

*Before H.S. Bhalla, J.*

MRS. KANTA GUPTA,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

**C.W.P. No. 14948 of 1997**

5th October, 2007

***Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. II-RI.6.17—Govt. doctor dismissed after inquiry for misconduct of indulging in private medical practice—Challenge against dismissal failing before High Court—Death of doctor—Govt. imposing cut on family pension on ground of misconduct—Challenge to imposing cut—No provision in P.C.S. Rules for imposing a cut on family pension on account of misconduct—Order quashed and directions issued for release of family pension and other terminal benefits.***

*Held*, that in view of the provisions of the Family Pension Scheme as contained in rule 6.17 of the Punjab Civil Services Rules, Volume II, the petitioner is entitled to the grant of family pension. There is no provision in these rules for imposing a cut on the family pension on account of any misconduct on the part of the deceased government servant. Therefore, the disciplinary proceedings ought not to have been made to stand in the way of grant of family pension to the petitioner. Even otherwise, the disciplinary proceedings ought to have come to an end on the death of the government servant. These could not be pursued after his death. A dead person cannot defend himself in departmental disciplinary proceedings. It is highly unjust to deprive the widow of the government servant who died in active service of the legitimate benefits provided by the rules. If timely succor is not provided to the needy family and the matter is allowed to linger on because of red tapism so common in bureaucracy the very purpose of the family pension scheme and other benefits get defeated.

(Para 4)

Manohar Lall, Advocate, *for the petitioner.*

Ashok Jindal, Additional Advocate General Haryana, *for the respondents.*

**H.S. BHALLA, J.**

(1) Invoking extraordinary writ jurisdiction under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the order, dated 30th June, 1997 passed by Commissioner and Secretary to Government, Haryana, Health Department, Chandigarh-respondent No. 1, whereby 50% cut on the family pension, was imposed. Petitioner has also prayed for issuance of direction to the respondents to make payment of arrears of pension, family pension, Gratuity, provident fund, leave encashment and Group Insurance money with interest at the rate of 18% per annum.

(2) The facts required to be noticed for the disposal of this petition are that the petitioner is a widow of late Dr. M.G. Gupta, who joined as an Assistant Surgeon, Class II on 25th January, 1952 in the Punjab Health Department. He was confirmed on the said post on 25th January, 1954. He joined as Medical Officer, PCMS Class-II, on 7th December, 1960 through the Punjab Public Service Commission. On re-organisation of the erstwhile State of Punjab on 1st November, 1996, the services of the petitioner's husband were allocated to the State of Haryana and thus, he became a member of HCMS, Class-II and he was confirmed as Medical Officer in the State of Haryana with effect from 1st November, 1966. In the month of March, 1977, he was served with a charge-sheet under Rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, (hereinafter referred to as "the Rules") levelling allegations therein that he opened a Nursing Home and was carrying on his private practice. The husband of the petitioner, on attaining the age of 50 years, served three months' notice on 7th November, 1978 under Rule 3.26 of the Punjab Civil Services Rules, as applicable to the State of Haryana. The period of notice expired on 8th February, 1979 and he automatically stood retired from service from that date i.e. 8th February, 1979. The husband of the petitioner Dr. M.G. Gupta met his edge of doom on 10th May, 1987. However, impugned order was passed, whereby 50% cut was imposed on family pension of the petitioner,—*vide* order, dated 30th June, 1997. This order has been challenged by the widow of deceased Dr. M.G. Gupta through the writ petition in hand.

(3) Written statement has been filed by the respondents by virtue of which it was pointed out that a charge sheet under rule 7 of the Rules was served upon the husband of the petitioner. On an inquiry being conducted,

a report was submitted by the Inquiry Officer mentioning therein that the husband of the petitioner had been doing private practice outside B.K. Hospital, Faridabad in contravention of Government instructions. He was not entitled to do private practice after 1st February, 1972. The husband of the petitioner has established a Nursing Home under the name and style of "Gupta Nursing Home" for doing private medical service, which was banned by the government with effect from 1st February, 1972. This act of the husband of the petitioner was in violation of the Government instructions and against the provisions of Service Rules and law. On the basis of the findings of the Inquiry Officer, it was decided to dismiss the husband of the petitioner from service. It has been further averred in the written statement that a show cause notice for dismissal from service was served upon the husband of the petitioner, which was challenged by filing a Civil Writ Petition No. 2092 of 1986, wherein stay was granted by this Court against the operation of the show cause notice,—*vide* order, dated 11th May, 1982 and ultimately, the aforementioned writ petition was dismissed by this Court on 29th December, 1996. Against the order of dismissal, Letters Patent Appeal No. 111 of 1997 was filed, which was also dismissed,—*vide* order, dated 29th December, 1996 passed by this Court. Meaning thereby that, the husband of the petitioner could have been dismissed from service and no right of pension/Gratuity could have accrued to him, but for his demise, that punishment could not be awarded. It has been further maintained in the written statement that taking a lenient view in the matter, 50% cut on his pensionary benefit was ordered to be made. It is finally prayed for dismissal of the writ petition.

(4) I have heard learned counsel for the parties. I find that in view of the provisions of the Family Pension Scheme as contained in rule 6.17 of the Punjab Civil Services Rules Volume II, the petitioner is entitled to the grant of family pension. There is no provision in these rules for imposing a cut on the family pension on account of any misconduct on the part of the deceased government servant. Therefore, the disciplinary proceedings to which reference has been made in the written statement ought not to have been made to stand in the way of grant of family pension to the petitioner. Even otherwise, the disciplinary proceedings ought to have come to an end on the death of the government servant. These could not be pursued after his death. A dead person cannot defend himself in departmental disciplinary

proceedings. In fact, it is mentioned in the written statement that the concerned office has already been asked to drop the disciplinary proceedings and write off the alleged shortages, but no decision on the point has been taken. Be that as it may, I find that it is highly unjust to deprive the widow of a government servant, who died in active service of the legitimate benefits provided by the rules. If timely succor is not provided to the needy family and the matter is allowed to linger on because of red tapism so common in bureaucracy, the very purpose of the family pension scheme and other benefits get defeated.

(5) In the circumstances, therefore, I allow this writ petition, quash the order, dated 30th June, 1997 (Annexure P-4) and direct the respondents to sanction and release to the petitioner the family pension, death-cum-retirement gratuity and cash in lieu of the unavailed of earned leave due to her husband on the date of his death, i.e., 3rd November, 1983 and other retrial benefits, within two months from today. I further direct that the petitioner should be paid interest at the rate of 12% per annum on the amount so due till the date of actual payment. The petitioner shall also get costs of this writ petition, which are assessed at Rs. 1,000.

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**R.N.R.**

*Before Permod Kohli, J.*

KIRPAL SINGH,—*Petitioner*

*versus*

SHIROMANI GURDWARA PRABANDAK COMMITTEE

TEJA SINGH,—*Respondent*

*C.W.P. No. 17365 of 2001*

26th September, 2007

***Constitution of India, 1950—Art. 226—Sikh Gurdwaras Act, 1925—S.132—A confirmed employee of S.G.P.C. applying for leave for going abroad—Petitioner failing to join duty on expiry of sanctioned leave and applying for extension of leave—Management rejecting request and directing petitioner to join immediately—Termination on account of absence from duty—Misconduct—***