

(2008) 04 P&H CK 0047
In the Punjab And Haryana At Chandigarh

P.M. Annamma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 152 PLR 294

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Mohinder Pal, J.—In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the orders passed by the respondents whereby her claim for Special Family Pension on account of the death of her husband, who was serving the Indian Air Force, has been rejected by the respondents and for issuance of a writ in the nature of mandamus directing the respondents to grant the same to her with all consequential benefits as the death of her husband was held to be aggravated by Air Force Service while on active duty as per the recommendations of the Medical Authority and Air Officer Commanding, 12 Wing Air Force (Annexure P-27).

2. As per facts of the case, husband of the petitioner was enrolled in the Indian Air Force as a Combatant Member. He was recruited for nine years "regular service and six years" reserve service, but was given extensions from time to time. While in service, he attained various ranks of the Indian Air Force and was promoted to the rank of Master Warrant Officer. However, while in service, he died of "Acute Myocardial Infraction And Cardiac Genic Shock" on April 29, 1990. He had rendered 30 years and 328 days" service. The petitioner was granted ordinary family pension with effect from April 30, 1990. Her claim for Special Family Pension, which was admissible to her under Regulation 85 of the Pension Regulations for the Army, 1961 (Part-1) (for short "the Pension Regulations) was

rejected.

3. Upon notice of motion issued, the respondents have filed reply. It has been stated that on April 28, 1990, husband of the petitioner reported to his SSQ with pain upper abdomen and left side of chest. He was given initial treatment and was transferred to Command Hospital, Chandimandir, for admission. He succumbed to his illness on April 29, 1990. The cause of death was Extensive Myocardial Infraction with Cardiac Genic Shock. It has been further pleaded that death of the husband of the petitioner was considered as neither attributable to nor aggravated by Air For Service.

4. We have heard Mr. Rajesh Seghal, Advocate, appearing for the petitioner and Ms. Ranjana Shahi, Central Government Standing Counsel, appearing for the respondents and have perused the record.

5. Learned Counsel for the petitioner has invited our attention to the "Report on the cases (other than those due to injuries) which have ended fatally or are proposed for invalidating" (Annexure P-27), Part "A" of which was filled by the Medical Officer and Part "B" by the Air Officer Commanding, 12 Wing Air Force, where husband of the petitioner was posted at the time of his death. In Part "B" relating to "circumstances of the case", under column No. 13, in answer to question "Do you consider the disability/death aggravated by service", it has been written by the Officer Commanding, 12 Wing Air Force, as "yes". Thus, the contention of the respondents in the written statement that death of the husband of the petitioner was considered as neither attributable to nor aggravated by Air For Service, is not correct. Under the circumstances, we hold that the death of the husband of the petitioner was aggravated by the Air Force Service. Pension Regulation 85 provides that a Special Family Pension may be granted to the family of an officer if his death was due to or hastened by a wound injury or disease, which was attributable to military service or the aggravation by military service of a wound injury or disease, which existed before or arose during the military service.

6. Resultantly, the petitioner is held entitled to Special Family Pension on account of the death of her husband. Her pension will be calculated as per the rates fixed by the Central Government from time to time from the date husband of the petitioner died. However, arrears of pension, so calculated, shall be restricted to three years preceding the filing of this writ petition. The respondents are directed to disburse the arrears to the petitioner within three months from the date of receipt of a copy of this order. In case the arrears are not disbursed within the said period, the entire arrears will carry interest at the rate of nine per cent per annum from the date of expiry of three months till the date of payment.

This writ petition, is allowed in the above terms with no order as to costs.