(2022-3)207 PLR 041
MOHINI v. STATE OF HARYANA
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Harsimran Singh Sethi.
MOHINI – Petitioner,
Versus
STATE OF HARYANA and others – Respondents.
CWP-11941-2017 and CWP-10103-2017

Dependents of Deceased Government Employees Rules, 2006 (5 of 2006) -The 2006 scheme was framed with an objective to assist the family of deceased/ missing Government employee of Group C and D (also group A and B) category, in tiding over the emergent situation, resulting from the loss of the bread-earner while for complete and upto date Pension Forms in regular service by giving financial assistance – Rule 3 lays down the eligibility to the effect that eligibility to receive financial assistance under the 2006 Rules shall be as per the provision in the pension/ family pension Scheme,1964 – Denial of benefits provided under the 2006 Rules is illegal, arbitrary and improper – Merely on the ground that the husband of the petitioner was appointed after January 1, 2006 in the office of the respondent Nigam i.e. on August 23, 2007, the petitioner cannot be denied the benefit of the provisions of Rule 5 of the 2006 Rules – *CWP No.1881 of 2012 Smt. Shashi v. DHBVNL, decided on 26.08.2013, referred to*. [Para 6, 10]

Cases referred to:-

1. CWP No.1881 of 2012 decided on 26.08.2013, *Smt. Shashi v. DHBVNL.*

Mr.Mohnish Sharma, for the petitioner in both cases.*Mr. Raman Kumar Sharma, Additional A.G., Haryana.Mr.Arvind Seth,*for respondents No. 2 to 6, in CWP-11941-2017.*Mr.VivekChauhan,* for respondents No. 2 to 4 in CWP-10103-2017.*Mr.Pritam Singh Saini,* for respondent No.5, in CWP-10103-2017.

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Harsimran Singh Sethi J. (Oral) –*(14th March, 2022)* –By this common order, two writ petitions, the details of which have been given in the heading of the order, are being decided as same question of law has been raised in both the petitions.

2. The prayer of the petitioners in the present petitions is that the petitioners have not been granted the pensionary benefits including pension in respect of the service which their respective husbands had rendered with the respondent-Organization, before they had unfortunately died while in active service.

3. Learned counsel for the petitioners submits that though the petitioners have already been extended the concession/benefits of the financial assistance as envisaged but even as of now, the petitioners have not been granted family pension after the death of their spouses, who had served in the respondent-Department. The prayer of the petitioners is that keeping in view the settled principle of law settled by the Coordinate Bench of this Court in CWP No.1881 of 2012 titled as *Smt. Shashi v. DHBVNL and others*[1]decided on 26.08.2013, which squarely covers the case of the petitioners in their favour, appropriate directions be given to therespondents to consider the petitioners eligible for the grant of family pension w.e.f. the date their respective husbands died and extend them the said benefit along with arrears of the family pension.

4. Learned counsel for the respondents submits that in the present case, the petitioners were only entitled for the grant of family assistance as envisaged under the Dependents of Deceased Government Employees Rules, 2006 (hereinafter referred as '2006 Rules') as after 01.01.2006, there is no scheme under which pension is to be extended to the employees and husbands of the petitioners were employed with the

respondentOrganization after the said date, hence, as the respective spouses of the petitioners, were not entitled for pension even after superannuation. The question for the grant of family pension to the petitioners does not arise and therefore, the prayer of the petitioners for the grant of family pension may kindly be rejected.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The law which is being relied upon by the learned counsel for the petitioners is an order passed by the Coordinate Bench of this Court while deciding CWP No.1881 of 2012 titled as *Smt. Shashi v. DHBVNL and others* [1]decided on 26.08.2013. In the said case, two prayers were raised by the petitioner therein that she should be given the benefit of financial assistance as envisaged under 2006 Rules and also that she should be granted the concession of family pension, which benefits have been declined by the respondents. In the said case also, objection of the State was that as husband of the petitioner therein was appointed after 01.01.2006, after which date, pension is not available to the employee and after the death of the employee, spouse is not entitled for the family pension. This Court, after considering 2006 Rules, passed the following order:-

> "Petitioner is wife of deceased Balraj who was working as Assistant Lineman with respondent No.1 Corporation. As the husband of the petitioner died while in service on April 27, 2009, the petitioner through instant writ petition under Article 226/227 of the Constitution of India seeks the quashing of letter annexure P-8 dated January 25, 2011 denying petitioner family pension or monthly financial assistance. The order annexure P-8 which had been sent by respondent No.1 to respondent No.4 and was communicated to the petitioner vide annexure P-9, reads as follows:-
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> "To
>
> DGM/OP Divn.
>
> DHBVN, Rewari
>
> Memo No.12269/70/DGM/Pen Dated: 25.1.11
>
> Subject: Notice to grant the death-cum-pensionary benefits of deceased Balraj, ALM died in harness on dated 27.4.2009 in favour of Smt.ShashiW/oSh.Balraj, ALM.
>
> In this connection, it is submitted that as per clause 3 of Hr.Notif. No. GSR 19/Const./Art309/2006 dt.1st August 2006 as Pub in Govt. Gaz./dated 1.8.06 at PP 378-380. "The eligibility to receive financial assistance under these rules shall be as per the provision in the pension/ family pension scheme, 1964."
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> And as per FD Hr. Notif. 1/1/2001-1 Pension dt.28.10.2005 vide which Haryana Govt. has adopted the new defined contributory pension scheme, the employees recruited on or after 1.1.2006 are covered under this new scheme.
>
> Hence, it is clear that family pension scheme 1964 is not applicable on those employees who has been appointed on or after 1.1.2006 and they are also not entitle for monthly financial Assistance as per Hr. Notif. No. GSR 19/Const./Art.309/2006, dated 1st August 2006 debars.
>
> This is for your kind information and further necessary action please. The reply for the other points may be given atyour own level.
>
> Dy. General Manager/ Pension
>
> For CGM/Accounts DHBVN, Hisar.
>
> CC to:
>
> 1. SE/OP Circle DHBVN, Narnaul."
>
> Brief facts relevant for decision of present writ petition are that husband of the petitioner, had joined the office of SDO, Sub Division, Kosli vide a report annexure P-2 dated August 23, 2007 after having been appointed pursuant to an open advertisement vide appointment letter dated August 14, 2007 (P-1). Unfortunately he was electrocuted

on April 27, 2009, after having rendered continuous regular service as Assistant Lineman from August 23, 2007 to April 27, 2009. Petitioner has further averred in the petition that she alongwithparents, elder brother and two married sisters of the deceased were dependents. Petitioner claims that being legally wedded wife of deceased Balraj, she is entitled to receive retiral and family pension benefits under the new pension scheme besides retirement gratuity etc. under Rule 6.16 (A) (2) (b) of Punjab Civil Services Rules, Volume II Part II, applicable under the new family pension scheme, leave encashment, additional compensation, besides workman compensation and ex-gratia employment or compassionate financial assistance in terms of ex-gratia financial assistance scheme w.e.f. August 1, 2006 onwards, as per notification No. GSR-19/Const./Art.309/2006 dated August 1, 2006. Relying upon clarification instructions dated February 23, 2011, petitioner has submitted that she is entitled to all the benefits under Rules 3 and 5 (2) of the Haryana Compassionate Assistance to the Dependents of Deceased Employees Rules, 2006, for short 'the 2006 Rules".

The written statement filed by respondents reveals that the petitioner has been paid a sum of Rs.4,23,580/- by the office of CGM Operation, DHBVN, Delhi as compensation under Section 3 read with Section 5 of Schedule IV of the Workmen Compensation Act, 1923. Copy of the order has been placed on record as annexure R-4/2. An additional compensation of Rs.3 lacs has also been paid to the petitioner vide order dated December 21, 2009, annexure R-4/3. In view of abovesaidamounts having been paid, the respondents have submitted that petitioner is not entitled to family pension or gratuity as claimed by her. Respondents have relied upon an office order dated January 25, 2001, annexure P8, to submit that petitioner is not entitled for family pension as husband of the petitioner was appointed after January 1, 2006 i.e. on August 23, 2007 against the post of Assistant Lineman.

The 2006 Rules framed with an objective to assist the family of deceased/ missing Government employee of Group C and D (also group A and B) category, in tiding over the emergent situation, resulting from the loss of the bread-earner while for complete and upto date Pension Forms in regular service by giving financial assistance. Rule 3 lays down the eligibility to the effect that eligibility to receive financial assistance under the 2006 Rules shall be as per the provision in the pension/ family pension Scheme, 1964. Rule 5 of the said rules provides for the criteria for financial assistance which reads as follows:-

"5 Criteria for financial assistance:-

(1) On the death of Government 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 in the normal course without raising a specific claim.

(a) for a period of fifteen years from the date of death of the employee, if the employee at the time of his death had not attained the age of thirty five years;

(b) for a period of twelve years or till the date the employee would have retired from Government service onattaining the age of superannuation, whichever is less,if the employee at the time of his death had attained the age of thirty five years but had not attained the age of forty eight years;

(c) for a period of seven years or till the date the employee would have retired from Government service on attaining the age of superannuation, whichever is less, if theemployee had 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.

(3) The family of a deceased Government employee who was in occupation of a

Government residence would continue to retain the residence on payment of normal rent/ license fee for a period of one year from the date of death of the employee.

(4) Within fifteen days from the date of death of a Government employee, an ex-gratia assistance of twenty five thousand rupees shall be provided to the family of the deceased employee to meet the immediate needs on the loss of the bread earner.

(5) House Rent Allowance shall not be a pert of allowance for the purpose of calculation of assistance."

According to Rule 5 (1) of the 2006 Rules, 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 in the normal course. Said relief can be granted without raising a specific claim. As per Rule 5 (2) of the Rules, the family is entitled to receive familypension as per the normal rules only after the period during which he receives the financial assistance. The Government vide instructions date February 23, 2011 has issued clarification regarding Rule 3 and 5 (2) of the Rules which are as follows:-

"I am directed to invite your attention to the subject cited above and to say that the Haryana Government had issued the notification vide No. GSR 19/Const./Art 309/2006 dated 1.8.2006, vide which provision for granting monthly financial assistance and thereafter family pension to the family of deceased Government employees was made. It has been observed that a number of references from different departments have been received seeking clarification as to whether the dependents of the employees who entered into Govt. service on or after 1.1.2006 and in the event of their death during the service would be eligible or not for monthly financial assistance in view of the Finance Department Notification dated 28.10.2005.

In this respect it is made clear that so far as the monthly financial assistance to the family of deceased is concerned, it is also admissible to the dependents of deceased employees covered under the New Pension Scheme on similar lines as are for the employees covered by CSR Volume II.

3. So far as the matter regarding Family Pension is concerned, in Rule 5 (2) it is clearly mentioned that 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. It means that for such employees who have entered into Government service on or after 1.1.2006, the New Pension Scheme is applicable to them and as such their cases will be decided accordingly.

There is no need for further clarification in this regard."

There does not appear to be any ambiguity in the provisions of Rules. The said Rules are in the nature of sociallegislation for compensating the loss of the bread earner and grant of family pension to the family members of the deceased.

The claim of the petitioner has been rejected vide order annexure P-8 stating that Family Pension Scheme, 1964 is not applicable to those employees who have been appointed on or after January 1, 2006. It is not disputed in the present case that the above said Rules in Government notification No. 1/1/2004-1Pension dated October 28, 2005 (annexure R- 4/1) vide which the Haryana Government had opted New Defined Contributory Pension Scheme for the employees who are recruited on or after January 1, 2006, have been adopted by the respondent Corporation.

The abovesaid Rule 5 clearly indicates that the eligibility to get financial assistance under the 2006 Rules shall be according to the provisions of the Pension/ Family Pension Scheme, 1964. Objective of Rule 5 regarding the criteria for financial assistance is to provide some support to the family of the deceased.

There is no force in the defence of the respondents that the Family Pension Scheme

will not be applicable to the persons appointed after January 1, 2006. The defence of the respondents is that employees who were recruited on or afterJanuary 1, 2006 are only covered under the New Defined Contributory Pension Scheme. The petitioner has no doubt been paid a sum of Rs.4,23,580/- under the Workmen's Compensation Act but the petitioner cannot be denied the statutory benefit of the provisions of the 2006 Rules. The denial of benefits provided under the 2006 Rules is illegal, arbitrary and improper. Merely on the ground that the husband of the petitioner was appointed after January 1, 2006 in the office of the respondent Nigam i.e. on August 23, 2007, the petitioner cannot be denied the benefit of the provisions of Rule 5 of the 2006 Rules.

In view of the above, the petition is allowed. Annexures P-8 and P-9 by virtue of which the case of the petitioner for family pension has been illegally rejected, are hereby set aside.The respondents are directed to release all the consequential benefits to the petitioner within a period of six months after the receipt of a certified copy of this order."

7. A bare perusal of the above order would show that thepetitioner in *Smt. Shashi's case* (supra), was held entitled for the grant of family assistance as well as family pension and the order rejecting the same were quashed, even though husband of the petitioner therein was appointed after 01.01.2006.

8. Learned counsel for the respondents submits that though in the case of *Smt. Shashi's case* (supra), the concession of family pension has been granted by the Coordinate Bench of this Court but the same has wrongly been granted as the relevant rules have not been discussed and the said judgment is liable to be ignored.

9. On being asked, as to whether, in the case of *Smt. Shashi'scase* (supra), there was an order passed by the Department declining the grant of family pension in favour of the petitioner therein, learned counsel conceded the said factum that in case of *Smt. Shashi's case* (supra), the family pension was declined on the same ground, as done in the case of the petitioners, which order was set aside by the Coordinate Bench while passing order in *Smt. Shashi's case* (supra). It is further conceded by the learned counsel for the respondents that the order passed by the Coordinate Bench of this Court in *Smt. Shashi's case* (supra) has been implemented by the respondents.

10. The objection, which is being raised by the respondents that the judgment in *Smt. Shashi's case* (supra) is not correct law and should beignored, is not at all correct and cannot be accepted. In *Smt. Shashi's case*(supra), the husband of the petitioner therein was also appointed in the year 2007, much after the pension scheme has already been over w.e.f01.01.2006. Similar are the facts in the present case as well. Once a Coordinate Bench of this Court has granted a particular relief after setting aside the similar objection, as being raised qua the petitioners, no differentiation can be made by this Court especially when the order in favour of *Smt. Shashi's case* (supra), has already been implemented.

11. Keeping in view the above, thequestion raised in the present petition are squarely covered by the decision in *SmtShashi's case* (supra) and the present petitions are also allowed in the same terms and conditions.

R.M.S. – Petition allowed.