
(1997) 02 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6304 of 1996

Kamaljit Kaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 117 PLR 441

Hon'ble Judges : K. Sreedharan, C.J;N.K. Kapoor, J

Bench : Division Bench

Advocate : J.S. Bhatti, for the Appellant; Tribhuvan Dahiya, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedharan, C.J.

1 Petitioner is the widow of Malkit Singh, who was in military service. He is stated to have died in Military Hospital at Jaipur due to burns. Petitioner and her children were awarded family pension upto May, 1994. Thereafter, she made request to the authorities to disburse the pensionary benefits. She represented that her re-marriage with his brother of the deceased Jawan will not dis-entitle her from getting the pension. These requests fell in deaf ears. Therefore, this writ petition has been filed.

2. A detailed written statement has been filed on behalf of respondents. A preliminary objection was raised therein stating that Sepoy Malkit Singh died while on duty in the State of Rajasthan and so this Court does not have the territorial jurisdiction to entertain the present writ petition. Further they have gone to the extent of saying that Malkit Singh died on 4.3.1985 due to burns caused by himself. It was a case of suicide. Later it is admitted in the written statement that the petitioner was being paid family pension. It went on to state that on her re-marriage, even with the real brother of the deceased, she is not entitled to ordinary family pension. On these basis it is stated that petitioner is

not entitled to any of the reliefs asked for.

3. The fact that petitioner was being paid family pension on account of the death of her husband Malkit Singh, Sepoy No. 4456373 is admitted. Payment of pension was made till May, 1994. That payment was effected within the territorial jurisdiction of this Court. It was stopped while petitioner was staying within the territorial limits of this Court and so when the pension payment was stopped petitioner's approach to this Court is perfectly justified and the contention taken by the respondent that this Court has no jurisdiction of deal with the case since Sepoy Malkit Singh expired in the Military Hospital at Jaipur is, to say the least, cantankerous on the part of the respondents.

4. Petitioner, widow of Malkit Singh, married with the brother of the deceased. This fact is admitted in the written statement. In such a situation the relevant Rule that applies to the case in hand is Rule 219 of Section 2 of Service Pension and Gratuity. That Rule states that "A relative specified in regulation 216 shall be eligible for the grant of family pension." Widow is one mentioned in Regulation 216. Thus, it is beyond controversy that widow is entitled to pension under Rule 219. That Rule further states that if the widow re-marries her deceased husband's brother and continues to live a common life with and/or contributes to the support of the other living eligible heirs she continues to be entitled to family pension. In this case petitioner re-married deceased's direct brother. She is maintaining the son born to her through the deceased Sepoy. Thus, petitioner continues to have a right to get the family pension. That family pension was denied to her from May, 1994. The said action on the part of the respondents was illegal. So, respondents are directed to pay the entire arrears, of pension due to the petitioner within a month from today. If the entire arrears are not paid within one month, as stated above, that entire arrears will carry interest at the rate of 12% per annum from the date of the expiry of one month till the date of actual payment. We direct the respondents to continue to disburse the family pension due to petitioner regularly month by month.

5. Petition is allowed as indicated above. Since respondents have raised all cantankerous contentions in the written statement filed in this case, we feel that it is a fit case where they are to be mulcted with costs. Respondents are directed to pay the costs of the petition including Advocate's fee of Rs. 2000/-.