
Before S.S. Nijjar, J

PHOOL PATI—*Appellant / Plaintiff*

versus

H.S.E.B. & ANOTHER—*Respondents / Defendants*

R.S.A. No. 3430 OF 2000

30th April, 2002

Punjab Civil Services Rules, Vol. II—Rl. 6.17—Family Pension Scheme, 1964—Cls. 4(i) & 4(ii)—Appendix I—Death of an unmarried employee while in service, after serving for more than 4 years—Claim for grant of family pension by the widowed mother of the deceased—Cl. 4(i) entitles to claim pension in case of death while in service the employee should have completed a minimum period of one year of continuous service without break—Order of the ld. lower Appellate Court denying the pension contrary to the provision—High Court already declaring Rl. 6.17 excluding parents from the definition of family as ultra vires to Art. 14 of the Constitution—Appellant entitled to the family pension—Appeal allowed with costs.

Held, that the learned trial Court had correctly granted the relief to the appellant. The learned Lower Appellate Court committed a serious error in appreciation of the factual as well as legal propositions. It has been held that the appellant cannot be granted the relief of family pension as she has allowed only 'family pension'. I am of the considered opinion that the aforesaid finding is wholly irrational and without any basis, in facts or in law. According to the learned Lower Appellate Court, monthly pension means a pension to be paid to the legal heirs of an employee after his death and the same is paid only after service of the deceased employee had become pensionable. Accordingly, it has been held that since the deceased had worked only for four years and three months, no pension could have been paid. This finding has been given by the learned Lower Appellate Court in spite of Cl. 4(i) of the Family Pension Scheme, 1964 provides that in case of death while in service a Govt. employee should have completed a minimum period of one year on continuous service without break. The reasoning of the learned lower Appellate Court is contrary to Cl. 4(i).

(Paras 11 & 12)

Further held, that the learned lower Appellate Court has erroneously tried to distinguish between the montly pension and the family pension. The provisions of the Family Pension Scheme, 1964 were considered by a Division Bench of this Court in State of Punjab and another v. Kharak Singh Kang and another, 1998(4) SLR 594. The Division Bench noticed that under 1951 Scheme, father and mother were included in the definition of family for the grant of family pension. Even today, in Rule 6.17(b) father and mother (including adopted parents) are included in the definition of family for the purpose of determining the entitlement to the death-cum-retirement gratuity but the parents have not been included in Rule 6.17 for the grant of family pension.

(Para 13)

R.K. Malik, Advocate for the Appellant

K.S. Malik, Advocate for the Respondents

JUDGMENT

S.S. NIJJAR, J.

(1) This Regular Second Appeal is directed against the judgment and decree passed by Shri N.C. Nahata, learned Additional District Judge (I), Jind, in Civil Appeal No. 96 of 26th September, 1998/28th August, 1998, decided on 4th November, 1999.

(2) Can the mother of a deceasee employee be denied the grant of family pension as the parents are not included in the definition of "family" as given in Clause 4(ii) (Appendix I) of the Family Pension Scheme, 1964, is the substantial question of law which arises for consideration in the present appeal.

(3) The son of the appellant, namely Dharambir was employed as Assistant Line Man on regular basis in the Haryana State Electricity Board (hereinafter referred to as the H.S.E.B.). He joined service on 9th September, 1986 and died while in service on 20th December, 1990. Therefore, he had served the respondent-H.S.E.B. for a period of four years and three months at the time of his death. The appellant is a widow, aged about 65 years. The deceased was unmarried at the time of his death. It was pleaded that during the life time of the

deceased, the appellant was residing with him and was dependent on him. She claims to have no further source of income. It has been candidly stated that the appellant has four sons. Her two sons namely, Hari Om and Chand Singh are unmarried. They are also unemployed and are living with the appellant. Her other two sons, namely, Ram Kumar and Raghbir are married and are living separately with their wives and children. All the four brothers have only four killas of land in their names. The appellant claimed the retiral benefits from the respondent-H.S.E.B. Part of the retiral benefits were paid to the appellant. A sum of Rs. 7200 was paid towards death-cum-retirement gratuity of the deceased in December, 1991. In the suit, she has prayed for mandatory injunction directing the defendants i.e. H.S.E.B. to release the arrears of G.P.F., amount of *ex-gratia* and the monthly pension as a dependent of a deceased employee. She also prayed for a direction to the defendants to appoint the nearest relative of the deceased employee in the H.S.E.B. on compassionate grounds.

(4) The learned trial Court partly decreed the suit. The relief with regard to the appointment on compassionate grounds has been denied. The appellant has, however, been granted relief of family pension alongwith interest at the rate of 15% p.a. from the date of death of the employee i.e. Dharambir, Assistant Line Man.

(5) The respondent-H.S.E.B. went in appeal before the learned Additional District Judge, Jind. The same has been accepted and the suit of the appellant has been dismissed.

(6) Mr. R.K. Malik, learned counsel for the appellant, has submitted that the judgment of the learned Lower Appellate Court suffers from total lack of application of mind to the facts and the relevant law on the issues raised in the suit.

(7) On the other hand, Mr. K.S. Malik, learned Counsel for the respondent-H.S.E.B. submitted that the judgment of the learned Lower Appellate Court is correct. The claim of the appellant did not fall within the purview of the Family Pension Scheme, 1964. In support of his submission, he has made pointed reference to Clause 4(ii) of Family Pension Scheme, 1964, which is as under :—

“(ii) “Family” for purposes of this scheme includes the following relatives of the officer :—

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

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- (b) husband, in the case of a female officer ;
 - (c) minor sons ; and
 - (d) unmarried minor daughters.

Note 1.—(c) and (d) include children adopted legally before retirement.

Note 2.—Marriage after retirement is not recognised for purposes of this scheme.

Note 3.—A judicially separated wife/husband does not lose her/his legal status of wife/husband of the Government employee and is thus eligible for the benefits of the Family Pension Scheme, 1964.”

(8) He has also relied on the judgment of the Hon'ble Supreme Court in the case of *State of Himachal Pradesh and another vs. Kedar Nath Sood and another (1)*.

(9) Mr. R.K. Malik, learned counsel for the appellant has submitted that the judgment of the learned Lower Appellate Court is contrary to the law laid down by a Division Bench of this Court in Letters Patent Appeal No. 640 of 1990 *State of Punjab and another vs. Kharak Singh Kang and another (2)*, decided on 20th January, 1998. Learned counsel has also referred to two more decisions of this Court in the case of *Jaswinder Kaur vs. The State of Punjab and others(3)* and *Lichhami Devi vs. State of Haryana (4)*

(10) I have heard the learned counsel for the parties at length and perused the record of the case.

(11) I am of the considered opinion that the learned trial Court had correctly granted the relief to the appellant. The learned Lower Appellate Court committed a serious error in appreciation of the factual as well as legal propositions. In paragraphs 10 of the judgment, it has been held that the appellant cannot be granted the relief of family pension as she has claimed only “monthly pension”. I am of

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- (1) 1999 (3) R.S.J. 54
 - (2) 1998 (4) S.L.R. 594
 - (3) 2002 (1) SLR 253
 - (4) 2001 (4) SCT 642

the considered opinion that the aforesaid finding is wholly irrational and without any basis, in facts or in law. According to the learned Lower Appellate Court, monthly pension means a pension to be paid to the legal heirs of an employee after his death and the same is paid only after service of the deceased employee had become pensionable. Accordingly, it has been held that since the deceased had worked only for four years and three months, no pension could have been paid. This finding has been given by the learned Lower Appellate Court in spite of the relevant provision contained in 1964 scheme itself. The relevant portion of Clause 4(i) of the Scheme is as follows:—

“.....in the case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break”.

(12) Having noticed that the deceased employee had served for more than four years, yet the pension has been denied by the learned Lower Appellate Court on the ground that his service had not yet become pensionable. This reasoning is contrary to the aforesaid provision contained in the Family Pension Scheme, 1964.

(13) The learned Lower Appellate Court also committed a serious error in not following the law laid down by a Division Bench of this Court in *Lerrters Patent Appeal No. 640 of 1990*. The learned Judge has distinguished the aforesaid judgment on the basis that the Division Bench was dealing with the case with respect to family pension whereas the appellant had sought no family pension in the present case. It has already been held by me that the learned Judge has erroneously tried to distinguish between the monthly pension and the family pension. The provisions of the Family Pension Scheme, 1964, were considered by a Division Bench of this Court in *Kharak Singh's* case (supra). Therein, the widowed mother of deceased government employee had claimed family pension. This was denied on the ground that definition of family given in the Family Pension Scheme, 1964, did not include the parents of the deceased. The learned Single Judge allowed the petition and declared Rule 6.17 of the Punjab Civil Services Rules, Volum-II, excluding parents from the definition of family, as ultra vires to Article 14 of the Constitution of India. The Division Bench noticed that under 1951 Scheme, father

and mother were included in the definition of family for the grant of family pension. Even today, in Rule 6.17(b), father and mother (including adopted parents) are included in the definition of family for the purpose of determining the entitlement to the death-cum-retirement gratuity but the parents have not been included in Rule 6.17 for the grant of family pension. After noticing the factual and legal situations the Division Bench in *Kharak Singh Kang's* case (supra) held as follows :—

- “8. Next to God, thy parents’ says the poet. Not even next to a judicially separated wife or husband is the mandate of Rule 6.17. Those who gave him birth and trained him up have no right to be included in his family ? It does not appeal to logic. We cannot say-Yes.
9. The purpose of the rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. It is not unknown that not only the widow and children but very often even the aged parents are dependent on their son for their livelihood. The provision for family pension has been made to help such dependents. There appears to be no valid basis for excluding the parents from the list of persons who should be entitled to the grant of family pension on the death of the employee.
10. It is well settled that every executive action and in particular a legislative measure like a statutory rule governing the grant of pensioner benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employees are eligible for the grant of gratuity. They are also eligible for the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased government employee from the concept of ‘Family’.”

(14) The aforesaid observations are squarely applicable to the facts and circumstances of the present case.

(15) Learned counsel for the respondent-H.S.E.B. had strongly relied on the judgment of the Hon'ble Supreme Court in **Kedar Nath Sood's** case (supra). The aforesaid judgment is wholly inapplicable in the facts of the present case. In that case, the Hon'ble Supreme Court was dealing with Rule 54(14) (b) (i) of C.C.S. (Pension) Rules, 1972, according to which father will not be a member of the family or dependent to get family pension. Interpreting the aforesaid rule, it was held that the father would not be entitled to the family pension. It was, however, also observed that it is time for the government to consider the amendment of the Rules to cover the situation similar to the one that appears in this case. The facts in the present case are almost identical to the facts in the case of **Kharak Singh** (Supra). Family pension cannot be denied to the appellant in view of the law laid down therein. The aforesaid judgment has subsequently been followed in similar circumstances in **Jaswinder Kaur** and **Lichhami Devi's** cases (supra). The aforesaid judgments are binding on this Court.

(16) In view of the above, the present Regular Second Appeal is allowed with costs which are quantified at Rs. 5000. The judgment and decree of the learned lower Appellate Court are set aside and the judgment and decree of the learned trial court are restored. The respondents-H.S.E.B. are directed to make the payment in accordance with the judgment and decree of the learned trial Court together with interest mentioned therein within a period of two months from the date of receipt of a certified copy of this order.

J.S.T.

Before Jawahar Lal Gupta & N.K Sud, JJ

SIMRANJIT SINGH MANN—*Petitioner*

versus

UNION OF INDIA & OTHERS—*Respondents*

C.W.P. No. 6827 of 2002