
(2005) 09 P&H CK 0088
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19475 of 2003

Manjeet

APPELLANT

Vs

State Bank of Patiala and Others

RESPONDENT

Date of Decision : 15-09-2005

Acts Referred:

State Bank of Patiala (Employees) Pension Regulations, 1995 — Regulation 3, 3(7), 34, 34(1), 34(2)

Citation : (2006) 108 FLR 505 : (2005) 141 PLR 843

Hon'ble Judges : S.S. Nijjar, J; Nirmal Yadav, J

Bench : Division Bench

Advocate : S.K. Garg Narwana, for the Appellant; H.N. Mehtani, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State Bank of Patiala Vs. Manjeet, AIR 2008 SC 1482 : (2008) 2 CLT 116 : (2008) 1 LLJ 1010 : (2008) 2 SCALE 481 : (2008) 3 SCC 501 : (2008) 1 SCC(L&S) 834 : (2008) AIRSCW 1545 : (2008) 2 Supreme 41

Nirmal Yadav, J.—Petitioner's father namely, Jai Singh, was serving with respondent No. 1, as Gunman and posted at Khanori Branch, District Sangrur, in the year 1986. On 4.6.1986 while he was performing his duties, the terrorists entered the bank. Jai Singh sacrificed his life while saving the bank from terrorists. Jai Singh left behind his widow Smt. Birmati and two daughters including the petitioner. However, Birmati got re-married in the year, 1989. Petitioner was minor at the time of death of her father. When Jai Singh was killed, there was no pension scheme applicable in the banks. However, the pension scheme was introduced in the year 1993. Consequently, State Bank of Patiala (Employees) Pension Regulations, 1995, for short "Pension Regulations" were framed in the year, 1995. As per Regulation No. 34(1) & (2), the families of the employees who retired or died between 1.1.1986 to 31.10.1993 were entitled to

get family pension with effect from 1.11.1993 and accordingly, family of Jai Singh was also eligible to get the family pension. For ready reference, Regulation 34 of the Pension Regulation is reproduced as under:-

"34. Payment of pension or family pension in respect of employees who retired or died between 1.1.1986 to 31.10.1993.

1) Employees who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

2) The family of a deceased employee governed by the provisions contained in Sub-regulation (7) of Regulation 3 shall be eligible for family pension with effect from the 1st day of November, 1993."

2. Petitioner's mother did not opt for the family pension after the death of Jai Singh as she got re-married and became ineligible to claim family pension. Petitioner, who was born on 12.8.1985, attained majority on 11.8.2003. On attaining majority, petitioner exercised her option vide application dated 16.9.2003 for the family pension. Her application was rejected by the respondents on the ground that she was not entitled for family pension. Only widow was entitled to receive the pension. Secondly, petitioner should have opted for the pension on or before 20.7.1986 as per Pension Regulation 3 (b) i.e., within 120 days from the date of notification. It is pleaded that the reasons given while rejecting the petitioner's application are against the provisions of Pension Regulations. As per Regulation 40(1) (c) unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier, is eligible for family pension. The second ground for rejecting the application that the petitioner did not exercise option within 120 days is also not applicable to the petitioner as she was minor at the time of death of her father and she exercised her option immediately after attaining majority. The petitioner not being satisfied with the rejection of her option, submitted another application dated 28.10.2003, Annexure P/6 which was also rejected by the respondents vide letter dated 11.11.2003, Annexure P/7. Thereafter the petitioner filed the present writ petition.

3. In the written statement filed by the respondents, it is admitted that Jai Singh died on 4.6.1986 in a terrorist attack. After his death, his widow Birmati was appointed as Record Keeper-cum-Godown Keeper on compassionate grounds and is still posted at State Bank of Patiala Jind Branch. It is further stated that the family of the deceased employee was required to exercise option in accordance with Sub-regulation (7) of Regulation 3 of the Pension Regulations, 1995, within 120 days from the notification date i.e. 23.3.1996 to become member of the fund. The family was also required to refund within 60 days of the expiry of the said period of 120 days the entire amount of Bank's contribution towards provident fund with interest at the rate of 6% per annum accrued thereon, from the settlement of the provident fund, till the date of refund of the aforesaid

amount. It is, of course, admitted by the respondent-bank that Pension Regulations do not debar a minor son or daughter opting for the family pension through a natural guardian or a legal guardian during his/her minority. In petitioner's case, her mother Smt. Birmati is the natural guardian. She was in employment with the bank in clerical cadre and was well conversant with the Pension Regulations, 1995. She being the natural guardian of the petitioner, did not exercise option on behalf of the petitioner within the prescribed limit, nor refunded the bank's contribution towards provident fund and, therefore, at this stage, petitioner cannot exercise the option.

4. We have heard learned counsel for the parties and have gone through the record.

5. Learned counsel for the petitioner argued that the mother of the petitioner Smt. Birmati had remarried and was not well educated. Since she had been appointed on compassionate grounds, she remained under the bonafide impression that she would not be entitled to family pension on account of her re-marriage. It is further argued that the petitioner being minor, could not exercise her option during the minority. Therefore, she should not be deprived of exercising option on attaining majority. The delay in exercise of option cannot be a ground to deny the claim of pension, which was and should have been paid suo motu by the respondent-Bank even without making a demand. It is further submitted that in the re-joinder it has been specifically mentioned by the petitioner that petitioner's father had joined the service of the bank in the year 1985 and was shot dead in the month of June, 1986 by the terrorists. He was not even confirmed in the service, nor contribution towards the provident fund had commenced. Therefore, no contribution towards the provident fund was made by the bank and as such there was no question of refunding any amount. Learned counsel further argued that this" very issue has been considered by a Division Bench of Rajasthan High Court in General Manager, P.N.B. and Ors. v. Smt. Jamna Devi 2004(1) S.C.T. 11.

6. On the other hand, learned counsel for the respondents argued that the delay in exercising the option cannot be condoned as there was no provision for condonation of delay.

7. We have considered the submissions advanced by learned counsel for the parties. From the averments made in the written statement filed by the respondent-bank it is not disputed that as per Regulation 34 of the Pension Regulations, the family of the deceased employee, who worked between 1.1.1986 to 31.10.1993, shall be eligible for family pension with effect from 1.11.1993. It is also admitted that Pension Regulations do not debar a minor son/daughter from opting the family pension. Unmarried daughter is eligible for pension until she is married or attains the age of twenty five year, whichever is earlier. Petitioner's application has been rejected only on the ground that option was not exercised within 120 days from the date of notification. We are not impressed by the submissions made by the learned counsel that the delay

caused in exercising the option cannot be condoned. In Smt. Jamna Devi's case (supra) there is a reference of communication of the Ministry of Finance, Department of Economics Affairs, Banking Division dated 28.4.1999, addressed to the Chief Executives of all Public Sector Banks, in this regard. The relevant extract of the communication reads as under:-

"Government has been getting representations from various quarters making a request for providing an opportunity for exercising option in favour of pension to those who could not do so due to circumstances beyond their control. One such situation referred to is that the employees who were out of service on account of dismissal, removal etc. at the time of notification but were subsequently reinstated in service with continuity of service on disposal of an appeal or by virtue of court order.

The matter has been examined and it has now been decided that banks, in the first instance, may examine such requests at their end and in case they are satisfied that there were circumstances beyond the control of the applicant, due to which he could not exercise his option within the stipulated period, they may refer such cases to Govt. along with a self-contained note, indicating the circumstances which deprived them to exercise such option. Efforts, if any, made by the bank to contact such persons during the relevant period to enable them to exercise their option may also be indicated."

8. From the aforesaid communication it is clear that the Government itself was of the view that in certain circumstances, the delay in exercising the option should be condoned. Undisputedly, petitioner was minor at the time of death of her father. Within one month after attaining the majority, she exercised the option for the family pension. In these circumstances, it cannot be legitimately contended by the respondent-bank that the delay caused in exercising the option cannot be condoned and the reason for delay is not reasonable or sufficient to condone the delay. The plea that option could have been exercised by her natural guardian Smt. Birmati, also appears to be unreasonable. It has been specifically mentioned in the petition that Smt. Birmati was not well educated and not aware of the Pension Regulations and also that she had re-married in the year 1989 and, therefore, she was under the impression that they were not entitled to family pension. The respondent-bank has admitted that unmarried daughter is entitled to family pension till she is married or attains the age of twenty-five years. The interest of the minor daughter cannot be allowed to be adversely affected merely on account of delay in exercising the option. There is also nothing on record to show that the Regulation with regard to the option to be exercised within 120 days from the notified date, was brought to the notice of Birmati mother of the petitioner. No document has been placed on record vide which it could be proved that the respondents had specifically advised petitioner's mother to submit the requisite form by the said date. Similar view has been expressed in Smt. Jamna Devi's case (supra), wherein it was held as under:-

"12. Family pension is meant for the family of the deceased government employee/retiree. Family pension is also admissible to his minor children. This is also evident from Regulation 40(3) of the Regulations which reads as follows:-

"Where family pension is granted under this regulation to a minor, it shall be payable to the guardian on behalf of the minor."

Thus, it is apparent that family pension is admissible to the guardian on behalf of the minor. The guardian has to act in the best interest of the minor. It is not in dispute that the respondent had five minor children at the time of death of her husband. The interest of the minor children cannot be allowed to be adversely affected by the delay committed by the respondent in exercising the option for grant of family pension."

9. We are of the considered opinion that the respondents have arbitrarily denied the family pension to the petitioner. Consequently, the writ petition is allowed and the respondents are directed to grant family pension to the petitioner as per the provisions of Pension Regulations, 1995. Needful be done within two months from the receipt of a certified copy of this order.