

*Before Sanjay Kishan Kaul, CJ, Surya Kant &  
Augustine George Masih, JJ.*

**SITA DEVI—Petitioner**

*versus*

**STATE OF HARYANA AND OTHERS—Respondents**

**CWP No. 10006 of 2007**

August 2, 2013

*A. Constitution of India, 1950 - Art. 226 - Punjab Civil Services Rules, Chapter 3, Section II, Clause 3.12, Volume II, Part I (as applicable to Haryana State) - Family Pension - Employment must be substantive and permanent - Petitioner's deceased daughter recruited on contractual basis - Continued in service - Unfortunately passed away before being considered under the Policy for regularisation - Certainly cannot be said that the petitioner as a legal heir of her deceased daughter would be entitled to family pension since the services were never regularised.*

*Held*, that it is not in dispute that the deceased daughter of the petitioner satisfied the first and the third parameters. The controversy is only qua the second parameter which required that 'employment must be substantive and permanent'. We, thus, posed a query to the learned counsel for the petitioner as to how could the services of the deceased daughter of the petitioner be said to be substantive and permanent in these circumstances since undisputedly she had not been regularized, though it may be stated that she would have been eligible for regularization on 01.10.2003 as per the policy of the respondents subject to fulfilment of all other conditions.

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 (sic) were never regularized. We answer the reference accordingly.

(Paras 5 & 8)

**B. Constitution of India, 1950 - Art. 226/227 - Practice and procedure - For a judicial pronouncement - Sentiments and sympathy alone cannot be a ground - Such aspects can always be considered by the respondent-authorities.**

*Held*, that however, before parting with the matter, we would like to state that though for a judicial pronouncement sentiments and sympathy alone cannot be a ground, such aspects can always be considered by the respondent-authorities. This is so as it is not as if the daughter of the deceased would have continued to work in the same capacity as she was at the time of her unfortunate demise, but she would have been entitled to regularization as per the own policy of the respondents on 01.10.2003. She was just a little less than three months short of being regularized and there was nothing to show that she would have been otherwise dis-entitled. Under this factual situation, it will be for the respondents to see if they are willing to consider the case of the petitioner for some kind of pension or assistance which may ameliorate the suffering of the petitioner.

(Para 10)

Naveen Daryal, Advocate, *for the petitioner*:

Ajay Gupta, Additional Advocate General, Haryana.

**SANJAY KISHAN KAUL, C.J. (ORAL)**

(1) Late Inder Kaur, daughter of the petitioner, was working as a JBT Teacher in the Government Primary School, Sultanpur, Block Ladwa, District Kurukshetra when she unfortunately passed away in an accident on 07.07.2003. The mother being the petitioner filed the present petition seeking release of family pension from the date of her death alongwith interest.

(2) In the course of hearing of the writ petition, a Division Bench of this Court noticed different judgements of the two Division Benches which had taken contrary view qua the material aspect in question. In *Usha Rani* versus *State of Haryana and others (1)*, the dependent of an employee who had died in harness and was working on work-charge basis was held entitled to family pension. On the other hand, in CWP No. 1851 of 2006 titled as *Shanti Devi Vs State of Haryana and others* decided on 07.02.2006, the claim of dependent of the deceased government employee

was rejected on the basis that the employee should be 'a regular employee on pensionable establishment'. It is in view of this conflict of judicial view that the matter has been referred to a larger Bench vide order dated 30.11.2007.

(3) Learned counsel for the petitioner seeks to contend that the family pension would be admissible to the petitioner on parity with the concept of admissibility of annual increments, medical leave etc. which was granted to similarly situated teachers in CWP No. 7520 of 2005 titled as *Mohinder Pal and others Vs State of Haryana and another* decided on 17.10.2007. It is stated that the daughter of the petitioner was also recruited in the same manner as the petitioners therein where the initial appointment was on contractual basis which was so continued. The petitioners therein apprehending discontinuation of service approached the Court by filing CWP No. 9104 of 1999 titled as *Dinesh Kumar and others Vs State of Haryana and others* which was decided on 13.09.1999 directing the State to permit the petitioners therein to continue in service till appointment of regular candidates was made. The petitioners continued in service and in the meantime the State of Haryana formulated a policy on 01.10.2003 to regularize the services of those employees who were in service for a particular number of years and accordingly the services of the petitioners therein were regularized and they were in service. Taking cue from other similar cases where the benefit of annual increment had been granted to similarly situated employees, the learned Single Judge granted that benefit despite the judgement of the Hon'ble Supreme Court in *Secretary, State of Karnataka and others versus Uma Devi (3) and others (2)*, on account of peculiar facts. We may note that there is no dispute about the conditions of qualification to be eligible for such pension which are contained in Chapter 3 Section II Clause 3.12 of the Punjab Civil Services Rules (as applicable to Haryana State) Volume II Part I. The relevant clause reads as under:-

*"3.12 The service of a government employee does not qualify for pension unless it conforms to the following three conditions:-*

*First - The service must be under Government.*

*Second - The employment must be substantive and permanent.*

*Third - The service must be paid by Government.*

*These three conditions are fully explained in the following rules.*

*Note.- The question whether service in a particular office or department qualified for pension or not is determined by rules which were in force at the time such service was rendered orders subsequently issued declaring the service to be non-qualifying, are not applicable with retrospective effect."*

(5) It is not in dispute that the deceased daughter of the petitioner satisfied the first and the third parameters. The controversy is only qua the second parameter which required that 'employment must be substantive and permanent'. We, thus, posed a query to the learned counsel for the petitioner as to how could the services of the deceased daughter of the petitioner be said to be substantive and permanent in these circumstances since undisputedly she had not been regularized, though it may be stated that she would have been eligible for regularization on 01.10.2003 as per the policy of the respondents subject to fulfillment of all other conditions.

(6) Learned counsel for the respondents has also relied upon the judgement of the Hon'ble Supreme Court in *State of Haryana and others versus Shakuntala Devi (3)*, 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 regularization 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 regularized in service."*

(7) A reference is also made to the judgement in *Uttar Haryana Bijli Vitran Nigam Ltd. and others versus Surji Devi (4)*, 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 regularized and he becomes permanent and not otherwise.

(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 (sic) were never regularized. We answer the reference accordingly.

(9) In view of the aforesaid position and the answer to the reference, nothing really survives in the petition, which is liable to be dismissed.

(10) However, before parting with the matter, we would like to state that though for a judicial pronouncement sentiments and sympathy alone cannot be a ground, such aspects can always be considered by the respondent-authorities. This is so as it is not as if the daughter of the deceased would have continued to work in the same capacity as she was at the time of her unfortunate demise, but she would have been entitled to regularization as per the own policy of the respondents on 01.10.2003. She was just a little less than three months short of being regularized and there was nothing to show that she would have been otherwise dis-entitled. Under this factual situation, it will be for the respondents to see if they are willing to consider the case of the petitioner for some kind of pension or assistance which may ameliorate the suffering of the petitioner.

(11) The petition accordingly stands dismissed in terms aforesaid.

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*V. Suri*