

(2009) 07 P&H CK 0108

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ram Dulari

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: July 2, 2009

Citation: (2009) 2 ILR (P&H) 889 : (2009) 155 PLR 773 : (2010) 1 SLR 403

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

Bench: Division Bench

Judgement

M.M. Kumar, J.

The petitioner, who is a widow of an ex-employee of the respondent State, has approached this Court with a prayer for quashing order dated 17.7.2007 (P-7) passed by the Director General of Police-respondent No. 2, whereby her claim for grant of 50% share of the family pension given to the minor children, who are born out of the wedlock of her husband with one Sona Devi. A further prayer has also been made for issuance of direction to grant her family pension with all consequential benefits and also for declaring clause 4(iii) Note (i) of the Family Pension Scheme, 1964 (for brevity, "the Pension Scheme") as ultra vires of the Constitution.

2. Brief facts of the case are that the husband of the petitioner Shri Mehar Singh, who was working in the Police Department, Haryana, as Assistant Sub Inspector, died in harness on 27.8.1980. He had rendered more than 17 years of service on the date of his death. Shri Mehar Singh was first married to one Sona Devi, who had died during his life time. Out of the wedlock with Smt. Sona Devi, Shri Mehar Singh had three children, namely, Raj Singh, Manju Rani and Braham Singh, whose date of birth are 5.1.1972, 20.3.1974 and 13.5.1976 respectively. After the death of Smt. Sona Devi, he married Smt. Ram Dulari-petitioner. Out of the wedlock of Shri Mehar Singh and the petitioner one son, namely, Shri Megh Raj was born on 8.12.1980.

3. It is undisputed that after the death of Shri Mehar Singh, the petitioner was given family pension w.e.f. 26.8.1980 to the extent of 50% because rest 50% pension was

apportioned to the share of minor children born from womb of Sona Devi, namely, Raj Singh, Manju Rani and Braham Singh. When Braham Singh attained the age of 25 years on 13.5.2001, the right of the aforementioned three children to draw 50% of the family pension ceased as per the "Pension Scheme". In order to claim that after attaining the age of majority by Braham Singh the 50% share given to them would come back to the petitioner, she made a detailed representation on 23.9.2006 (P-2) with subsequent reminders. That representation has been rejected by the Director General of Police-respondent No. 2 by observing as under:

The representation dated 23.9.2006 (Annexure P-2) has been considered. Brief facts of the case are that Late ASI Mehar Singh expired in year 1980 and his first wife expired in year 1976 leaving behind minor son Raj Singh who was below the age of 25 years at the time of death. Late ASI Mehar Singh got remarried with 2nd wife in year 1977 with Smt. Ram Dulari. A.G., Haryana has released the family pension in two equal shares i.e. 50% for Raj Singh S/o ASI Mehar Singh and 50% family pension in favour of Smt. Ram Dulari (2nd wife) wife of Late ASI Mehar Singh. After completion the age of 25 years the minor child was not eligible for the family pension, hence, the share of 50% pension of Raj Singh was ceased in accordance with the rule Para 4(III) note (I) of Appendix-1 of the family pension Scheme 1964.

As per family pension rules Para 4(111) Note (I)-Appendix-I "where an officer is survived by more than one widow the pension will be paid to them in equal share. On the death of the widow, her share of 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 pension will cease.

4. In response to notice of motion, respondent Nos. 1 to 6 have filed a joint written statement. The broad factual matrix have not been disputed. However, reliance has been placed on clause 4(I) note (1) of Appendix-1 of the "Pension Scheme", which contemplate that where an officer is survived by more than one widow then pension is to be paid to them in equal share. After the death of widow, her share is to be paid to her eligible minor child. In case a widow does not leave any minor child then the payment of her share of pension would cease. It has, thus, been claimed that after the other widow or her minor child has stopped enjoying 50% of the pension then the aforesaid share would not be payable to anyone including the person like the petitioner.

5. Mr. R.S.Mamli, learned Counsel for the petitioner has argued that after the death of the husband, a widow would be entitled to 100% family pension but because of the minor children, who were born out of the wedlock of her husband and his deceased wife Smt. Sona Devi, 50% share of the family pension was apportioned in favour of the minor children. According to the learned Counsel the 50% apportionment of family pension in favour of the minor children would, therefore, has to be paid to the petitioner after the youngest minor child of Smt. Sona Devi, namely, Shri Braham Singh had attained majority w.e.f. 13.5.2001. Learned Counsel

has also submitted that Note (i) of clause 4(iii) of the "Pension Scheme" would be rendered unconstitutional if it is not interpreted to mean that the petitioner would become entitled to 100% family pension after the claim of any other claimants ceased.

6. Ms. Ritu Bahri, learned Deputy Advocate General, Haryana, has, however, argued that once the right of the minor children of Smt. Sona Devi has ceased then the petitioner cannot stake her claim to the aforesaid 50% share of the family pension because there is no such provision in the rules. According to the learned Counsel, Note (i) of clause 4(iii) of the "Pension Scheme" has used a strong expression "cease", which would mean that after the attaining of majority by the children this part of the pension would not be available to anyone and, therefore, the order granting 50% of family pension to the petitioner is just and equitable.

7. Having heard learned Counsel at a considerable length and perusing the record with their assistance we are of the view that in order to resolve the controversy it would be necessary first to peruse the relevant provisions of the "Pension Scheme". The family pension is regulated by the "Pension Scheme", which is part of the Civil Service Rules Volume-II. The expression "family" has been defined in sub-clause (ii) of clause 4 of the "Pension Scheme" whereas sub-clause (iii) deals with entitlement to family pension. Both the relevant sub-clauses are set out here-in-below for facility of reference:

4. This scheme is administered as below:

(i) xxx

(ii) "Family" for purposes of this Scheme includes the following relatives of the officer:

(a) wife, in the case of a male officer;

(b) husband, in the case of a female officer;

(c) minor sons; and

(d) unmarried minor daughters.

Note 1 xxx

Note 2 xxx

Note 3 xxx

(iii) The pension is admissible:

(a) in the case of widow/widower upto the date of death or remarriage whichever is earlier and

(b) in the case of minor son/unmarried daughter until he/she attains the age of 25 years.

Provided that an unmarried daughter will become ineligible for pension from the date she gets married.

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

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 her 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.

8. A perusal of the definition of expression "family" shows that it would include wife, husband, minor sons and unmarried minor daughters. It is further evident from the perusal of clause 4(iii) that the pension is admissible to a widow/widower upto the date of his/her death or remarriage whichever is earlier. According to sub-para (b) of subclause (iii) of clause 4 in the case of minor son/unmarried daughter the pension would remain admissible until he/she attains the age of 25 years. An unmarried daughter would become ineligible for pension from the date she gets married and a son/unmarried daughter would be rendered ineligible for pension if he or she starts earning livelihood.

9. The "Pension Scheme" has further clarified that in case there are more than one widow, the pension has to be paid to both of them in equal share. On the death of one of the widow, her share of pension is to be payable to her eligible minor children and if there are no eligible minor children left, the payment of her share of pension would cease. Note (ii) of sub-clause (iii) of clause 4 or the "Pension Scheme" further clarifies that where an officer is survived by a widow but who has left behind an eligible minor child from another wife then the eligible minor child would be paid share of pension which his or her mother would have received had she been alive at the time of death of the officer.

10. In the present case, family pension has been granted and apportioned in accordance with Note (ii) of sub-clause (iii) of clause 4 of the "Pension Scheme" because at the time of death of Shri Mehar Singh there were minor children who were born out of his wedlock with Smt. Sona Devi apart from the petitioner who was rendered widow. Note (ii) appended to sub-clause (iii) of Clause 4 of the "Pension Scheme" is squarely attracted to the facts of the instant case. It postulates a widow surviving the death of her husband and minor child from another wife. It further

clarifies that the minor child would become entitled to that share of pension which was payable to her mother had she been alive which obviously according to Note (i) is 50%. Accordingly, 50% share of the family pension was apportioned to the minor children whereas the petitioner continued to get the other 50%. The youngest of the minor children, Shri Braham Singh, attained majority on 13.5.2001 and consequently payment of 50% family pension to them was stopped. The claim of the petitioner is meritorious because had there been no minor child then at the first place she would have got 100% family pension. The same stage has now been set in May 2001 when the minor children have stopped getting their 50% share of the family pension on account of the fact that every one of them had attained majority. In any case we would interpret the provision of "Pension Scheme" liberally as it is a piece of social welfare legislation. The State cannot appropriate that amount which would have come to the petitioner. Therefore, the petitioner, who is widow, has rightly claimed that State cannot appropriate 50% of the family pension, which she is entitled to get during her life time. Accordingly, we are of the view that the petitioner would be entitled to the payment of remaining 50% family pension from the date the youngest of the minor children have attained majority and stopped availing the same i.e. 13.5.2001.

11. The argument of the respondents is wholly misconceived when they argued that according to Note (i) of sub-clause (iii) of clause 4 of the "Pension Scheme" once the minor children have stopped getting their share on account of attaining majority then the 50% share would cease. A perusal of Note (i) would show that the aforesaid provision is applicable only in a case where an employee is survived by more than one widow. In the present case there was only one widow on the date of death of Shri Mehar Singh. It has come on record that Shri Mehar Singh died on 27.8.1980 and his earlier wife Smt. Sona Devi had predeceased him in the year 1976 leaving behind three children, namely, Raj Singh, Manju Rani and Braham Singh, who were born on 5.1.1972, 20.3.1974 and 13.5.1974 respectively. Then he married the petitioner. It is further appropriate to mention that the petitioner also had a minor child, namely, Megh Raj, who was born on 8.12.1980. Therefore, Note (i) would have no application in the absence of at least two widows. The present is a case of one widow who had a minor child of her own and three minor children of her husband, born out of his wedlock with Smt. Sona Devi, who had predeceased him. The respondents have totally misdirected themselves in applying Note (i) to the case of the petitioner whereas the matter is covered by Note (ii) of subclause (iii) of clause 4 of the "Pension Scheme", which does not contemplate ceasing of pension. Therefore, there is no substance in the argument of the respondents and the same is rejected.

12. For the reasons aforementioned, this petition succeeds. Order dated 17.7.2007 (P-7) passed by the Director General of Police respondent No. 2 is set aside. The respondents are directed to release 50% share of the family pension to the petitioner, which was being paid to the minor children of deceased wife of Shri

Mehar Singh, namely, Smt. Sona Devi, to the petitioner. It is clarified that the petitioner would now be entitled to 100% pension. The petitioner shall also be entitled to all the arrears with effect from May 2001 till date alongwith interest at the rate of nine percent per annum. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order.

13. The writ petition stands disposed of in the above terms.