

(2009) 09 P&H CK 0053

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Baldev Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Sept. 22, 2009

Citation: (2010) 1 ILR (P&H) 207 : (2009) 156 PLR 669

Hon'ble Judges: M.M. Kumar, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Jaswant Singh, J.

The instant petition filed under Article 226 of the Constitution prays for a declaration that Rule 6.16-B of the Civil Service Rules Volume II (as applicable to Haryana) (for brevity "the Rules") and Rule 4(ii) of the Family Pension Scheme, 1964 (for brevity "the Scheme") denying family pension to the petitioner who is father-in-law of the deceased employee are unconstitutional and ultravires the provisions of Payment of Gratuity Act, 1972 and Hindu Succession Act, 1956. A further prayer has also been made for quashing order dated 18.6.2008 (P.6) whereby the claim of the petitioner for payment of gratuity in respect of his daughter-in-1 has been rejected by placing reliance on Rule 6.16-B of the Rules which does not include father-in-law in the definition of expression "family". The petitioner has still further claimed interest on the delayed payment in pursuance of instructions issued by the respondent State on 15.10.1984 (P.7).

2. The petitioner had a son with the name of Balkaur Singh. He was traveling in his car with his wife Paramjit Kaur and two children namely their daughter Navneet Kaur and son Ripandeep Singh. They met with a tragic accident on 27.3.2006 in the area of village Khuain Malkana and all of them died because of drowning as their car fell in the canal. Their death certificates issued by the Registrar of Births and Death -cum-Senior Medical Officer dated 7.6.2006 have been placed on record (P.1 to P.4). At the time of their death, Balkaur Singh and Paramjit Kaur were working as JBT

teachers at Government Primary School Panihari and Govt. Primary School, Dhani Vracha, District Sirsa. The petitioner being father-in-law and the only surviving member in the family applied for service benefits including GPF, leave encashment, GIS, gratuity and family pension. All other benefits in respect of his son has been paid except family pension however, in respect of Paramjit Kaur, daughter-in-law except gratuity and family pension, the petitioner has been paid GPF, leave encashment and the amount representing GIS. The basic reason for rejection of the claim made by the petitioner is that father-in-law is not included in the definition of expression "family" as per the provisions of Rule 6.16-B of the Rules which deal with payment of gratuity. The impugned order dated 18.6.2008 (P.6) rejecting the claim of the petitioner has been placed on record which reads thus:

Please refer to your notice dated 4/08 served on behalf of Sh. Baldev Singh father of late Shri Balkar Singh. In this context it is informed that pension case of late Sh. Balkaur Singh and Sh. Paramjit Kaur had been settled according to the rules of Haryana Govt. As per Haryana Govt. Notification dated 26.11.2004 parents of unmarried officers are considered as family members in the family pension scheme. Hence he is not entitled for family pension of Sh. Balkaur Singh and Smt. Paramjit Kaur. Commutation and pension is admissible in case of Service Pension only and not of Family Pension. As far as gratuity in r/o late Smt. Paramjit Kaur is concerned as per pension of Rule 6.16 of Pb. CSR Vol. II parent-in-law do not fall in the definition of family. Hence your notice is neither tenable not maintainable.

3. The petitioner has further claimed that he has obtained the succession certificate dated 17.10.2006 (P.5) in respect of his son as well as daughter-in-law u/s 370 of the Indian Succession Act, 1956 which have been issued by the learned Additional Civil Judge (Sr. Division) Sirsa while exercising the powers of the District Judge. The petitioner by placing reliance on Rule 6.16-A(2) read with Rule 6.16-B of the Rules has asserted that gratuity is payable on completion of five years qualifying service to an officer who dies while in harness as per Rule 6.16-A(2). The gratuity may be paid to the person or persons on whom the right to receive the gratuity is conferred under Rule 6.16 B or if there is no such person, it shall be paid in equal shares to those surviving members of a Government employee's family as detailed in the aforesaid rule. In case there are no surviving members, he has surviving widowed daughter and/ or one or more members of the family of the Government employee who belong(s) to categories (v) to ix) of Rule 6.16-B(1) of the Rules, then the gratuity may be paid to all such persons in equal shares. It has also been asserted that his deceased daughter-in-law Paramjit Kaur is survived by her father-in-law, one brother who is married and two sisters who are also married. Her real father and mother had already expired. It is thus claimed that the petitioner is the only surviving successor for the purposes of gratuity. He has been denied the payment of gratuity on account of the fact that father-in-law is not covered by the definition of "family" as given in Rule 6.16-B(1) of the rules. It has also been claimed that once GPF, GIS and leave encashment has been paid to the petitioner then denial to pay

gratuity is not legally sustainable. The petitioner has also challenged the constitutional validity of Rule 6.16-B of the Rules which excludes father-in-law from the definition of the family. Rule 4(ii) of the Scheme has also been challenged on the same ground. The petitioner has also placed reliance on various provisions of the Hindu Succession Act, 1956 to claim that father-in-law would be included in the definition of expression "family. The petitioner has also sought support from the provisions of Payment of Gratuity Act, 1972 for the purposes of showing that father-in-law is included in the definition of "family".

4. Respondents have filed the written statement asserting that the petitioner is not entitled to have pension qua his son and daughter-in-law as well gratuity because these benefits are not available to him under Rule 6.16-A read with Rule 6.16-B of the Rules. It has been revealed that the petitioner himself was an employee of the education department of the State of Haryana and he retired as Head Teacher from the Government Primary School, Baragudha on 31.12.2002. He has been drawing his pension @ basic pension of Rs. 3,482/- p.m. The petitioner is not entitled to family pension as per the Scheme because the income criteria for drawing the family pension is that their earning is not more than Rs. 2,550/- p.m. An annual certificate to the effect that his/her earning is not more than Rs. 2,550/- p.m. is to be produced. In that regard reliance has been placed on the notification dated 21.7.2006 (R.2) whereby amendment has been made in para 4(iii). The petitioner in the present case is drawing Rs. 3482/- p.m. as basic pension which is obviously more than Rs. 2,550/-. Therefore his claim of payment of pension has been contested. The other factual averments have not been disputed.

5. Mr. Anurag Goyal, learned Counsel for the petitioner has confined his claim only to the payment of gratuity by seeking interpretation of expression "family" so as to include father-in-law. In order to appreciate the controversy raised it would first be necessary to read rule 6.16-A(2)(a) of the Rules which reads thus:

6.16-A. (1) xx xx xx xx

(2)(a) If an officer, who has completed five years" qualifying service, dies while in service, a gratuity, not exceeding the amount specified in Sub-rule (3) may be paid to the person or persons on whom the right to receive the gratuity is conferred under Rule 6.16B or if there is no such person, it shall be paid in equal shares to those surviving members of a Government employee's family as detailed in rule 6.16B who belongs to categories (i) to (iv) mentioned therein except widowed daughters. Where there are no such surviving members, but there is/are surviving widowed daughters and/ or one or more members of the family of the Government employee who belong(s) to categories (v) to (ix) mentioned , in rule 6.166 the gratuity may be paid to all such persons in equal shares. In cases where the qualifying service is less than the prescribed minimum (viz. 5 years) the deficiency should not be condoned.

6. The expression "family" has been defined by Rule 6.16 B(1) of the Rules which does not include father-in-law and the rule reads as under:

6.16-B(1) For the purpose of this rule:

(a) "family" shall include the following relatives of the Government employee:

(i) wife or wives including judicially separated wife or wives, in the case of male Government employee;

(ii) husband including judicially separated husband in the case of female government employees;

(iii) sons (including step children and unmarried and widowed adopted children);

(iv) daughters;

(v) brothers below the age of 18 years and unmarried and

widowed sisters, including step brothers and sisters;

(vi) father; including adoptive parents in case of individuals whose personal law permits adoption.

(vii) mother;

(viii) married daughters; and

(ix) children of a predeceased son.

(b) "persons" for the purpose of this rule shall include any company or association or body of individuals, whether incorporated or not.

7. A perusal of Rule 6.16-A of the Rules shows gratuity of a deceased employee who dies in harness may be paid to the person/persons on whom such a right is conferred under Rule 6.16-B. Therefore, we are required to construe Rule 6.16-B. The Rule 6.16-B shows that definition of expression "family" is not exhaustive but is illustrative. The aforesaid principle has been laid down in a number of judgements of Hon"ble the Supreme Court. In para 7 of the judgement rendered in the case of Regional Director, Employees" State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons and Another, it has been clarified that whenever in a statute the expression "includes" is used then it is comprehensive of the definition what is stated in it. The observations of their Lordships reads as under

The word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural

import but also those things which the interpretation clause declares that they shall include.

8. Similarly following observations have been made in the case of The Forest Range Officer and others Vs. P. Mohammed Ali and others :

The word "include" is generally used as a word of extension. When used in an interpretation clause, it seeks to enlarge the meaning of the words or phrases occurring in the body of the statute.

9. Therefore the expression "family" used in Rule 6.16-B(1) of the Rules has been defined to include various persons and the list from Clauses (i) to (ix) cannot be regarded as exhaustive. It can include various other relations which may be logically comprehended in the expression "family".

10. A close examination of various Sub-clauses of Clause (a) of Sub-rule 6.16-B(1) would reveal that the rule making authorities have given a wider scope to the expression "family" purportedly by keeping in view the nature of the benefits. The grant of gratuity is a piece of social legislation and interpretation which advance the aforesaid object has to be preferred to the one which defeat the object. It is equally well settled that the Court should adopt the interpretation which lean towards upholding the constitutional validity of a rule rather than declaring the same to be unreasonable and ultra vires of the Constitution. In case of male government male employee the definition not only includes the wife but it also includes those wives who are judicially separated. The same is the position about the female government employees which includes not only the husband but also judicially separated husband. The expression "sons" has been defined to include step children, unmarried children and even widowed adopted children. The expression "father" includes adopted parents. Once the definition of "family" has been cast in such a wide language it is not understood as to how father-in-law has been kept out of the definition. It is evident from Clause (vi) that father is to include adoptive parents in case of individuals whose personal law permits adoption. It would, therefore, follow that father-in-law has to be included in the definition of expression "family". It may include even the mother-in-law.

11. The aforesaid view is also supported by the guidance provided by the parliamentary statute namely Section 2(h) of the Payment of Gratuity Act, 1972. The expression "family" has been defined as under:

(h) "family" in relation to an employee, shall be deemed to consist of:

(i) in the case of a male employee, himself, his wife, his children whether married or unmarried, his dependent parents [and the dependent parents of his wife and the widow] and children of his predeceased son, if any,

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her

husband and the widow and children of her predeceased son, if any.

12. A perusal of Clause (ii) of Sub-section (h) of Section 2 clearly postulates that dependent parents of her husband in case of female employee would be included in the definition of expression "family". Moreover, in the Indian context it cannot be lost sight that after the marriage a female is planted in the family of her husband. Her mother-in-law and father-in-law cannot be excluded from her family. Therefore, the rule making authorities cannot be imputed with the intention that they wanted to exclude father-in-law from the definition of expression "family". Moreover, the petitioner has been paid all the benefits belonging to his daughter-in-law in the shape of GPF, leave encashment, GIS etc. It is a different matter that in order of preference the father-in-law may come after exhausting the list given in Sub-rule (a) of Rule 16(B(1) of the rules. Therefore father-in-law must be included in the definition of expression "family". To that extent Rule 6.16-B (1)(a) must be read down to include father-in-law in it in the definition of "family".

13. As a sequel to the above discussion, the writ petition is allowed. The order dated 18.6.2008 passed by the respondents is hereby quashed. The respondents are directed to make the payment of gratuity to the petitioner within a period of two months from the date of receipt of copy of this order. Keeping in view the difficulty posed by the rule we are not inclined to award any interest or costs in favour of the petitioner.