

## **Iswanti and Others Vs Haryana Urban Development Authority and Others**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** March 15, 2010

**Acts Referred:** Constitution of India, 1950 " Article 14

**Hon'ble Judges:** K. Kannan, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

K. Kannan, J.

The writ petition challenges the decision of the respondents to reject the petitioner's claim for family pension on the ground

that a person similar to the 1st petitioner's husband, who had served only for one year was afforded family pension, which had been denied only to

the petitioner. The contention of the petitioners was that the 1st petitioner's husband was working as a Chowkidar in Haryana Urban Development

Authority at Ambala w.e.f. 01.03.1986 and was regularised w.e.f. 01.02.1996. On 18.02.1997, he had died while still in service. According to

learned Counsel for the petitioner, the petitioner was entitled to family pension, which was admissible to the employees under a Scheme formulated

and put in place by the respondent organization.

2. The contention in defence is that the employees of the respondent were governed by a Scheme called as Contributory Provident Fund (CPF)

and as per the Rules, a CPF Account Number was allotted only after completion of probationary period of one year. The 1st petitioner's husband

completed his probation on 01.02.1997 and an order to that effect was passed on 03.09.1997. Within 15 days after issuance of the letter, the

petitioner's husband had expired and since by that time, no specific account number had been allotted, no deduction from the salary had been

started on account of CPF contribution. On the death of the petitioner's husband, whatever dues had accrued namely (i) death-cum- retirement

gratuity, (ii) ex gratia payment of Rs. 37,986/-, (iii) leave encashment of Rs. 2150/- had all been paid and in addition, by way of compassionate

appointment, the 1st petitioner had also been appointed as a Beldar. The pension scheme itself had come through a notification on 22.10.2001 and

since the death of the petitioner's husband occurred prior to the applicability of the pension scheme, pension could not be granted to the petitioner.

The respondent had also taken a defence that the claim was belated and therefore, the petitioner's claim did not deserve consideration.

3. The issue of limitation need not stand in the way for, pension is a recurring right and if the petitioner was entitled to it, the right cannot be

defeated merely on the ground of delay. In this case, on the other hand, the issue is whether the petitioner could be granted family pension although

on the date when the 1st petitioner's husband died, the scheme was not in force. Learned Counsel appearing for the petitioner relies on the

decision of a Division Bench of this Hon'ble Court in Vinay Kumar and Ors. v. The State of Haryana and Anr. 1996(2) SLR 402. The case dealt

with a situation where a pension scheme was brought into effect from 01.07.1982. While taking up issue of rejection of the claim of the family

pension, the Bench held that the pensionary benefits would also be available to the surviving members of an employee, who died in harness under

the said scheme. This decision, according to the petitioner, supports the claim that pension would be available in all cases where a person dies in

harness without opting for the applicability of the scheme. In my view, the said judgment ought not to be understood as available to all persons,

who had died in harness before the applicability of the Scheme. The Division Bench was referring to its own ruling in Harbans Lal v. The State of

Haryana in C.W.P. No. 1646 of 1995 and held that the family pension and other benefits would be available to the petitioner. I cannot see the

observations of the Hon'ble Division Bench in the case referred to as laying down any proposition of law that in all cases where an employee dies

in harness without exercising his option even though the pension scheme itself was not in force at the time of the death, family pension would always

be payable. It will depend on the terms of the scheme and I have not been shown through any particular provision, which would enable the

petitioners to make such a claim. If on the date of death of the petitioner's husband, the pension scheme was itself not in force and when no

provision in the scheme brought in the year 2003 is shown entitling a person to make such a claim for death occurring earlier, I see no scope for

acceding to the petitioner's claim.

4. The learned Counsel also refers to a decision in Mussammat Sajida Begum v. Secretary, Basic Education, U.P. Shasan, Lucknow 2002(3)

SCT 781 and the decision in M.C. Dhingra v. Union of India 1996(2) SCT 304 to contend i) all pensioners form a homogenous clan and it cannot

be denied to one section of employees and admitted to another section and ii) the cut off date for applicability of pension scheme is arbitrary and

violative of Article 14. Both these decisions make their reliance on D.S. Nakara and Others Vs. Union of India (UOI), . There is a whole wealth of

decisions that have come about after Nakara"s case, explaining its scope and sweep. The exceptions are:

(1) financial constraint State of Punjab and Others Vs. Amar Nath Goyal and Others, ; State of Bihar and Others Vs. Bihar Pensioners Samaj, .

(2) There is a difference between continuance of an existing scheme and introducing a new scheme. Discrimination could be complained of in the

form and not of the latter. All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, .

(3) The rigidity of Nakara"s case has been watered down. Cut off date is an executive function and it should not be interfered with by Court

unless, the cut off date leads to some blatantly capricious or outrageous result. (Govt. of Andhra Pradesh v. Subarayadu (2008) 4 SCC 702.

There is nothing capricious about setting a cut off date for applicability of pension rules only to classes of persons who were in service on a

particular date when the Rules were brought into force.

5. The writ petition is, therefore, dismissed.