

*Before M.M. Kumar & Sabina, JJ.*

**SUKHWANT KAUR,—Petitioner**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 15287 of 2006

11th July, 2008

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules—Rl. 6.17—Family Pension Scheme, 1964—Sub Rl. 3—Son of petitioner killed by terrorists—Claim for family pension by mother— Whether mother is covered by definition of word ‘family’ as per 1964 Scheme—Held, no—1964 Scheme excluding parents from definition of expression ‘family’—Amendment made in 1998 including parents in definition of expression ‘family’ not applicable petitioner’s case— Petition dismissed.*

*Held*, that Balbir Singh son of the petitioner was killed by terrorists on 9th March, 1990 which is covered by 1964 Scheme. Accordingly, the petitioner cannot derive any advantage from 1964 Scheme. Moreover, there is no challenge to the exclusion of parents from the definition expression ‘family’ as used in clause 3 of the 1964 Scheme. It is further pertinent to notice that the petitioner was not dependent on her son as her husband was in government service at the relevant time. The amendment made in the year 1998 with effect from 1st January, 1996 including parents in the definition of expression ‘family’ the requirement of being dependent on the deceased son would remain unsatisfied. Therefore, there is no merit in the instant petition.

(Para 6)

K.G. Chaudhary, Advocate, *for the petitioner.*

Charu Tuli, Sr. D.A.G. Punjab *for the respondents.*

**M.M. KUMAR, J.**

(1) The petitioner in this case is the mother of constable Balbir Singh (No. 638/GSP) who was working in the district Police Gurdaspur

and was killed by the terrorists on 9th March, 1990. By alleging that under the Family Pension Scheme, 1951 both the parents namely father and mother were included in the definition of family and as such they were entitled to the grant of 'family' pension. The definition was altered by the Family Pension Scheme of 1964 where father and mother of unmarried deceased government servants were excluded from the definition of 'family' for the purposes of family pension nor they were included in the definition of 'family' as per Rule 6.17 of the Punjab Civil Service Rules. By filing the instant petition she has claimed that being the mother of deceased son she is entitled to all the benefits including family pension.

(2) The respondent-State has taken the stand that Accountant General, Punjab has declined the recommendations made by the Senior Superintendent of Police, Gurdaspur,—*vide* letter dated 15th October, 1990 (Annexure R.2) with the remarks that family pension is not admissible to her. It has also been claimed that father of the deceased Constable Balbir Singh was serving and the petitioner was not dependent on her deceased son.

(3) The only question which needs determination in the instant petition is as to whether the petitioner being mother of the deceased is covered by the definition of word 'family' as per the Family Pension Scheme of 1964. In that regard reference may first be made to sub rule 3 of the Family Pension Scheme, 1964 incorporated in Rule 6.14 of the Punjab Civil Service Rules. Volume II and the same reads as under :

“6.17. The provision of this rule shall apply :—

(1) and (2) xxx xxx xxx xxx

(3) “Family” for the purpose 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 a female government employee ;

(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

(d) unmarried daughters below the age of 21 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.”

(4) The afore-mentioned scheme has been amended in 1998 with effect from 1st January, 1996. The amendment carried in the Scheme reads thus :

“4.3. For the purpose of Rule 6.17(3) of Punjab Civil Services Rules Vol. 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 of 25 years or upto the date of his/her marriage/remarriage or till he/she starts earning his/her livelihood, whichever 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 employee 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.”

(5) The matter is no longer res-integra and has been considered by their Lordship of the Supreme Court in the case of **State of Punjab versus Devinder Kaur (1)** where the son of one Devinder Kaur was killed by the terrorists in the year 1985. Apparently the 1964 Scheme

would be applicable which excludes the parents from the definition of expression 'Family'. However, amendment effected from 1st January, 1996 would not apply as death has taken place much before 1st January, 1996. In this regard observations made in para 8 are pertinent which reads as under :

“.....In the facts and circumstances of the present case there is no question of setting aside any arbitrary condition. Infact, the class of parent 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 are now included in the term 'family' by a new amended scheme with effect from 1st January, 1996. But that is entirely a different matter. If Daljit Singh had died after 1st January, 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 judgement of the High Court cannot be sustained so far as the legal position goes.” (emphasis added)

(6) In the instant case Balbir Singh son of the petitioner was killed by terrorists on 9th March, 1990 which is covered by 1964 Scheme. Accordingly the petitioner cannot derive any advantage from 1964 Scheme. Moreover, there is no challenge to the exclusion of

parents from the definition expression 'family' as used in clause 3 of the 1994 Scheme. It is further pertinent to notice that in the present case the petitioner was not dependent on her son as her husband was in government service at the relevant time. For the sake of arguments it may be noticed that the amendment made in the year 1998 with effect from 1st January, 1996 including the parents in the definition of expression 'family' the requirement of being dependent on the deceased son would remain unsatisfied. Therefore, there is no merit in the instant petition and the same is accordingly dismissed.

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**R.N.R.**

***Before Jasbir Singh & K.C. Puri, JJ.***

**LALITA SHARMA,—Petitioner**

***versus***

**STATE OF PUNJAB AND OTHERS,—Respondents**

C.W.P. No. 6890 of 2007

11th May, 2008

***Constitution of India, 1950—Art. 226—Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003—Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006—Dependents of deceased Government employees claiming compassionate appointment—Grant of compassionate appointment—Object of—To enable family to tide over certain crisis—Death of an employee in harness does not entitle family to such source of living—Grant of financial assistance—Policy prevalent at time of death of Government employee applicable—Dependents held entitled for payment of financial assistance in accordance with schemes applicable to them.***

***Held***, that so far as relief for grant of compassionate appointment is concerned, the same is available to the dependents of deceased Government employee only in case of extreme financial distress due