
(2013) 10 P&H CK 0393

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23627 of 2012 (O&M)

Kamaljit Kaur

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : (2014) 173 PLR 843

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—By this writ petition, the petitioner has claimed that 50% share of family pension of her late husband which was given to her step children be restored to her since her step children have become disentitled for the same on their having attained the age of majority. In reply the plea taken is that in a case where family pension is released to two widows, on the death of one widow the second widow is not entitled to her share.

2. Counsel for the petitioner has argued that the respondents have completely misdirected themselves in taking this plea because the present is not a case where at any stage there were two widows but this is a case where the petitioner married her husband after his first wife died. In the circumstances, as per counsel for the petitioner, the two minor children from the first wife were definitely entitled to their share of the family pension but after they became disentitled, the petitioner would be entitled to restoration of full pension just as if those two children had been her own children.

3. Counsel for the respondents has tried to justify the stand taken in the reply.

4. The relevant provision of the scheme is quoted below:-

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.

(iii) Where the family pension is payable to twin children, it shall be paid to such children in equal shares and when one such child ceases to be eligible his/her share shall revert to the other child and when both of them cease to be eligible the family pension shall be payable to the next eligible single child/twin children.

5. In my opinion, arguments of counsel for the petitioner have to prevail for the simple reason that the present case is not a case where there were two widows at any stage. It is not disputed that the first wife of the husband of the petitioner had died and thereafter he had married the petitioner. Once that is so, on the disentitlement of the children for family pension (on account of majority/marriage), it has to be held that the only widow would be entitled to the whole family pension.

6. The matter can be looked at another angle. In the entire family pension scheme, the entitlement of various persons has been mentioned in descending order of priority. For instance the first claimant is the widow, second are the children and so on. In all cases, on the death of the most important claimant, the next in line is entitled to the full family pension. In the entire scheme there are only two situations of equal entitlement. The first is the case of more than one widow and the second is the case of twin children. Even in the case of twin children, on the disentitlement of one child the other twin would be entitled to full pension and it is only in the case of two widows that the disentitlement of one does not result in passing of full family pension to the other. In the first place even the rule restricting the family pension in the case of two widows would be open to question, but in any case there is no warrant for the stand of the respondents in trying to extend the provision relating to two widows to the present case. They could very easily have extended the beneficial provision of twin children to the present case. Once there is no restriction in the rule, the normal practice should follow. Resultantly, this writ petition is allowed and the respondents are directed to restore the full pension to the petitioner after the disentitlement of her step children, within a period of one month from the receipt of a certified copy of this order. The petitioner is also entitled for arrears with interest @ 8% from the date/s the amounts fell due till the date of payment, which shall also be released to her within the aforesaid period. No order as to costs.