

Before Ajay Tewari, J.

AMRIT KAUR @ PARAMJIT KAUR—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 4623 of 2012

October 28, 2013

Constitution of India, 1950 - Punjab Civil Services Rules, 1970 - Vol.2 Chapter VIII - Rule 8.35 - Husband of petitioner was constable in police who died in accident - Petitioner granted family pension - Petitioner remarried brother of her deceased husband and made application for transfer of pension to children - Transfer not possible due to age of children - Thereafter petitioner claims, it is her own right - Whether petitioner can claim again - Held, such prayer cannot be held to be waiver for all times to come - Writ allowed.

Held, that in my opinion, what the petitioner requested was for transfer of family pension in favour of her minor children and now the children are no more entitled for family pension, since the family pension is otherwise payable to the petitioner, her prayer for transfer of family pension in favour of her children cannot be treated as a waiver of her right of claiming family pension for all times to come, more-so when it is a beneficial provision.

(Para 5)

Anurag Goyal, Advocate, *for the petitioner.*

Monica Chhibber Sharma, DAG Punjab

AJAY TEWARI, J (ORAL)

(1) The claim in this writ petition is for restoration of family pension.

(2) The husband of the petitioner who was a Constable in the police died in accident on 18.11.1987. The petitioner was granted family pension. On 1.10.1989, she was remarried to the brother of her late husband. She made an application requesting the respondents to transfer family pension in favour of her minor children. Thereafter, on account of age, her children became dis-entitled to the family pension. She has now claimed family pension in her own right again.

(3) Counsel for the petitioner has relied upon a Division Bench decision of this Court in Smt Balwant Kaur and another vs State of Punjab and another, decided on 23.4.2008, wherein it was held as follows :-

“The short question that arises in this petition is whether the family pension of a widow, who has contracted a second marriage with the younger brother of her deceased husband, can be stopped and whether the recovery of the family pension, which has already been paid, can be effected from her. In this regard it would be relevant to reproduce rule 8.35 of the Punjab Civil Service Rules Vol.2, Chapter VIII, which is as under :-

'8.35 (1) A family pension will take effect from the day following the death of the Government employee or from such other date as the competent authority may decide.

(2) A family pension will ordinarily be tenable-

(a)(i) in the case of widow or mother until death or remarriage whichever occurs earlier.

(ii) in the case of a minor son, or minor brother, until he attains the age of 18;

(iii) in the case of an unmarried daughter or minor sister, until marriage or until she attains the age of 21, whichever occurs earlier.

(iv) in the case of a father, for life.

(b) Notwithstanding anything contained in sub-clause -

(a) a widow who re-marries her deceased husband's brother and continues to live a communal life with or contributes to the support of other dependents of her deceased husband shall not be disqualified for the grant of extraordinary pension otherwise admissible to her under these rules.

Note 1. - A family pension granted to a posthumous child should commence from the date of his/her birth and not from the date of death of his/her father.

Note 2. – The family pension of a widow will cease on re-marriage but when such re-marriage is annulled by divorce, desertion or death of the second husband her pension may be restored upon proof that she is in necessitous circumstances and otherwise deserving.

Clause 2(b) of rule 8.35 Punjab Civil Service Rules Vol.2, Chapter VIII clearly stipulates that a widow, who has remarried her deceased husband's brother and continues to live a communal life and contributes to the support of other dependents of her deceased husband, shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under Civil Service Rules.

In the instant case, a perusal of Annexure R-2 written by the petitioner to the Administrative Officer, Punjab Mandi Board dated 25.07.2001 clearly shows that she has solemnized her marriage with the younger brother of her deceased husband. The petitioner is also supporting four children born out of her wedlock with her deceased husband. Although, the petitioner has averred in this writ petition that she has not contracted a marriage with the brother of her deceased husband and has only entered into an arrangement and continues to live a communal life with the family of her deceased husband, but this averment seems to be an afterthought in order to protect her family pension. The remarriage of a widow with the younger brother of her deceased husband entitles her for the grant of family pension in terms of rule 8.35(2)(b) of the Punjab Civil Service Rules Vol.2, Chapter VIII and hence, the order dated 04.01.2007 passed by the General Manager (Accounts) (Annexure P-1) holding that petitioner is not entitled to family pension and further ordering recovery from the petitioner for the amount already paid to her as family pension, cannot be sustained.

Resultantly we quash Annexure P-1 and hold that the petitioner is entitled to family pension. We further hold that the respondents are not entitled to recover the family pension already paid to the petitioner.”

(4) Counsel for the respondents states that she does not dispute the proposition of law as laid down in *Balwant kaur's case* (supra), but the petitioner had specifically given up her claim for family pension. In my opinion, what the petitioner requested was for transfer of family pension in favour of her minor children and now the children are no more entitled for family pension, since the family pension is otherwise payable to the petitioner, her prayer for transfer of family pension in favour of her children cannot be treated as a waiver of her right of claiming family pension for all times to come, more-so when it is a beneficial provision. Resultantly, this writ petition is allowed and the respondents are directed to release the family pension to the petitioner with effect from the date her children were disentitled for the same. Necessary disbursal be made within three months from the receipt of a certified copy of this order failing which the petitioner would be entitled to claim the same with interest @ 8% pa from the date/s the amount/s fell down.

(6) No order as to costs.

S. Sandhu