**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

2025:PHHC:098051-DB

247 **CWP-2609-2024 (O&M).**
Date of Decision: 01.08.2025.

Sarabjeet Kaur ....Petitioner.

VERSUS

State of Punjab and others ....Respondents.

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CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Ms. Ishani Goyal, Advocate and
Mr. Deepak K. Bishnoi, Advocate for the petitioner.

Mr. Aftab Singh Khara, Sr. Deputy Advocate General, Punjab.

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ANUPINDER SINGH GREWAL, J. (Oral)

The petitioner has *inter-alia* sought quashing of the communications dated 20.09.2023 (Annexure P-7) and 23.07.2021 (Annexure P-5) to the extent that the respondents have withheld 50% of the family pension.

2. Learned counsel for the petitioner submits that the marriage of Avtar Singh was solemnized with one Amrik Kaur. Two children were born from this wedlock namely, Harsimranjit Singh (son) and Poonampreet Kaur (daughter) on 04.10.1983 and 05.03.1986 respectively. Amrik Kaur unfortunately expired on 31.05.1994 (Annexure P-2). Thereafter, Avtar Singh solemnized his marriage with the petitioner on 07.12.1994. From the aforesaid wedlock, a daughter, namely, Jaspreet Kaur was born on 17.10.1996 who is presently residing abroad in Canada. Avtar Singh passed away on

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18.07.2020 (Annexure P-1). She submits that at the time of death of Sh. Avtar Singh, both the children from the first wedlock were over 25 years of age and married, therefore, in view of the statutory rules they would not be entitled to any share in the family pension. She, therefore, submits that the petitioner, being the only eligible beneficiary as the surviving widow of Sh. Avtar Singh, is entitled to 100% of the family pension.

3. Learned State counsel while referring to the short reply by way of affidavit of Senior Deputy Accountant General (Pension), filed on behalf of respondent No.4, submits that in terms of Note 1 to Rule 6.17 of the Punjab CSR-Vol-II, which has been clarified by the Department of Finance Pension Policy and Co-ordination Branch letter dated 24.10.2006, 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 pension will become payable to her eligible minor child and if at the time of her death, a widow leaves no eligible minor child, the payment of her share of pension will cease. Furthermore, if the sons from first wife are more than 25 years of age, they are not eligible for share of family pension and their share will cease. Therefore, the petitioner being the surviving widow is eligible for only half share of the family pension which shall be paid to her.

4. Heard.

5. Husband of the petitioner, namely, Avtar Singh retired as Inspector from Punjab Police on 31.12.2019 on attaining the age of superannuation. His first wife predeceased him having expired on 31.05.1994. The petitioner is the second wife of late Avtar Singh. At the time of his death on 18.07.2020, the children from the first marriage were over 25 years of age and are married.

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6. Rule 6.17(4) of the Punjab Civil Services Rules Volume II Chapter VI sets out the eligibility for disbursement of family pension. Relevant extract of the same is reproduced as under:-

> *"(4) The pension will be admissible–*
>
> *(i) (a) in the case of widow or widower up to the date of death or remarriage whichever is earlier; (b) in the case of a son until he attains the age of twenty-five years or till he starts earning his livelihood, whichever is earlier; and (c) to a daughter upto the age of twenty-five years irrespective of her marriage. However, an unmarried daughter shall be entitled to family pension irrespective of her age. But, family pension shall not be admissible to a daughter, if she starts earning her livelihood:*
>
> *xxx xxx*
>
> *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 a widow, her share of the pension will become payable to her eligible minor child, if at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.*
>
> *Note 2.–Where a Government employee is survived by a widow but has left behind an eligible minor child from another wife, the eligible minor child will be paid the share of pension which the mother would have received if she had been alive at the time of the death of the Government employee.*
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> *Note 3.–Except as provided in Note 1, pension awarded under this scheme will not be payable to more than one member of the family of a Government employee at the same time. It will first be admissible to the widow or widower and thereafter to the eligible minor children. "*

7. It is manifest from a bare reading of this Rule that in the event of an employee being survived by more than one widow, the pension will be paid to the surviving widows in equal shares. Thus, Note 1 to Rule 6.17(4) of the Punjab Civil Services Rules, Volume II Chap. VI, would apply only if more than one widow of the deceased employee is alive and Note 2 would

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apply only if there are minor child from his previous wife. However, in the instant case, the first wife of the employee, namely, Amrik Kaur had predeceased him. After her death, he had solemnized marriage with the petitioner. Hence, on the death of Avtar Singh, the petitioner is his sole widow. It is also not in dispute that the children from the first marriage, at the time of death of their father were over 25 years old and married and, therefore, not eligible to receive family pension. Therefore, there does not seem to be any impediment in the disbursement of the entire pension of late Avtar Singh in favour of the petitioner.

8. We draw support from the judgement of the Division Bench of this Court in the case of **Ram Dulari vs. State of Haryana and others, 2010 (1) SLR 403**, wherein a similar issue was under consideration. It was held as under:-

> *"9. In the present case, family pension has been granted and apportioned in accordance with Note (ii) of sub-clause (iii) of clause 4 of the 'Pension Scheme' because at the time of death of Shri Mehar Singh there were minor children who were bom out of his Wedlock with Smt. Sona Devi apart from the petitioner who was rendered widow. Note (ii) appended to sub-clause (iii) of Clause 4 of the 'Pension Scheme' is squarely attracted to the facts of the instant case. It postulates a widow surviving the death of her husband and minor child from another wife. It further clarifies that the minor child would become entitled to that share of pension which was payable to her mother had she been alive which obviously according to Note (i) is 50%. Accordingly, 50% share of the family pension was apportioned to the minor children whereas the petitioner continued to get the other 50%. The youngest of the minor children, Shri Braham Singh, attained majority on 13.5.2001 and consequently payment of 50% family pension to them was stopped. The claim of the petitioner is meritorious because had there been no minor child then at the first place she would have got 100% family pension. The same stage has*

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now been set in May 2001 when the minor children have stopped getting their 50% share of the family pension on account of the fact that every one of them had attained majority. In any case we would interpret the provision of 'Pension Scheme' liberally as it is a piece of social welfare legislation. The State cannot appropriate that amount which would have come to the petitioner. Therefore, the petitioner, who is widow, has rightly claimed that State cannot appropriate 50% of the family pension, which she is entitled to get during her life time. Accordingly, we are of the view that the petitioner would be entitled to the payment of remaining 50% family pension from the date the youngest of the minor children have attained majority and stopped availing the same i.e. 13.5.2001.

10. <u>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 bom 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 bom 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, bom 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 subclause (iii) of clause 4 of the 'Pension Scheme', which does not contemplate ceasing of pension.</u> Therefore, there is no substance in the argument of the respondents and the same is rejected.

11. For the reasons aforementioned, this petition succeeds. Order

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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. <u>It is clarified that the petitioner would now be entitled to 100% pension.</u> The petitioner shall also be entitled to all the arrears with effect from May 2001 till date alongwith interest at the rate of nine percent per annum."

Further, the Division Bench of this Court in the case of **State of Punjab and others vs. Harpal Kaur, 2014 SCCOnLine P&H 16645,** while agreeing with the findings in the case of **Ram Dulari vs. State of Haryana (supra)** observed as under:-

> *"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.*
>
> *<u>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 v. State of Haryana (CWP No. 3359 of 2008, decided on July 03, 2009)</u>. 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*

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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,*

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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. <u>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.</u> 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.

No merit. Dismissed."

9. Consequently, the petition is allowed. The communications dated 20.09.2023 (Annexure P-7) and 23.07.2021 (Annexure P-5) are hereby quashed and the petitioner is held entitled to 100% of the family pension. The petitioner shall also be entitled to all the arrears along with interest at the rate of 6% per annum. Needful shall be done within a period of two months from the date of receipt of certified copy of this order.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No

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