(2000) 11 P&H CK 0242

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5981 of 1999

Tripta Devi APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Punjab Civil Services Rules — Rule 6.17 , 6.17(4)

Citation : (2000) 11 P&H CK 0242

Hon'ble Judges : R.S. Mongia, J;K.C. Gupta, J

Bench : Division Bench

Advocate : Mr. I.D. Singla, for the Appellant; Mr. G.S. Cheema, Senior DAG, for the Respondent

Judgement

R.S. Mongia, J.—Petitioner''s husband was employed with the respondent S.D. Kanya Mahavidalaya Senior Secondary School, Phagwara which is a privately managed recognised aided School. The husband of the petitioner was contributing towards the contributory provident fund with the management of the School. The Punjab Government promulgated a re-lirement benefit scheme known as the Punjab Privately Managed Recognised Aided Schools Retirement Benefits Scheme, 1992 (hereinafter to be re-ferred as the Scheme), this Scheme came into effect with effect from 5.2.1987. The relevant provisions of the Scheme i.e. Clauses 6, 8, 12 and 13 are reproduced below:

"6. Qualifying Service : (1) The Service of an em- ployee shall not qualify for retirement benefits under this Scheme unless :-

XX XX XX XX (4) In a case where the total qualifying service is less than ten years, no pension benefit shall be admissible.

8. Entitlement for pension: An employee shall be entitled for pension under the scheme only after he completes ten years (twenty half years) qualifying service.

12. Death Gratuity: In case of an employee who dies in harness the death gratuity shall be admissible at the rates given below :

(i) Less than one year

Two times of pay

(ii) one year year more but less five years

Six times of pay

(ii) Five year year more but less twenty years

Twelve times of pay

(Iv) Twenty years and above

Half pay for every completed six months period of a minimum of thirty three years pay;

Provided that the amount of the death gratuity shall in no case exceed rupees one lac.

13. Family Pension: In case of the death of the employee or pensioner, the family pension shall be granted as given below :

(1) the rates of family pension during the first seven years or till the employee would have attained the age of sixty-five years had he survived whichever is less shall be as follows :

Range of pay

Rate of family pension per month

(i) upto Rs. 1500

Sixty per cent of pay subject to a minimum of Rs. 900 and

(ii) exceeding Rs. 1500 but not exceeding. 3000

Forty pet cent of pay subject to a minimum of Rs. 900; and

(iii) Exceeding Rs 3000/-

Thirty per cent of pay subject to a minimum of Rs. 1200/-and maximum of Rs. 2500/-

(2) After the expiry of seven years or the completion of sixty-five years of his age, had the employee survived whichever is less the rate of family pension shall be as follows:

Range of pay

Rate of family pension per month

(i) Upto Rs 1500

Forty per cent of pay subject to a mimimum of Rs. 375/-.

(ii) exceeding Rs. 1500 but not exceeding Rs. 3000

Thirty per cent of pay subject to a minimum of Rs. 600 and

(iii)Rs exceeding Rs. 3000

Twenty per cent of pay subject to a minimum of Rs. 900 and maximum of Rs. 1500.

Note : In case both the husband and wife are the employees of the privately managed recognised aided schools, the maximum family pension in the event of death both of them shall not exceed Rs. 2250/-."

2. The husband of the petitiorer while in service unfortunately died on 9.11.1990. The heir of the husband (widow) i.e. the petitioner, was granted family pension and other benefits pursuant to the dealh of her husband. The family pension was started with effect from 10.12.1990. However, the same was slopped by the respondent with effect from June, 1996. In other words, the family pension had been paid upto May 1996 as per the Scheme. The petitioner then filed the present writ petition.

3. Notice of motion was issued. Reply has been filed.

4. The case of the respondents is that since the deceased husband of the petitioner after starting the contribution towards contributory Provident Fund and before his death, had less than ten years service which is the required qualifying service for the purpose of grant of pension as per Clause 6(4) read with Clause 8 of the Scheme (supra), no family per.sion was admissible to the heirs of the deceased.

5. Learned counsel for the petitioner argued that the grant of family pension has nothing to do with the qualifying service of a deceased for the purpose of grant of pension. The connotation of pension and the family pension are totally different. In Clause 13 of the Scheme for the grant of family pension no period is mentioned. According to the petitioner, the grant of family pension is personal in nature to the heirs of the deceased. In support of his contention, learned counsel cited Division Bench judgments of this Court in Bat-want Kaur v. State of Punjab and another 1950(1) RSJ 627, Smt. Savitri Devi v. State of Haryana . and others 1996(2) RSJ 854 : 1996(2) SCT 809 (P&H) and a Single Bench judgment of this Court in Sita Devi v. The Secretary, Haryana State Electricity Board 1990(1) RSJ 471.

6. Learned counsel for the respondents argued that it was a special Scheme pertaining to grant of pension and unless the deceased employee had qualifying for pension, the question of grant of family pension to the heirs of the deceased employee does not arise.

7. After hearing the learned counsel for the parties, we are of the view that there is substance in the arguments of learned counsel for the peiitioner. From the reading of Clause 13 of the Pension Scheme, it is evident that the same is

admissible in ease of the death of an employee or pensioner. There is no pre-condition or pre-qualification in the said Clause that the employee should be such an employee who had already completed qualifying service for the purpose of pension. The word "pensioner" used in this Clause is in contradiction to the word "employee" and has been used that the family pension is not only admissible in case of death of an employee but it is admissible in case of dealh of a pensioner as well. Clause 12 also uses the word "an employee". The death gratuity is given to the heir in case of death of any employee and not necessarily on the death of an employee who had completed qualifying service for pension. Two different meanings cannot be given to the word "employee" in Clause 12 and Clause 13. Otherwise also we are of the view that the family pension due to the heirs of the deceased employee cannot be confused with the pension which would have been due to the employee had he been alive. The family pension is personal in nature to the heirs of the employee and has nothing to do with the qualifying service for pension which may become admissible to the employee himself if he is alive. In para 4 of the Division Bench judgment in Balwant Kaur''s case (supra) it was observed as under :-

"We have heard the learned counsel for the parties. We are of the view that the petit ion must succeed. Family pension scheme embodied in rule 6.17 of the Punjab Civil Services Rules, Volume II. is meant to benefit persons specifically designated, though connected with the Government employee by relationship. But the benefit is personal in nature. Sub-rule (4) of Rule 6.17 specifically says that the pension will be admissible in the case of a widow upto the date of her death or remarriage, whichever is earlier. The benefit conferred is not qualified or capable of exceptions. Pension due to the widow cannot be confused with pension which would have been due to the husband had he been alive. Her pension being personal in character cannot be withheld by the respondents on the supposition that if something was due from the husband of the petitioner she should be held responsible for the same as if a liability inherited by her. The idea is totally mis-conceived. Her rignt to his estate as an heir cannot be confused with her personnel right to pension. We have no hesitation to hold accordingly."

8. In the case of Sita Devi (supra) the stand of the respondent in that case was that since the deceased employee had not completed five years service, family pension could not be granted to (he heirs. The learned Judge while repelling the stand of the respondent observed as under:

"The stand of the respondent as projected in its written statements is that no doubt services of the deceased employees had been regularised before their death, yet they did not have five years'' service to their credit at the time of their death. Therefore, according to the respondent, the claims to the family pension submitted by the petitioner have been rightly rejected by the respondent-Board..

After hearing the learned counsel for the parties and having gone through the reply, I am of the considered view that the stand taken by the respondent is wholly untenable in law. The object of the Punjab Civil Services Rules, Volume II, relating to pensions etc., and the Family Pension Scheme, 1964, is to ensure that family pension was to be granted only to the widows or widowers of the employees if the deceased employee was in regular employment. Whether the employer had ordered regularisation on the services of the deceased employee one day before the date of birth or a decade back, the same is wholly irrelevant for the purposes of entitlement to family pension. Once an employee completes five years'' continuous service, on regularsation the whole service becomes regularised and has to be counted for pension. Any other interpretation would defeat the purpose of grant of family pension."

9. It may be observed here that the Pension Scheme in the present case is not different than the Rules and the Pension Scheme which were considered in the aforesaid judgments. We concur with the reasoning and the law laid down in the aforesaid authorities.

10. For the foregoing reasons, we allow this writ petition and over-rule the objection raised by the Audit Department on the basis of which the family pension of the petitioner was stopped. The respondents are directed to release the arrears of family pension with effect from the date it was stopped. It is further directed that the family pension in accordance with the calculations according to law be continued to be paid on monthly basis in future. The aforesaid directions be carried out within a period of three months.

11. Petition allowed