

CWP No.24430 of 2017

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HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24430 of 2017
Reserved on :01.01.2021
Date of decision:25.01.2021

Baljinder Kaur ... Petitioner

Versus

State of Haryana and others ... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. G.S.Sullar, Advocate,
for the petitioner.

Mr. Sandeep Mann, Addl. A.G., Haryana.

(The proceedings were conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

In the present writ petition, filed under Articles 226/227 of the Constitution of India, the petitioner challenges the order dated 12.09.2017 (Annexure P-8) passed by respondent no.2 whereby her claim for grant of arrears of monthly financial assistance and family pension has been rejected. Resultantly, a writ in the nature of *mandamus* is sought for releasing the benefits of family pension including the arrears of monthly financial assistance, family pension and other benefits along with the arrears of revised pay on account of revision of pay scale from November, 2011 and other admissible benefits due to Tarsem Singh, husband of the petitioner, who had died during service on 17.11.2008. Interest @ 18% per annum is also claimed on account of delay in disbursal of the aforesaid amount(s).

The reasoning given to deny the said benefits is that the conduct,

as such, of the petitioner was not good as she has been convicted by the Court and, therefore, pecuniary benefits could not be extended to her on both accounts monthly financial assistance and the liability of family pension. For the aforesaid reasoning, respondent no.2 relied upon the provisions of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006 (hereinafter referred to as the "Rules of 2006") and the pension provisions under the Punjab Civil Services Rules Volume-II including the Family Pension Rules, 1964. The said order has been, thus, defended by filing the written statement that the pension is not a charity or bounty and it is a conditional payment depending upon the sweet will of the employer. The person, convicted for the offence of murder, cannot be allowed the said benefit and since the petitioner's conviction has not been stayed and only her sentence has been suspended while releasing her on bail, she was held not entitled to any pecuniary benefits under the Haryana Government. Rule 2.2(a) of the Punjab Civil Services Rules Volume-II (as applicable to the State of Haryana) has been relied upon by the respondents.

The brief background of the present case is that the petitioner's husband was working as a teacher in the respondent-Education Department on regular basis since 1986. He died on 17.11.2008, leaving behind the petitioner as his widow along with children. In view of the Rules of 2006, the financial assistance became payable on the death of any Government employee, to the family of such deceased employee, and it is to be continued to be payable till the date specified in the Rules of 2006 or the date the employee would have retired from the Government service on attaining the age of superannuation, which in the present case is 31.10.2017. The eligibility of the petitioner to

receive the family pension would come thereafter. The petitioner continued to draw the monthly financial assistance for some time, but then she was involved in FIR No.126 dated 31.07.2009. She was convicted on 19.11.2011 along with Gurjeet Singh and sentenced to life imprisonment on 23.11.2011 (Annexure P-5). She firstly filed CWP No.5086 of 2015 alleging that no order had been passed for releasing the family pension and other admissible benefits. The respondents took the defence that since the order of conviction and sentence had been passed against the petitioner, therefore, on account of her lack of good conduct, the amount of monthly financial assistance had been stopped. Resultantly, an interim order was passed on 15.05.2017 that the monthly financial assistance would be continued to be paid and a speaking order be passed whether it was payable upto 17.11.2016 and whether the family pension is liable to be stopped thereafter. The aforesaid writ petition was disposed of having been rendered infructuous on 14.09.2017 (Annexure P-9) on account of the impugned order having been passed on 12.09.2017, as noticed earlier.

The relevant provisions of the various Rules, relied upon by the respondents for denying the claim of the petitioner, read as under:-

Rules 3 and 5(1)(c) of the Rules of 2006

“3. **Eligibility:-** the eligibility to receive financial assistance under these rules shall be as per provision in the pension/family pension scheme, 1964.”

xxx xxx xxx xxx

“5. **Criteria for Financial Assistance:-**

(1) On the death of any Govt. Employee, the family of the employee would continue to receive as financial assistance a sum equal to the pay and other allowances that was last drawn by the deceased employee is the normal course without raising a specific claim:-

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) For a period of seven years or till the date the employee would have retired from Govt. service on attaining the age of superannuation, whichever is less, if the employee has attained the age of forty eight years.

(2) The family shall be eligible to receive family pension as per the normal rules only after the period during which he receives the financial assistance as above is completed.”

Punjab Civil Services Rules, Volume-II

“2.2 (a):- Future good conduct is an implied condition of every grant of pension. The appointing authority reserves to itself the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or is guilty of grave misconduct.

The decision of the appointing authority on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and conclusive.

Explanation.-- For the purpose of this rule:- (1) Departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and (s) Judicial proceedings shall be deemed to have instituted – (i) in the case of criminal proceeding, on the date on which the complaint is made or a challan is submitted to a criminal court; and (ii) in the case of civil proceeding, on the date on which the plaint is presented or, as the case may be, an application is made to civil court. Note 1.- As soon as proceedings of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay intimate the fact to the Accountant General.

Note 2.-- In a case in which a pension as such is not withheld or withdrawn, but the amount of any pecuniary loss caused to Government is ordered to be recovered from the pension, the

recovery should not ordinarily be made at a rate exceeding one-third of the gross pension originally sanctioned including any amount which may have been commuted.”

Rule 4(a) and (b) of the Family Pension Rules, 1964

4-A. (a) If a person, who in the even of death of government employee while in service, is eligible to receive family pension under this rule, is charged with the offence of murdering the Government employee or for abetting in the commission of such an offence, the claim of such a person, including other eligible member or members of the family to receive the family pension, shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(b) If on the conclusion of the criminal proceedings referred to in clause (a), the persons concerned-- (i) is convicted for the murder or abetting in the murder of the government employee, such a person shall be debarred from receiving the family pension which shall be payable to other eligible member of the family, from the date of the death of government employee.”

Perusal of the above provisions of relevant Rules would show that the monthly financial assistance was payable to the petitioner as per the provisions of the Pension/Family Pension Scheme, 1964. Rule 2.2(a) of the Punjab Civil Services Rules Volume-II talks about the future good conduct of the pensioner as the pension can be withheld or withdrawn if the pensioner is convicted for the serious crime or is guilty of grave misconduct. Thus, the Appointing Authority have the discretion to withhold or withdraw the whole or any part of pension . Note 2 appended with the Explanation to Rule 2.2(a) further talks about the recovery of any pecuniary loss caused to Government from the pension but such recovery should not exceed one-third of the gross pension originally sanctioned including any amount which may have been commuted. Thus, the aforesaid Rule talks about the withholding or

withdrawing of the pension in case of conviction of a pensioner of a serious crime or his guilty of gross misconduct but the same does not refer to the family member receiving financial aid. For the intervening period from the date of death of the employee till the grant of family pension, as per the Rules of 2006, there is nothing mentioned about the misconduct, as such, of the family members for not being entitled for the monthly financial assistance and, therefore, the eligibility, as such, to continue receiving the monthly financial assistance could not have been denied by the respondents as per Punjab Civil Service Rules.

Even otherwise, Rule 2.2(a) provides that the recovery from pension cannot be made of the amount exceeding one-third of the gross pension and it has been time and again settled by this Court that the complete pension cannot be stopped and reliance in this regard can be placed upon a judgment of the Division Bench of this Court rendered in the case of **Shankar Lal vs. State of Haryana and others**, LPA No.427 of 2013, decided on 12.11.2014, wherein an employee was convicted under the Prevention of Corruption Act, 1988 for a period of three years. The entire pension was withheld under Rule 2.2(a) of the Punjab Civil Services Rules Volume II. The learned Single Judge had refused to interfere in the impugned order and the intra-court appeal was carried before the Division Bench, which noticed that the cut on pension could not exceed one-third of the gross pension and accordingly, the impugned order was set aside for reconsideration of the issue. The relevant part of the aforesaid judgment reads as under:-

“Clause (ii) of the aforesaid Rule clearly stipulates that the entire pension of an employee under the said Rule cannot be withheld or withdrawn and only a part of pension is to be

withheld or withdrawn and the amount of such part of pension shall not ordinarily exceed one-third of the total pension.

In our opinion, the Authority while passing the order dated 22.3.2012 has not considered this aspect of the matter and in an arbitrary manner has withheld the entire pension of the appellant. Thus, the impugned order dated 22.3.2012 passed by the Authority is liable to be quashed.

Accordingly, this appeal is allowed and order dated 22.3.2012 passed by the Authority is set aside and the matter is remitted to the Authority to re-consider the issue in the light of the aforesaid aspect and then pass the order in accordance with law after hearing the appellant within a period of three months from today. In case, the Appellate Authority withholds part of the pension according to the aforesaid Rule, the remaining amount of pension is directed to be paid to the appellant immediately within a period of one month of the decision of the authority failing which the appellant shall also be held entitled to interest on the said amount in accordance with law.”

A similar view is also taken in the case of **Prem Chand Dhand vs. State of Punjab and another**, 2019(2) Service Cases Today 662, wherein also there was a conviction under the Prevention of Corruption Act, 1988 for six years. The payment of the pension was stopped, which was challenged and the said order was set aside and a direction was issued to pass an appropriate order within a period of three months, after reconsidering the case.

Similar view was taken in the case of **Darshan Singh vs. State of Punjab and others**, 2019(1) Service Cases Today 703, wherein an employee had been sentenced for nine months under Section 324 IPC. His provisional pension was stopped on account of Rule 2.2(a) of the Punjab Civil Services Rules but the said order was set aside on the ground that a person should be left with adequate amount for his/her maintenance and it was held that the pension

of a person, held guilty of grave misconduct in the department inquiry or by a Criminal Court, could not be stopped to the extent of 100%. Resultantly, the said principle is also to be applied in the present case as, by the impugned order, 100% cut in pension has been imposed.

It is not disputed that the petitioner has committed the offence of murder and is on bail and her sentence has been suspended and, therefore, she requires to maintain herself and cannot be denied the financial assistance and it is not a bounty, as such, and is her right on account of the services rendered by her husband to the Government. Even as per Rules of 2006, the object, as such, is to tide over the emergent situation of the family of the deceased employee, resulting from the loss of the bread-earner, by giving financial assistance and, therefore, it is a beneficial piece of legislation, which fact has been lost sight of while passing the impugned order. The relevant Rule 2 of the Rules of 2006 reads as under:-

“2. The object of the rules is to assist the family of a deceased/missing Government employee of Group C and D category, in tiding over the emergent situation, resulting from the loss of the bread-earner while in regular service by giving financial assistance.”

If the Family Pension Rules, 1964 are to be examined, as reproduced above, under which the petitioner was entitled to receive family pension after 17.11.2016 and she has been denied the same on account of the fact that she has been convicted under Section 302 IPC. Reading of the said Rule would not go to show that it is framed in a different manner inasmuch as it talks about the eligibility to receive the family pension if a person is charged with the offence of murdering the Government employee or for abetting in the

commission of such an offence. The disqualification is, thus, for such a person or other eligible family member to receive the family pension from the date of death of the Government employee. In the present case, as noticed, the conviction of the petitioner is not on account of murdering Tarsem Singh, husband of the petitioner, the Government employee, who had died on 17.11.2008. The said provision, as such, cannot be relied upon by the respondents to deny the claim of the petitioner as it is a disqualification to the other family members for receiving benefits, which are arising out of the right to receive the family pension. Only if the Government employee has been murdered, the disqualification, as such, would arise. The said provision is based on the principle as provided under Section 25 of the Hindu Succession Act, 1956, wherein any person who commits murder or abets the commission of murder is disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of offence. The said provision reads as under:-

“25. Murderer disqualified.-- A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.”

Thus, the purpose behind Rule 4-A(a) of the Family Pension Rules, 1964 is to debar the family members, as such, from getting the family pension if they are involved in committing the murder or abetting the murder of the Government employee on the old fable that `one cannot kill the goose

which lays the golden eggs'.

Reliance can also be placed upon a similar order passed by the High Court of Madhya Pradesh in the case of **Smt. Sharada Devi vs. The State of Madhya Pradesh**, WP-7725-2015, decided on 15.12.2017. In the said case, the family pension of the widow, as such, had been stopped on account of the fact that she had been convicted under Section 304-B IPC for causing death of her daughter-in-law. The State had relied upon Rule 47(11)(c) of the M.P. Civil Services (Pension) Rules, 1976, which is *pari materia* to Rule 4-A(a) of the Family Pension Rules, 1964. The Court came to the conclusion that the pension could have only been stopped if the petitioner had been charged with the commission of offence of murder of the Government servant. The relevant part of the aforesaid judgment reads as under:-

“Petitioner's contention is that vide impugned order Annexure P/1 dated 17.09.2014 passed by Conservator of Forest and D.F.O., General Forest division, Gwalior, petitioner's family pension has been withheld invoking provisions contained in Rule 47(11)(c) of the M.P. Civil Services (Pension) Rules, 1976 (hereinafter referred to as “The Rules”).

It is petitioner's contention that this Rule has been wrongly understood by the authorities, inasmuch as rule 47(11)(c)(i) of Rules reads as under:-

“(c)(i) if a person, who in the event of death of Government Servant while in service, is eligible to receive family pension under this rule, is charged with the offence of murdering the Government servant or for abetting in the commission of such an offence, the claim of such a person, including other eligible member or members of the family to receive the family pension, shall remain suspended till the conclusion of the criminal proceedings instituted against him.”

As it is apparent that Petitioner's family pension could

have only been stopped if she would have been charged with the commission of offence of murder of the Government servant, as a dependent to whom she is claiming family pension, her conviction under Section 304-B of IPC for causing death of her daughter-in-law, will not fall under this category and, therefore, impugned order deserves to be set aside.

After going through the provisions contained in Rule 47(11)(c) of the Rules, it is apparent that this provisions has been wrongly applied to the facts and circumstances of the case, this impugned order deserves to and is quashed. It is directed that family pension of the petitioner be finalized within thirty days and arrears of family pension be also paid to her from the death of her husband within the aforesaid period.

Accordingly, this petition is disposed of.”

Resultantly, this Court is of the opinion that the order dated 12.09.2017, denying pension to the petitioner on account of her conviction, is unrelated to the death of her husband and is not sustainable and accordingly, the said order is set aside.

Accordingly, a *mandamus* is issued to the respondents to pay the arrears of monthly financial assistance to the petitioner, which was admissible under the Rules of 2006 till it was payable. Thereafter, the case of the petitioner for payment of family pension be processed and the arrears be paid to her. The petitioner shall also be entitled to the benefit of simple interest @ 6% per annum on the said arrears from the date they became payable. The needful shall be done within a period of two months from the date of receipt of certified copy of this order.

January 25, 2021
vinod*

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No