
(2009) 07 P&H CK 0065
In the Punjab And Haryana At Chandigarh

Smt. Dalip Kaur	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226, 227

Citation : (2009) 123 FLR 961 : (2009) 156 PLR 98 : (2009) 6 SLR 107

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajai Lamba, J.—Smt. Dalip Kaur has filed this Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to release family pension to the petitioner on account of death of son of the petitioner; namely, Dr. Gurdip Singh.

2. Dr. Gurdip Singh was unmarried son of the petitioner and in this view of the matter, the claim of the petitioner is that she being the mother, has to be included within the definition of "family". The claim of the petitioner is based on a Division Bench judgment of this Court in State of Punjab v. Kharak Singh Kong 1998 (1) S.C.T. 556.

3. It has been brought out that the petitioner was entirely dependent on the earnings of Dr. Gurdip Singh, who had joined the service of respondents on 26.6.1992, as Medical Officer, in the Department of Health and Family Welfare, Punjab. Dr. Gurdip Singh died on 30.11.1994 while in service and, on the said date, was unmarried. The petitioner is the only surviving family member.

4. Earlier, father of Dr. Gurdip Singh and husband of the petitioner, was working as Helper in Shiromani Gurudwara Parbandak Committee, Amritsar, who however, retired on 19.1.1985. Husband of the petitioner also died on 18.3.2001 and, therefore, the petitioner has no means to support herself, being an old lady.

5. It is not in dispute that Death-cum-Retirement Gratuity was released in favour of the petitioner by the office of Accountant General, Punjab, Chandigarh. The petitioner, thereafter, has been requesting the authorities to release family pension to the petitioner on account of the death of her only son. The respondents, however, vide letter dated 18.6.1997, informed the petitioner that family pension is not permissible to the mother.

6. It has further been brought out that the petitioner filed representations (Annexures P-6 and P-7) for her claim which, however, have not been entertained.

7. Learned Counsel for the respondent-State has relied on a judgment of the Hon"ble Supreme Court of India in State of Punjab and Anr. v. Devinder Kaur (1999) 9 Supreme Court Cases 12, to contend that mother does not fall within the four corners of definition of "family". Family Pension Scheme, 1964, was in force at the point in time when Dr. Gurdip Singh died. The issue has been dealt with in the cited judgment and the claim of the petitioner, in view of the law laid down by the Hon"ble Supreme Court of India, cannot be allowed.

8. Learned Counsel for the petitioner has not been able to either distinguish the judgment rendered in Devinder Kaur's case (supra) or cite any judgment to the contrary.

9. I have considered the contentions of the learned Counsel for the parties.

10. The claim of the petitioner is based on the law as laid down by a Division Bench of this Court in the case of Kharak Singh Kong (supra). It seems that the State of Punjab challenged the judgment in appeal before the Hon"ble Supreme Court of India. Devinder Kaur, the respondent before the Hon"ble Supreme Court of India, is none other but the surviving widow of Kharak Singh Rang. The judgment of this Court in Kharak Singh Kang's case (supra) has been reversed by the Hon"ble Supreme Court of India in Devinder Kaur's case (supra). Following is the relevant portion:

8. The other judgment on which reliance was placed by learned Counsel for the respondent is Smt. Bhagwanti Vs. Union of India (UOI), . Even in that case the wife of a deceased government servant was included in the definition of the term "family" but what was found fault with was that a restrictive condition was attached to the said definition to the effect that provided the marriage of the government servant concerned took place before the retirement of the government servant. Thus the surviving widows of government servants who had married after the government servants' retirement were excluded from the benefit of the Scheme. This restriction was found to be totally arbitrary and, therefore, this clause was struck down as being violative of Article 14 of the Constitution of India. Resultantly, the definition of "family" of the beneficiary as found by Clause (b) of Rule 54(14) of the CCS (Pension) Rules, 1972 in relation to a government servant including wife in the case of a male government servant, or husband in the case of a female government servant, remained fully

operative. It becomes at once clear that in that case the Family Pension Scheme was made available to the entire class of wives of the male government servants. But the restrictive condition attached to that clause was found to be arbitrary, with the result that by judicial interpretative surgery the other part of the restrictive condition was set aside. In the facts and circumstances of the present case there is no question of setting aside any arbitrary condition. In fact, the class of parents is not included at all in the Scheme of 1964. Therefore, there is no occasion for striking down any part of the said supposed illegal or arbitrary condition. It is also pertinent to note that the rule has neither been challenged in the proceedings before the High Court nor before us. Therefore, there remains no occasion for the same to be read up or to remove any obnoxious part of the restrictive condition. On the contrary all that the learned Single Judge and the Division Bench have done is to add a new class of beneficiaries which is not a permissible exercise for the court. A new policy is sought to be evolved by judicial intervention. It is, of course, true that parents now are included in the term "family" by a new amended scheme with effect from 1-1-1996. But that is entirely a different matter. If Daljit Singh had died after 1-1-1996 the benefit of that Scheme would have been legally available to the respondent. But that is not the case here. Consequently, even keeping in mind sympathy for the respondent widow who at the time when Daljit Singh died was dependent on him as her husband, the other claimant had already retired and was aged 65. The judgment of the High Court cannot be sustained so far as the legal position goes.

9. Now remains the question as to what appropriate order can be passed in these proceedings to bring down the curtain. It must be stated and for which there is no dispute that pursuant to the High Court's order the appellant State went on paying the family pension amount to the respondent widow of Kharak Singh, the mother of the deceased Daljit Singh. We are told that the stay was granted for the first time by this Court on 12-10-1998. Therefore, whatever amount has been paid to the respondent under the impugned order of the High Court should not be recovered by the appellant even though the appellants succeed in this appeal. This order is required to be passed in exercise of our powers under Article 142 of the Constitution of India for the simple reason that the respondent widow has not only lost her son since 5-11-1985 when she was dependent on him but her husband, the other claimant, Kharak Singh was also killed by terrorists. Under these circumstances, even the appellant State itself has granted her a monthly pension of Rs. 2,500/- on that account. Considering all these aspects, therefore, there is no question of effecting any recovery by the appellant from the respondent only because the appeal is being allowed.

10. A perusal of the above extracted portion from the judgment in Devinder Kaur's case (supra), makes it evident that the petitioner cannot claim pension for death of her son as Dr. Gurdip Singh had died before the Family Pension Scheme was changed with effect from 1.1.1996. As held by the Hon'ble Supreme Court of India, parents are not included in the definition of "family" under the Family Pension Scheme, 1964, which would apply to the facts of mis

case because Dr. Gurdip Singh died on 30.11.1994 i.e. before the Family Pension Scheme of 1996 came into force.

11. In view of the above, no ground for interference is made out.

12. The petition is, accordingly, dismissed.