



**107+210 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6326-2004 (O&M)

Date of Decision: 03.11.2025

RAGHUBIRI

....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present: Mr. J. S. Mannipur, Advocate
for the applicant-petitioner.

Mr. Pankaj Middha, Addl. AG, Haryana.

ASHWANI KUMAR MISHRA, J. (ORAL)

CM-14364-CWP-2025

This application under Section 151 CPC has been filed on behalf of the applicant-petitioner seeking permission to place on record the complete copy of the Family Pension Scheme, 1964 as Annexure P-14.

For the reasons stated in the application, the same is allowed. Annexure P-14 is taken on record. Registry is directed to tag the same at an appropriate place.

Main Case

1. This writ petition has been filed challenging the communication of the third respondent dated 13.01.2004, whereby the petitioner's claim for the grant of family pension as well as appointment on compassionate ground has been rejected. The petitioner has also sought quashing of Clause-D of Rule 11 of Punjab Civil Services Rules Volume II Part-I, 1964 (for short, '1964 Rules'). A further prayer has been

made to command the respondents to pay family pension to the petitioner and also offer compassionate appointment.

2. The undisputed facts, in the context of which the claim has been put forth in the present petition, are that the petitioner's husband was engaged as a Chowkidar with the respondent(s)-Department on 01.08.1994. The services of the deceased husband of the petitioner were terminated on 05.09.1995. An industrial dispute was raised which culminated in passing of an award dated 01.02.2000 granting relief of reinstatement along with 20% back-wages. The husband of the petitioner was not reinstated and the award remained unimplemented. Ultimately, the husband of the petitioner died on 29.04.2001 leaving behind the petitioner who happens to be the widow of the deceased employee. Three other sons were also left behind by the deceased employee. An application for compassionate appointment was made along with request for payment of back-wages with interest. When the claim was not addressed, the petitioner sent a legal notice to the respondents but the same was denied by the respondents *vide* order dated 13.01.2004 which is contained in Annexure P-5. In the reply, the respondents contend that the deceased employee Mool Chand was not in service and the provisions of pensionable rules were not applicable upon him as he was not a regular employee. It is, further, stated that the award was passed in view of the fact that the deceased employee had completed 240 days of working and the compensation in terms of Section 25-F of the Industrial Disputes Act, 1947 was not paid.

3. According to the respondents, the actual working of the

deceased employee was below 240 days. It is also the case of the respondents that the only relief granted to the employee was with regard to reinstatement along with 20% back-wages. As per the respondents, the reinstatement would restore the deceased employee on the post held by him which was of a daily-wager and his status would not convert into that of a regular employee which alone would justify issuance of pensionable benefits to the petitioner-widow.

4. The payment of family pension is governed by the Family Pension Scheme, 1964 (for short, '*Scheme of 1964*'). The Scheme of 1964 is formulated to afford family pension to the deceased Government employee(s) as per the rates specified in the Scheme of 1964. Rule 3 of the Scheme of 1964 provides for the applicability of the said Scheme, which reads as under:-

“3. This scheme comes into force with effect from 1st July, 1964 and is applicable to all regular employees on pensionable establishment-temporary or permanent who were in service on the 1st July, 1964, or are recruited thereafter.”

5. Rule 4(i) and (ii) of the Scheme of 1964 are also relevant and are reproduced hereinafter:-

“4. [This scheme is administered as below :-

(i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in

service a Government employee should have completed a minimum period of one year of continuous service without break.

Note 1:- *The term one year continuous service used in para-4(i) above is inclusive of permanent/temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularised by the competent authority or before completion of one year continuous service provided the deceased Government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service.*

Note 2:- *In the cases of persons who were in service in composite state of Punjab prior to 1st November, 1966 and came over to Haryana State on or after 1st November, 1966 or those who have been recruited by the Haryana Government on or after 1st November, 1966, or who are transferred to the Haryana State from the Central Government or other State Governments and to those cases it had 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.]*

(ii) *"Family" for the purposes of this scheme includes the following relatives of the office :-*

- (a) wife, in the case of a male officer;*
- (b) husband, in the case of a female officer;*
- (c) minor sons;*
- (d) unmarried minor daughters;*
- (e) widowed/legally divorced daughters; and*

(f) the parents of an unmarried officer.

Note 1. *Clause (c) and (d) include children adopted legally before retirement. Note 2. - A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefit of the Family Pension Scheme, 1964.*

(ii) The pension is admissible:-

(a) in the case of widow/widower up to the date of death or remarriage, whichever is earlier;

(b) in the case of son/unmarried daughter including widowed/divorced daughter until he/she attains the age of 25 years; and

(c) in the case of parents who were wholly dependent on the Government employee when he/she was alive, up to the date of death provided the deceased employee had left behind neither a widow nor a child:

Provided that an unmarried daughter including widowed/divorced daughter will become ineligible for pension from the date of her marriage/remarriage:

Provided further that the son/unmarried daughter including widowed/divorced daughter shall become ineligible for pension if he or she starts earning livelihood.

The income criteria in respect of parents and widowed/divorced daughter will be that their earning is not more than Rs. 2,550/- per month. Provided also that parents and widowed/divorced daughter shall produce an annual certificate to the effect that their earning is not more than Rs. 2,550/- per month. The upper ceiling of family pension will be 30% of basic pay of the deceased employee, subject to a minimum of Rs. 1,913/- per month.

Note.: *(i) Where an officer 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 death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.

(ii) Where an officer 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 officer.

6. Rule 11 of the Scheme of 1964 specifies the category of persons to whom the Scheme will not be applicable. Sub-Clause (d) of Rule 11 of the Scheme of 1964 specifies ‘casual labour’ as being the person on whom the Scheme will not be applicable. It is this Clause which is assailed in the present petition and learned counsel for the petitioner submits that this stipulation in Rule 11 of the 1964 Rules goes contrary to the Scheme of 1964 itself. For such purposes, reliance is placed upon a judgment of this Court in the case of ***Om Pati Devi v. State of Haryana and another, CWP-2249-2003.***

7. *Per contra*, learned State counsel submits that the judgment of this Court in ***Om Pati Devi (supra)*** was followed by a subsequent judgment authored by the same Hon’ble Judge in ***Usha Rani v. State of Haryana and others, 2005 (1) SCT 410*** wherein this Court put the view that dependent of an employee, who had died in harness and was working on work-charge basis, was entitle to family pension.

8. Our attention has been invited to a Full Bench judgment of this Court in ***Sita Devi v. State of Haryana, 2014(2) SCT 586*** wherein the Full Bench took note of conflicting opinion(s) rendered by different Courts on the applicability of Family Pension Scheme in respect of casual

or work-charge employees. The Full Bench, after referring to the conflicting opinions expressed in the matter, referred to the provisions of the Service Rules and thereafter proceeded to hold that it would only be the dependent of the regular employee who would be entitle to family pension. For such purposes, reliance has been placed upon the previous judgment of the Supreme Court in ***State of Haryana v. Shakuntala Devi, 2008 (15) SCC 380*** as well as the judgment in ***Uttar Haryana Bijli Vitran Nigam Ltd. v. Surji Devi, 2008 (1) SCC 310***. Paragraphs No.6 and 7 of the Full Bench judgment is reproduced, which reads thus:-

“6. Learned counsel for the respondents has also relied upon the judgement of the Hon'ble Supreme Court in State of Haryana and others v. Shakuntala Devi 2008(15) SCC 380 where in para 31 it has been explained as to what is meant by substantive and permanent employment. It is only when an employee renders service in pensionable service, would he be entitled to pension, as held by the Hon'ble Supreme Court. In paras 31 to 33 of the said judgement, it was held as under:-

"31. Clause 3.17 of the Rules in no uncertain term explains as to what is meant by substantive and permanent employment. The contention of the counsel that it applies only to a person who has retired is not correct because holding of a substantive permanent post on the date of retirement is followed by the words "his temporary or officiating service under the State Government". Confirmation in service, therefore, whether before retirement or before death must be held to be sine qua non for becoming eligible for grant of pension. Only when an employee renders service in a pensionable service, would he be entitled to pension.

32. Only by reason of fulfillment of the conditions laid down under the contract of service and/or the statutory rules governing the same, can a person become a full fledged Government employee. When the terms and conditions of service are governed by a statute or statutory rules, no doubt the same would prevail over the contract of employment but then for the said purpose, the employee concerned must show that the appointment was regular in nature and on a post which is a cadre post. The Government employee acquires status only when he becomes entitled thereto by reason of a statute or by his employer declaring him to be entitled therefor.

33. When a regularisation scheme was framed (assuming that such a scheme is valid and constitutional) the employee must be regularized. At least he must acquire a right to be regularised in service.

7. A reference is also made to the judgement in *Uttar Haryana Bijli Vitran Nigam Ltd. and others v. Surji Devi* 2008(1) S.C.T. 656: 2008(2) SCC 310 where the same rule was in question as in the present case. The deceased had been appointed on a work-charge basis with services not being regularized. It was held that the statutory provisions debarred grant of family pension in favour of the family members as the deceased employee was not a permanent or temporary employee. It was further observed that sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law and the period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularised and he becomes permanent and not otherwise.”

9. Ultimately, the question has been answered in paragraph No.8 of the judgment passed by the Full Bench in *Sita Devi (supra)* as

per which the mother of the deceased daughter was not entitled to family pension as the deceased daughter was not regularized. Paragraph No.8 of the judgment reads as under:-

“8. In our view, the issue is no more res-integra in view of the various judicial pronouncements and, thus, it certainly cannot be said that the petitioner as a legal heir of her deceased daughter would be entitled to family pension since the services of the petitioner were never regularized. We answer the reference accordingly.”

10. Learned State counsel has also placed reliance upon another Division Bench judgment of this Court in ***Dharmender v. State of Haryana, 2005 (3) SCT 763*** wherein vires of Rule 3(d)(i)(ii) of Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 was assailed on the ground that pre-condition of deceased employee being a regular employee was unconstitutional. The Division Bench has examined the controversy and dealt with the issue in paragraphs No.5 and 6 of the judgment passed in ***Dharmender (supra)*** which are reproduced:-

“5. We are unable to accept the submissions made by the learned counsel. The object of the Family Pension Scheme, 1964 cannot be made applicable to the special provisions contained under the 2003 Rules. The principle of law laid down by the Supreme Court in the case of D.S. Nakara (supra) would not be applicable in the facts and circumstances of the present case. Therein the Supreme Court was considering the eligibility of the retired employees for the grant of liberalised pension. The employees who retired prior to 1st April, 1979 had been rendered ineligible. The Supreme Court held the fixation of the date to be wholly

*irrational as it had resulted in dividing of the homogeneous class of retired employees. In the present case, under Rule 3(d)(i)(ii), a distinction is made between regular employees and other employees. It is by now settled proposition of law that regular employees are generally given security of tenure under the relevant statutory rules. When an employee is appointed on a regular basis, his conditions of service are provided under the Statutory Service Rules governing a particular service. On the other hand, daily wagers, casual workers, work charged employee, ad hoc or contractual employees have different rights under different statutory provisions. Therefore, a valid classification has been made under the 2003 Rules in defining "a deceased Government employee" for the purposes of eligibility of a dependent for appointment on compassionate grounds. Similarly, the provision of 3 years regular service cannot be said to be either irrational or arbitrary. It is well known that on being appointed to Government service, an employee is generally put on probation. In normal circumstances, the period of probation may be for two years. There may also be provision for extension of the period of probation. Generally, the rules provide that the maximum period of probation shall be three years Le. the initial period of two years may be extended by one more year. On confirmation, the employee acquires a status of regular employee. Keeping in view the aforesaid principle, the prescribed period of three years service cannot be said to be either irrational or arbitrary. This view of ours will find support from the judgment of the Supreme Court in the case of **E.P. Royappa v. State of Tamil Nadu and another**, AIR 1974 Supreme Court 555. In this case, the Supreme Court has clearly held that reasonable classification of persons based on an intelligible differentia is permissible classification under Article 14 of the*

Constitution of India, In the case of **In Re, Special Courts Bill, 1978, AIR 1979 Supreme Court 478**, the Supreme Court has held that the classification must not be arbitrary, artificial or evasive and must be based on some rule and substantial distinction bearing a just and reasonable relation to the object sought to be achieved. In other words, the classification has to be founded on an intelligible differentia which distinguishes those which are grouped together from others who are left out and the said differentia has a rational relation with the object sought to be achieved by the statute or the provision. In our opinion, Rule 3(d)(i)(ii) cannot be struck down on the ground that it does not apply to all employees of the State of Haryana irrespective of the nature of their appointment. May be, a better formula could be evolved, but the Court cannot substitute its wisdom for the Government, in the absence of unreasonableness or perversity. Policy matters have to be left to the Government. The Supreme Court considered similar arguments in the case of **Tamil Nadu Education Department Ministerial and General Subordinate Services Association etc. v. State of Tamil Nadu and others, AIR 1980 Supreme Court 379**. The relevant observations made by the Supreme Court in the aforesaid judgment are as follows:

"In service Jurisprudence integration is a complicated administrative problem where in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life involves experiment, trial and error, but within the leading strings of fundamental rights, and absent unconstitutional "excesses", judicial correction is not right. Under Article 32, this

Court is the constitutional sentinel, not the national ombudsman. We need an ombudsman, but the Court cannot make do.”

6. *It is also well settled that whilst considering the constitutional validity of a statute or a provision thereof, said to be violative of Article 14 of the Constitution of India, there is always a presumption in favour of the constitutionality of the statute or the provision. This presumption has to be rebutted by the party claiming the provision to be violative of Article 14 of the Constitution of India. This view of ours finds support from the judgment of the Supreme Court in the case of **R.K. Garg and others v. Union of India and others, AIR 1981 Supreme Court 2138.** In our opinion, the aforesaid enunciation of law in all the judgments quoted above would make it clear that Rule 3(d) (1)(ii) cannot be held to be violative of Article 14 of the Constitution of India.”*

11. Having considered the controversy raised before us, we find that the issue sought to be raised by the petitioner is clearly not acceptable in view of the Full Bench judgment of this Court in **Sita Devi (supra)**, wherein the Full Bench unequivocally held that the benefit of family pension would not be available to the dependents of an employee who was never regularized. This view of the Full Bench is based upon previous adjudication made on the issue by the Supreme Court. Once that be the position, it would be difficult for the petitioner to contend now that the dependent of a deceased employee, who was not regularized, would be entitle to family pension.

12. Even otherwise, we find that challenge laid to Rule 11(D) of the 1964 Rules is bereft of any merit inasmuch as Rule 3 of the Scheme of 1964 itself makes it apparent that the benefit of family pension would

be applicable only to the regular employees working on pensionable establishment whether temporary or permanent and were in service on 1st July, 1964 or are recruited thereafter. It is, otherwise, well-settled principle that regular employment can be offered either permanently or on temporary basis. Once that be the position in the Rules, we find that the specification in Rule 11 of the Scheme of 1964 excluding the work-charge employee or persons engaged on casual basis, who have not been regularized, from the ambit of Family Pension Scheme merits no interference.

- 13. Accordingly, the present writ petition is dismissed.
- 14. Pending application(s), if any, also stand(s) disposed of.

[ASHWANI KUMAR MISHRA]
JUDGE

[ROHIT KAPOOR]
JUDGE

NOVEMBER 03, 2025
Rahul Joshi

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|------------------------------|--------|
| 1. Whether Speaking/reasoned | Yes/No |
| 2. Whether Reportable | Yes/No |