

(2004) 12 P&H CK 0031

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11526 of 2002

Smt. Tej Kaur and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Dec. 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- Punjab Civil Services Rules - Rule 6.17, 6.17(1), 6.17(2), 6.17(3)

Citation: (2005) 1 ILR (P&H) 564 : (2005) 140 PLR 84

Hon'ble Judges: V.M. Jain, J; S.S. Saron, J

Bench: Division Bench

Advocate: B.N. Sehgal, for the Appellant; Baljit K. Mann, Sr. A.A.G., for the Respondent

Final Decision: Dismissed

Judgement

S.S. Saron, J.

The petitioners, who are husband and wife in the writ petition under Article 226 of the Constitution of India seek a Writ in the nature of mandamus directing the respondents to grant them family pension alongwith all arrears with compound interest @ 18% per annum on the same on account of the demise of their son in harness.

2. The son of the petitioner, namely Dr. Iqbal Singh was appointed as Medical Officer in the Department of Health and Family Welfare, Punjab, w.e.f. 6.2.1992. It is stated that while he was on duty on 18.1.1994, he was murdered in the hospital Colony at Nihal Singh Wala under Primary Health Centre Patto Hira Singh District Moga. F.I.R. dated 18.1.1994 in this respect was registered at Police Station Nihal Singh Wala. His post mortem was also conducted. His death certificate has been placed on record as Annexure P-1. The said Dr. Iqbal Singh was unmarried and the petitioners being the parents of the deceased are dependent on his earnings. The petitioners were granted death-cum-retirement gratuity. (D.C.R.G.), ex-gratia, Group Insurance

Scheme (G.I.S.), Government Provident Fund (GPF) on account of the demise of their son. However, they were not granted family pension and in this respect the petitioners through heir counsel sent a notice dated 13.3.2002 (Annexure P-3) for the grant of family pension. The petitioners in terms of letter dated 18.4.2004 (Annexure P-4) were asked by the Civil Surgeon, Moga to supply certain documents. The letter of the Civil Surgeon was replied by the petitioners vide letter dated 4.6.2002 (Annexure p-5). The family pension having not been granted to the petitioners, they have filed the present writ petition.

3. On notice, written statement has been filed by Dr. R.P. Mittal, Civil Surgeon Moga on behalf of respondents No. 1 to 4. It is stated that the writ petition is not maintainable on the ground that Rule 6.17 of the Punjab Civil Services Rules Volume 11 Part 1 (Rules - for short) provides that family pension is admissible only to the widow of the deceased and not to the mother of the deceased. It is submitted that family pension is not admissible to the mother/father of the deceased. Besides, the deceased Dr. Iqbal Singh served the department for one and half years and expired during service and taking a lenient view as per instructions/rules whatsoever was admissible to the parents of the deceased was given to them. It is submitted that as per Government Instructions/ Rules death-cum-retirement (D.C.R.G.), ex-gratia, Group Insurance Scheme (G.I.S.) Government Provident Fund (GPF) etc. were given to the petitioners. Therefore, it is prayed that the writ petition be dismissed.

4. In the separate written statement filed by the Accountant General Punjab (A&E) (respondent No. 5) it is submitted that family pension is not admissible to the parents of the deceased employees where the employee has expired before 1.1.1998 i.e. before the issuance of the instructions by the Government of Punjab Department of Finance vide letter dated 16.7.1998 in pursuance of the Fourth Pay Commission Report.

5. The petitioners has filed replication to the written statement of respondents No. 1 to 4, wherein the contents of the written statement have been denied and that of the petition have been reiterated.

6. Shri B.N. Sehgal, Advocate, learned counsel appearing for the petitioners has submitted that the action of the respondent in declining the family pension to the petitioners is illegal and arbitrary and that the petitioners are entitled to family pension on account of the demise of their son in harness. It is contended that exclusion of parents from the definition of Family under Rule 6.17 of the Rules has already been held to be illegal and arbitrary.

7. In response, Ms. Baljit K. Mann learned Senior Deputy Advocate General, appearing for the State has submitted that the petitioners are not entitled to the benefit of family pension as parents of the deceased employee are not covered by the definition of family in terms of Rule 6.17 of the Rules. In support of the contention she has placed reference of State of Punjab and Another Vs. Devinder

Kaur. Therefore, it is contended that the writ petition is liable to be dismissed.

8. We have given our thoughtful consideration to the respective contentions of the learned counsel appearing for the parties. In order to appreciate the contentions, the provisions of Rule 6.17 of the Rules may be noticed, which provide for the grant of Family Pension and are applicable to regular employees of the Punjab Government in a pensionable establishment on or after 1.7.1994. Sub-rule (1) of Rule 6.17 provides for the family pension benefits admissible to the family of deceased employees. Sub-rule (2) of Rule 6.17 provides for the administration of the scheme. Sub-rule (3) of Rule 6.17 defines family, which reads as under:-

(3) Family for purposes of this Scheme will include the following relatives of the Government employee :-

a) Wife in the case of a male Government employee and husband in the case of a female Government employee;

b) a judicially separated wife or husband, such separation not being granted on the ground of adultery, provided the marriage took place before the retirement of the Government employee and the person surviving was not held guilty of committing adultery; and

(c) sons upto the age of twenty-five years.

(d) unmarried daughters upto the age of twenty five years.

Note.- (c) and (d) will include children adopted legally before retirement.

Note:- (2) Marriage after retirement will not be recognised for purposes of this Scheme.

The definition of family was amended vide Finance Department Circular No. 177/98-IFP 378/03 dated 16.7.1998 which is effective from 1.1.1996 in terms of para 4.3 of the said Circular dated 16.7.1998 the amendment has been effective in the following manner:-

4.3 For the purposes of Rule 6.17(3) of Punjab Civil Services Rules Volume II, the definition of family shall also include the following relatives of the deceased Government employee:-

(i) Son/daughter including widowed/divorced daughter till he/she attains the age 25 years or upto the date of his/her marriage/remarriage or till he/she starts earning his/her livelihood, which ever is earlier; son/daughter including widowed/divorced daughter shall be deemed to be earning his/her livelihood if his/her income is Rs. 2,620/- per mensem or more.

(ii) Parents who were wholly dependent on the Government employee when, he/she was alive provided the deceased employees had left behind neither a widow nor a child. The parents whose total income from all sources was Rs. 2,620/- per mensem

or more at the time of death of the employee shall not be considered to be dependent.

A perusal of the above definition of family as contained in Rule 6.17(3) of the Rules admittedly does not include the parents of the deceased Government employee except as provided for in terms of sub para (ii) of para 4.3 of the Circular dated 16.7.1998. The said sub para (ii), however, is inapplicable to the present case as the said Circular is effective from 1.1.1998 whereas the son of the petitioners died on 18.1.1994.

8. Learned counsel appearing for the petitioners has however, contended that the above definition of family which excludes the parents of the deceased has been held to be arbitrary by a Division Bench of this Court in State of Punjab v. Kharak Singh Kang 1998(1) S.C.T. 556. It has been held therein that Rule 6.17 which excludes the parents of the deceased has no rational and is totally arbitrary and that it cannot, he sustained to the extent it excluded the parents of the deceased Government employee from the concept of family. Learned counsel for the petitioner has also referred to Malkiat Singh v. State of Punjab 2003(2) S.C.T. 203 wherein following the decision of Kharak Singh "s case (supra), it was observed that the deceased cannot be viewed as a married person when his widow has re-married and after her re-marriage, the parents are entitled to family pension. Reliance was also placed on Jaswinder Kaur v. State of Punjab 2002(1) S.C.T. 953 wherein also the judgment in Kharak Sigh"s case has been followed and the Rule to the extent it excludes the parents from the definition of "family" it was observed has been declared to be arbitrary and irrational in the said case. Besides, reliance is also placed on Balwant Kaur v. State of Punjab 2002(3) S.C.T. 800, wherein it was observed that parents who are dependent and whose income is not over Rs. 2,620/-are included in the definition of family. The said case, however, relates to the instructions dated 16.7.1998 in respect of which it was observed that some amendments have been made in the Rules to provide further benefits to pensioners and parents who are dependents and whose income was not more than Rs. 2,620/- per mensem.

9. The aforesaid case law referred to by the learned counsel for the petitioners, however, would not be applicable in view of the judgment of the Hon"ble Supreme Court in State of Punjab v. Devinder Kaur (supra) wherein respect of the Family Pension Scheme 1964 (1964 Scheme-for short) the definition of "family" as contained in the 1964 Scheme was considered The employee in the said case died in harness on 5.11.1985 while he was in Government service of the State of Punjab. At that time the 1964 Scheme was in force which did not include the parents Within the definitions of "Family" whereas the earlier Scheme of 1951 and the subsequent amendments to the Punjab Civil Services Rules which came into force w.e.f., 1.1.1996 included the parents also. The short question that was considered therein was whether the parents of the deceased employee were entitled to get family pension on the demise of their unmarried son who died in harness on 5.11.1985 when he

was in Government service of the State of Punjab. It was held that in view of the 1964 Scheme which was in force at the time of death of the employee in the said case, his parents are not entitled to family pension. The case *State of Punjab v. Devinder Kaur (supra)*, is applicable to the case in hand wherein the provisions of the present Rule 6.17(3) was considered as also the amendment which came into force w.e.f. 1.11.1996. Besides, in [State of Gujarat through Chief Secretary and Others Vs. Sarti Devi](#), the definition of "family" in the context of revised Family Pension Scheme in the State of Gujarat wherein the definition of family is para materia to the case in hand was considered and it was held that in view of the express definition of "family", the mother of the employee who died in harness has not been included as a member of the family to claim any family pension from the Government.

10. The judgment of the Hon"ble Supreme Court are applicable to the case in hand inasmuch as the son of the petitioners died in harness on 18.1.1994 and at the time of his demise the Family Pension Scheme as contained in Rule 6.17 of the Rules was applicable. The definition of "Family" in Rule 6.17(3) thereof does not include the parents of the deceased. The subsequent amendment to the Rules vide Circular dated 16.7.1998 is effective from 1.1.1996 which in any case is not applicable to the case in hand.

11. For the fore-going reasons, there is no merit in this petition and the same is accordingly dismissed.