2019 is barred by the principle of constructive *res judicata* needs to be appreciated so as to decide that whether, the claim qua grant of invalid pension could have been raised at the relevant time when the writ petition was filed before the Tribunal claiming benefit of disability pension in the year 2002, as well.

9. Once, a clarification for grant of invalid pension has been given on 12.02.2019 qua Rule 38 of the 1972 Rules, which clarification has been made the basis of the claim raised before the Tribunal, the said argument of the petitioner qua constructive *res judicata* will not come in the facts and circumstances of the present case as it is only after the said instruction came



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into force that the respondent became entitled and raised the claim the said claim could not have been raised in the earlier proceedings.

10. The claim qua grant of invalid pension which has been allowed is on the basis of the notification dated 12.02.2019 after which only the Rule 38 of the 1972 Rules, has been clarified which clarification has made the respondent No.1 entitled for the invalid pension, the argument of the learned counsel for the petitioner that the principle of constructive *res judicata* will bar the claim raised before Tribunal in the year 2019 on the ground that on earlier occasion, writ petition was filed claiming benefit of disability pension therein which was dismissed and that claim qua grant of invalid pension should have also been claimed at the relevant time, cannot be accepted.

11. Further, it is a conceded position that under the instructions dated 12.02.2019, the claim qua grant of invalid pension allowed in favour of husband of respondent No.1 by the Tribunal is covered, that being so, once benefit of pension is being allowed being a welfare measure, the technical argument of learned counsel for the petitioner qua constructive *res judicata*, that the same has not been adhered with as petitioner's claim for grant of invalid pension got accepted, cannot be allowed to operate so as to deny a benefit, which was otherwise admissible to a Soldier, who has served the country.

12. With regard to the grant of arrears from the year 2017, the Learned Senior Counsel for respondent No.1 submits that once the instructions were issued in the year 2019, the benefit of arrears can only be



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allowed from the said date. Hence, the arrears which will be given to respondent No.1, will only be given from 04.01.2019 onwards and not from a date prior and the order dated 15.05.2023 (Annexure P-1) passed by the Tribunal is modified to the said extent.

13. Keeping in view of the above, the order 15.05.2023 (Annexure P-1) passed by the Tribunal is modified to the above extent and the writ petition is disposed of in the above terms.

14. Pending applications, if any, also stand disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

November 12, 2025
Varinder

(VIKAS SURI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No