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*Before V.M. Jain & S.S. Saron, JJ.*

SMT. TEJ KAUR & ANOTHER,—*Petitioners*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

*C.W.P. No. 11526 of 2002*

6th December, 2004

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Vol. II, Part I—Rl. 6.17—Demise of a medical officer in harness—Dependent parents claiming family pension—Rejection of—Challenge thereto—Whether parents of a deceased employee are covered by the definition of family in terms of Rl. 6.17—In view of the pension scheme as contained in Rl. 6.17 which was in force at the time of the death of son of petitioners, they are not entitled to family pension—Subsequent amendment in Rl. 6.17 effective from 1st January, 1996 not applicable in the case of petitioners—Petition dismissed.*

*Held*, that a perusal of the definition of family as contained in Rule 6.17 (3) of the Rules admittedly does not include the parents of the deceased Government employee except as provided for in terms of sub para (ii) of para 4.3 of the Circular dated 16th July, 1998. The said sub para(ii), however, is inapplicable to the present case as the said circular is effective from 1st January, 1996 whereas the son of the petitioners died on 18th January, 1994.

(Para 10)

B.N. Sehgal, Advocate, for the petitioners.

Mrs. Baljit K. Mann, Senior Advocate General, Punjab for  
the respondent-State.

### JUDGMENT

**S.S. SARON, J.**

(1) The petitioners, who are husband and wife in this writ petition under Article 226 of the Constitution of India seek a writ in the nature of mandamus directing the respondents to grant them family pension alongwith all arrears with compound interest @ 18% per annum on the same on account of the demise of their son in harness.

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(2) The son of the petitioners namely Dr. Iqbal Singh was appointed as Medical Officer in the Department of Health and Family Welfare Punjab w.e.f. 6th February, 1992. It is stated that while he was on duty on 18th January, 1994, he was murdered in the hospital Colony at Nihal Singh Wala under Primary Health Centre Patto Hira Singh District Moga. FIR dated 18th January, 1994 in this respect was registered at Police Station Nihal Singh Wala. His post mortem was also conducted. His death certificate has been placed on record as Annexure P-1. The said Dr. Iqbal Singh was unmarried and the petitioners being the parents of the deceased are dependent on his earnings. The petitioners were granted death-cum-retirement gratuity (D.C.R.G.), *ex-gratia*, Group Insurance Scheme (G.I.S.), Government Provident Fund (GPF) on account of the demise of their son. However, they were not granted family pension and in this respect the petitioners through their counsel sent a notice dated 13th March, 2002 (Annexure P-3) for the grant of family pension. The petitioners in terms of letter dated 18th April, 2004 (Annexure P-4) were asked by the Civil Surgeon, Moga to supply certain documents. The letter of the Civil Surgeon was replied by the petitioners,—letter dated 4th June, 2002 (Annexure P-5). The family pension having not been granted to the petitioners, they have filed the present writ petition.

(3) On notice, written statement has been filed by Dr. R.P. Mittal, Civil Surgeon, Moga on behalf of respondents No. 1 to 4. It is stated that the writ petition is not maintainable on the ground that Rule 6.17 of the Punjab Civil Services Rules Volume II Part I (Rule - for short) provides that family pension is admissible only to the widow of the deceased and not to the mother of the deceased. It is submitted that family pension is not admissible to the mother/father of the deceased. Besides, the deceased Dr. Iqbal Singh served the department for one and half years and expired during service and taking a lenient view as per Instructions/Rules whatsoever was admissible to the parents of the deceased was given to them. It is submitted that as per Government Instructions/Rules death-cum-retirement gratuity (D.C.R.G.), *ex-gratia*, Group Insurance Scheme (G.I.S.) Government Provident Fund (GPF) etc. were given to the petitioners. Therefore, it is prayed that the writ petition be dismissed.

(4) In the separate written statement filed by the Accountant General, Punjab (A&E) (respondent No. 5) it is submitted that family pension is not admissible to the parents of the deceased employees

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where the employee has expired before 1st January, 1996 i.e. before the issuance of the instructions by the Government of Punjab Department of Finance,—*vide* letter dated 16th July, 1998 in pursuance of the Fourth Pay Commission Report.

(5) The petitioner has filed replication to the written statement of respondents No. 1 to 4, wherein the contents of the written statement have been denied and that of the petition have been reiterated.

(6) Shri B.N. Sehgal, Advocate learned counsel appearing for the petitioners has submitted that the action of the respondents in declining the family pension to the petitioners is illegal and arbitrary and that the petitioners are entitled to family pension on account of the demise of their son in harness. It is contended that exclusions of parents from the definition of "Family" under Rule 6.17 of the Rules has already been held to be illegal and arbitrary.

(7) In response, Ms. Baljit K. Mann learned Senior Deputy Advocate General appearing for the State has submitted that the petitioners are not entitled to the benefit of family pension as parents of the deceased employee are not covered by the definition of Family in terms of Rule 6.17 of the Rules. In support of her contention she has placed reliance on **State of Punjab versus Devinder Kaur (1)** Therefore, it is contended that the writ petition is liable to be dismissed.

(8) We have given our thoughtful consideration to the respective contentions of the learned counsel appearing for the parties. In order to appreciate the contentions, the provisions of Rule 6.17 of the Rules may be noticed, which provide for the grant of family pension and are applicable to regular employees of the Punjab Government in a pensionable establishment on or after 1st July, 1964. Sub Rule (1) of Rule 6.17 provides for the family pension benefits admissible to the family of deceased employees. Sub Rule (2) of Rule 6.17 provides for the administration of the Scheme. Sub Rule (3) of Rule 6.17 defines family, which reads as under :—

(3) Family for purposes of this Scheme will include the following relatives of the Government employee :—

(a) wife in the case of a male Government employee and husband in the case of female Government employee ;

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- (b) a judicially separated wife or husband, such separation not being granted on the ground of adultery, provided the marriage took place before the retirement of the Government employee and the person surviving was not held guilty of committing adultery ; and
  - (c) sons up to the age of twenty-five yeras.
  - (d) unmarried daughters upto the age of twenty-five years.

**Note.-1** (c) and (d) will include children adopted legally before retirement.

**Note.-2** Marriage after retirement will not be recognised for purposes of this Scheme.

(9) The definition of family was amended *vide* Finance Department Cicular No. 1/7/98 - IFP 3/8/03 dated 16th July, 1998 which is effective from 1st January, 1996. In terms of S. para 4.3 the said Circular dated 16th July, 1998 the amendment has been effected in the following manner :—

- 4.3 For the purpose of Rule 6.17(3) of Punjab Civil Services Rules Volume II, the definition of family shall also include the following relatives of the deceased Government employee :—
- (i) Son/daughter including widowed/divorced daughter till he/she attains the age 25 years or up to the date of his/her marriage/remarriage or till he/she starts earning his/her livelihood, which ever is earlier; son/daughter including widowed/divorced daughter shall be deemed to be earning his/her livelihood if his/her income is Rs. 2,620 per mensem or more.
  - (ii) Parents who were wholly dependent on the Government employee when, he/she was alive provided the deceased employees had left behind neither a widow nor a child. The parents whose total income from all sources was Rs. 2,620/- per mensem or more at the time of death of the employee shall not be considered to be dependent.

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(10) A perusal of the above definition of family as contained in Rule 6.17(3) of the Rules admittedly does not include the parents of the deceased Government employee except as provided for in terms of sub para (ii) of para 4.3 of the Circular dated 16th July, 1998. The said sub para (ii), however, is inapplicable to the present case as the said Circular is effective from 1st January, 1996 whereas the son of the petitioners died on 18th January, 1994.

(11) Learned counsel appearing for the petitioners has, however, contended that the above definition of "family" which excludes the parents of the deceased has been held to be arbitrary by a Division Bench of this Court in **State of Punjab vs. Kharak Singh Kang (2)**. It has been held therein that Rule 6.17 which excludes the parents of the deceased has no rational and is totally arbitrary and that it cannot, be sustained to the extent it exclude the parents of the deceased Government employee from the concept of Family. Learned counsel for the petitioner has also referred to **Malkiat Singh vs. State of Punjab (3)**, wherein following the decision of **Kharak Singh** case (*supra*), it was observed that the deceased cannot be viewed as a married person when his widow has re-married and after her re-marriage, the parents are entitled to family pension. Reliance was also placed on **Jaswinder Kaur vs. State of Punjab (4)**, wherein also the judgment in **Kharak Singh's** case has been followed and the Rule to the extent it excludes the parents from the definition of "family" it was observed has been declared to be arbitrary and irrational in the said case. Besides, reliance is also placed on **Balwant Kaur vs. State of Punjab (5)**, wherein it was observed that parents who are dependent and whose income is not over Rs. 2620/- are included in the definition of family. The said case however, relates to the instructions dated 16th July, 1996 in respect of which it was observed that some amendments have been made in the Rules to provide further benefits to pensioners and parents who are dependents and whose income was not more than Rs. 2620 per mensem.

(12) The aforesaid case law referred to by the learned counsel for the petitioners, however, would not be applicable in view of the judgment of the Hon'ble Supreme Court in **State of Punjab versus Devinder Kaur (supra)** wherein in respect of the family Pension

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- (2) 1998 (1) S.C.T. 556
  - (3) 2003 (2) S.C.T. 203
  - (4) 2002 (1) S.C.T. 953
  - (5) 2002 (3) S.C.T. 800

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Scheme 1964 (1964 Scheme - for short) the definition of "family" as contained in the 1964 Scheme was considered. The employee in the said case died in harness on 5th November, 1985 while he was in Government service of the State of Punjab. At that time the 1964 Scheme was in force which did not include the parents within the definition of "Family" whereas the earlier Scheme of 1951 and the subsequent amendments to the Punjab Civil Services Rules which came into force w.e.f. 1st January, 1996 included the parents also. The short question that was considered therein was whether the parents of the deceased employee were entitled to get family pension on the demise of their unmarried son who died in harness on 5th November, 1985 when he was in Government service of the State of Punjab. It was held that in view of the 1964 Scheme which was in force at the time of the death of the employee in the said case, his parents are not entitled to family pension. The case **State of Punjab versus Devinder Kaur** (supra), is applicable to the case in hand wherein the provisions of the present Rule 6.17(3) was considered as also the amendment which came into force w.e.f. 1st January, 1996. Besides, in **State of Gujarat versus Sarti Devi (6)** AIR 1996 SC 937 the definition of "family" in the context of revised Family Pension Scheme in the State of Gujarat wherein the definition of family is *para materia* to the case in hand was considered and it was held that in view of the express definition of "family", the mother of the employee who died in harness has not been included as a member of the family to claim any family pension from the Government.

(13) The judgments of the Hon'ble Supreme Court are applicable to the case in hand inasmuch as the son of the petitioners died in harness on 18th January, 1994 and at the time of his demise the Family Pension Scheme as contained in Rule 6.17 of the Rules was applicable. The definition of "Family" in Rule 6.17(3) thereof does not include the parents of the deceased. The subsequent amendment to the Rules,—*vide* Circular dated 16th July, 1998 is effective from 1st January, 1996 which in any case is not applicable to the case in hand.

(14) For the fore-going reasons, there is no merit in this petition and the same is accordingly dismissed.

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**R.N.R.**

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(6) AIR 1996 S.C. 937