



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

222

CWP-11073-2021 (O&M)

Date of decision: 12.08.2025

Vinita Bakshi

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Amit Prashar, Advocate for the petitioner(s).

Mr. Rahul Dev, Addl. AG Haryana.

Ms. Anu Malika, Advocate for
Mr. Harneet Singh Oberoi, Advocate
for the respondent(s)-CAG.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenging the Clause 12(A) (i) and (viii) of the Government Instructions issued vide letter No.13/5/(5)/86-5FR-1 dated 17.03.1987 to the extent it deprives family pension to the family members of permanently absorbed Government employee on the ground of being in violation of the provision of the Family Pension Rules, 1964 as well as the Punjab Civil Services (Pension Rules) as applicable to the State of Haryana, the instant writ petition has been filed.

2. Learned counsel appearing on behalf of the petitioner contends that Sh. Ashok Bakshi, i.e. the deceased husband of the petitioner, was an employee with the Irrigation Department in the State of Haryana. He was taken on deputation by the Water and Power Consultancy Services,



hereinafter referred to as '**the WAPCOS**', and was eventually absorbed with it. He contends that the husband of the petitioner submitted his technical resignation on 05.10.2004 for an absorption in **the WAPCOS** which was accepted vide order dated 13.03.2006 and the deceased husband of the petitioner was held entitled to the pensionary benefits from 15.11.1975 till the date of acceptance of the resignation. He submits that the deceased husband of the petitioner started getting pension w.e.f. 14.03.2006 in lieu of total service of 30 years 3 months and 28 days rendered by him with the respondent-Department of Irrigation which was also eventually revised w.e.f. 01.01.2007. After the death of her husband on 19.08.2020, the petitioner being the widow approached the office of respondent No.2 with a request for grant of family pension. The said representation was however dismissed by the respondents vide impugned order dated 07.12.2020. The operative part thereof reads thus:

“Sub: Family Pension for the family of Late Sh. Ashok Bakshi

Ref: Your request letter No. Nil, dated Nil.

In response to your request letter, it is intimated that as per Government of Haryana FD letter No 13/5(5)/86-5FR-1/dated 17.03.1987, family pension is not admissible in absorption cases i.e. Government has no liability for family pension in such cases. As the abovenamed deceased officer had resigned from this department for permanent absorption in WAPCOS (Water and Power Consultancy). So, your claim



regarding fixing family pension is not admissible as per said observations of Government and same is hereby rejected.”

(emphasis supplied)

3. Counsel contends that denial of the family pension is based upon the aforesaid impugned Clause 12A(viii) of the Instructions dated 17.03.1987. He contends that prior to the issuance of the said instructions, the instructions of 11.05.1977 issued by the Finance Department were in force. With a view to consolidate the instructions on the subject i.e. the transfer of Haryana Government employees to other Governments, Companies, Corporations & Board, Municipal Committees etc., the new instructions were issued. He submits that a similar clause, as is under challenge in the present writ petition, was also available in the instructions of 11.05.1977. He contends that by placing reliance on the said clause, the respondent-State had earlier denied the benefit of family pension to one Tara Devi, who thus approached this Court in CWP-8712-2015 titled as ‘Tara Devi Vs. State of Haryana and others’. The said writ petition was allowed vide order dated 01.02.2017 holding that the said clause was contrary to the statutory Rules and the provisions of the Family Pension Scheme, 1964 and that in the event of a conflict between the Instructions and the Rules, the Rules have to prevail. The denial of family pension to the petitioner therein was thus held bad, illegal and was consequently struck down and direction was given to the respondent-State to release family pension to the petitioner therein. The operative part of the said judgment reads thus:-



“I have heard learned counsel for the parties and gone through the record of the case.

A short law point arising before this Court is as to whether the family of a deceased employee, who on account of previous service under the Government is entitled to pro-rata pension and dies while receiving the pension, then his family is entitled to family pension or not? The Family Pension Scheme, 1964 provides for grant of family pension to the family of deceased Government employee. Under the said scheme, the family pension is admissible on account of death of an employee after his retirement. Admittedly, wife is included in the definition of family. The instructions dated 11.05.1977 (Annexure P-1) deals with the transfer of Haryana Government employees to other Governments, Companies, Corporations, Boards, Municipal Committees etc. It deals with the various aspects on accounts of deputation of an employee. Rule 12 of the said instructions deals with grant of retiral benefit on permanent absorption in the Public Sector Undertakings. The said rule provides pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under the Government till the date of absorption. It is apparently on the basis of this rule that husband of the petitioner was granted pro-rata pension. Now the offending rule is Rule 12A (viii), which is reproduced as under:-



“(viii) Government would have no liability for family pension in such cases.”

I am of the view that the said rules run contrary to Family Pension Scheme, 1964. Once an employee on his retirement gets pension on account of service under the Government, he is at the same footing as an employee retired from the service of the Government qua his service is rendered with the Government. Therefore, the Government cannot make discrimination that the employee, who were absorbed under the other departments and who were being allowed pro-rata pension on account of service rendered under the Government then his family will not be allowed family pension. Once a retired employee is getting pension from the Government, the necessary consequences will follow that on account of his death, his family will be on the same footing as that of a retired employee under the Government and be entitled to family pension as such. Accordingly, the said Rule 12A (viii), which is reproduced above, denying the liability of the Government for family pension in such cases is held illegal and struck down. Accordingly, the petition is allowed. Respondent are ordered to allow the family pension to the petitioner from the date of death of her husband. Needful be done within three months from the date of receipt of certified copy of this order.”

4. He submits that since the Clause in question is identical and



there has been no change in the statutory rules, hence, the said ratio would be applicable in the present case as well.

5. Responding to the above, counsel for the respondent-State submits that the deceased husband of the petitioner had submitted his resignation, which was accepted on 13.03.2006, to enable to him seek permanent absorption in the WAPCOS. He exercised his option for payment of pension on monthly basis in accordance with Point 12(B) (vii) of the Government Instructions of 1987 and the same was accordingly released. An amount of Rs.0/-(zero) as family pension was clearly mentioned in the authority dated 21.01.2010 issued by the office of the Principal Accountant General (A&E) Haryana. Accordingly, the claim with respect to the fixed family pension has been rightly declined by the respondent-Department. He further submits that Rule 15(D) of the HCS (Pension) Rules, 2016 provides the benefit of past service towards pension in case of an appointment from pensionable to non-pensionable organization, *pro rata* pensionary benefits shall, in lump sum or otherwise, as per the option exercised by the Govt. employee, would become admissible. The pro-rata pensionary benefits shall be payable from the date of permanent absorption or subsequent appointment and shall be released within six months from the date of submission of documents complete in all respects required for the purpose. No family pension shall be admissible in case of death after the date of permanent absorption or subsequent appointment, hence, the petitioner is not entitled to the said benefit as per Rule 15(D) of the HCS (Pension) Rules, 2016. Despite the aforesaid specific objection raised by the



respondents in their written statement regarding Rule 15(D) incorporating a similar Clause, no rejoinder had been filed.

6. Counsel for the petitioner, however, makes an attempt to contend that the Rule 15 of the HCS (Pension) Rules, 2016 talks of the benefit of past service towards the pension and since the said aspect would be in relation to the service rendered by him at WAPCOS to claim benefit of the service rendered with Irrigation Department, hence, Clause (D) would not be applicable, however, the said argument of the petitioner is faulty. The Rule deals with the benefit of past service rendered toward pension and contemplates different eventualities when a person can claim the benefit of the past services rendered. In relation to an eventuality where a person has moved from a pensionable to non-pensionable organisation, Clause 2 would *prima facie* be applicable. The respondents in the said Rules have specifically mentioned that no family pension shall be admissible in case of death after the date of permanent absorption or subsequent appointment. The Rule under reference reads thus:-

“Rule 15 of the HCS (Pension) Rules, 2016:Benefit of past service towards pension.

(D) On appointment from pensionable to non-pensionable organization —

On permanent absorption or subsequent appointment of a Government employee from a department to a non-pensionable organization under any State Government or Government of India, pro-rata pensionary benefits shall, in lump sum or otherwise as per option exercised by the concerned



Government employee, be admissible of the qualifying service rendered before permanent absorption or subsequent appointment, as the case may be, provided the application has been submitted through proper channel. The pro-rata pensionary benefits shall be payable from the date of permanent absorption or subsequent appointment and shall be released within six months from the date of submission of documents complete in all respects required for the purpose. The incumbent has to resign from service which will be a technical formality. No family pension shall be admissible in case of death after the date of permanent absorption or subsequent appointment.

(emphasis supplied)

7. It is thus evident that the judgment in the matter of **Tara Devi** (*supra*), relied upon by the counsel for the petitioner, would not be applicable to the case of the petitioner in the instant case since the said judgment was based on the principle that there was no such Clause providing for any restriction on family pension under the Pension Rules applicable then. Evidently and undisputedly, the Pension Rules have been modified and a similar prohibitory Clause has been incorporated therein and the petitioner has not raised any challenge to the said clause, hence, this Court cannot go into the legality or validity of the same or read down any provision of the Rule which is not under challenge.



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- 8. The present writ petition is accordingly **dismissed** at this stage.
- 9. Since liberty is being granted to the petitioner to challenge the Rule, further merit of the case need not to be gone into or commented upon.
- 10. The petitioner shall, however, be at a liberty to file an appropriate petition to challenge the Rules as well as the conditions, before an appropriate Forum, if so advised.

(VINOD S. BHARDWAJ)
JUDGE

12.08.2025
Mangal Singh

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