PUNJAB STATE ELECTRICITY BOARD AND ORS. A

v.

RAM RAKHI

JULY 28, 2000

[S. RAJENDRA BABU AND SHIVARAJ V. PATIL, JJ.] B

Punjab Civil Services Rules, Vol. II, 1960 Edn., Rule 6.16-D(1) Explanation and Rule 6.16-B(1)(a).

Family Pension—Widowed sister—Entitlement to—Held : Explanation to R.6.16-D(1) included widowed sister—Hence, she is entitled to claim family pension. C

Family Pension—Widowed sister—Entitlement to—Eligibility conditions—Held : Widowed sister must establish that there is no nomination in respect of any other person and that she is dependent on the deceased employee in order to claim family pension. Punjab Civil Service Rules, Vol. II, 1960 Edn., Rule 6.16-D(1) Explanation. D

Words and Phrases :

"Family"—Meaning of—In the context of Explanation to Rule 6.16-D(1) of the Punjab Civil Services Rules, Vol. II, 1960 Edn. E

The respondent was the widowed sister of one D, who was working in the appellant's establishment at the time of his death. The respondent filed a suit seeking mandatory injunction to the appellant to pay family pension. The trial Court decreed the suit and the High Court, in second appeal, held that the widowed sister was a member of the family of the deceased and, therefore, entitled to family pension. Hence this appeal. F

Allowing the appeal in part, this Court

HELD : 1. Explanation to Rule 6.16-D(1) of the Punjab Civil Services Rules, Vol. II, 1960 Edn. defines a Family' which includes a widowed sister. Therefore, a widowed sister does become a member of the family of the deceased employee who could claim family pension under the Rules. [3-E] G

Jasohdhan Devi **v.** *State of Punjab,* **(1989) 6 SLR 664, referred to.** H

A **2. However, in order to become entitled to claim family pension, the conditions specified in Chapter VI, sub-heading : 'Family Pensions', have to be fulfilled. The widowed sister must establish that there was no nomination in respect of any other person and that she was dependent on the deceased employee at the time of his death. The matter is remitted to**
B **the trial Court to determine the question as to whether the respondent was dependent on the deceased employee. [3-G, 4-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4278 of 2000.

From the Judgment and Order dated 13.10.97 of the Punjab and Haryana
C High Court in R.S.A. No. 937 of 1997.

Harinder Mohan Singh, A.P. Chhabra and M.S. Bakshi for the Appellants.

S.K. Bagga, Seeraj Bagga and Ms. Sureshta Bagga for the Respondent.

D

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Leave granted.

Respondent filed a suit seeking a mandatory injunction to the appellants
E to sanction and pay family pension, G.P.F., Death-cum-Retirement Gratuity, *ex-gratia* grant and leave encashment etc. Her case is that she is the widowed sister of Shri Dalip Chand, who was working as a Lineman in the appellant's establishment at the time of his death. The suit was resisted by the appellant and it is contended that deceased Dalip Chand did not nominate any person to be paid the family pension or G.P.F. nor any member of his family was
F dependent on Dalip Chand for payment of family pension. The trial Court decreed the suit in respect of various claims made by the respondent. The matter was carried in appeal unsuccessfully. In the second appeal in the High Court it was noticed that the matter is covered by the decision in *Jasohdhan Devi* v. *State of Punjab and Anr*, (1989) 6 S.L.R. 664 and therefore no
G interference is called for as the widowed sister is recognized as member of the family entitled to family pension.

The contention put forth before this Court is that the respondent is not a member of the family as per the new pension rules which came into force in 1964 under which only spouse and children of the deceased employee will
H constitute members of the family. In addition it is contended that even if the

respondent is a member of the family under the old rules, in which an unmarried widowed sister is included in the definition of family, still she has to fulfil other conditions arising under the other relevant provisions of the Rules and those conditions having not been fulfilled the Courts below were not justified in passing the decree for grant of family pension. The learned counsel for the respondent submitted that the view taken by the Courts below is absolutely justified and no interference is called for.

Though three claims had been made by the respondent, the learned counsel for the appellant confined his case only to one aspect of the matter namely, grant of family pension and in regard to other two aspects did not challenge the decree passed by the Courts below as affirmed by the High Court of Punjab & Haryana. Therefore, we will rivet our attention only to the question of grant of family pension to the respondent.

The fact that respondent is a widowed sister of the deceased employee of the appellant is not in dispute. It is also not in dispute that he did not exercise his option to be governed by the Pension Scheme 1964 and therefore the restricted definition given to the expression 'Family' confining only to spouses, sons and unmarried daughters has no application. On the other hand, the relevant rules in Punjab Civil Services Rules Vol. II 1960 Ed. would be applicable wherein in Rule 6.16- D (1) an explanation is added to define as to what family is and that definition adopts the definition set out in Rule 6.16-B (1)(a) except certain persons and that rule clearly includes a widowed sister. Therefore in the absence of any option having been exercised by the deceased employee to adopt new Rules, old Rules govern him as rightly held by the High Court following the decision in *Jasodhan Devi* v. *State of Punjab* (supra), a widowed sister does become a member of the family who could claim pension under those Rules. So far as this aspect of the matter is concerned, the view taken by the Courts below is absolutely justified and calls for no interference.

However, the matter does not rest at what we have stated so far. In order to become entitled to claim family pension, the conditions specified in Chapter VI, sub-heading D:'Family Pensions', have to be fulfilled. Clause (a) of Rule 6.16-D provides that no pension is payable without production of any proof that such person was dependent on the deceased officer for support in respect of those falling within sub-rule (4)(b). Sub-rule (4) applies to two categories of the members of the family. The first category consists of spouses and children. The second category coming under clause (b) are all other relatives of the deceased such as parents and siblings. So far as relatives other than spouse and

A children are concerned there is a condition that they are dependents on the deceased employee for support has to be established by adducing reasonable proof to claim pension. Further the scheme of grant of pension is by way of exclusion of a relative mentioned in the earlier category with reference to the one mentioned in the latter category. In the first place it is to be established
B that there was no nomination in respect of any one of them and that such person was a dependent of the deceased employee at the time of the death. In the absence of such proof family pension cannot be granted. Indeed whether a widowed sister, as in the present case, has her own source of income or was not a dependent upon the deceased is a matter to be established by adducing appropriate proof. However, none of the Courts have adverted their attention
C to this aspect of the matter, though the defence raised by the appellants has been noticed. Thus we have no option but to set aside the decree passed by the trial Court as affirmed by the first appellate court and the High Court in second appeal to the extent indicated above in so far it relates to direction for payment of family pension.

D . This appeal is thus allowed to the extent indicated above setting aside the decree in so far as it relates to the direction to grant of family pension and in other respects remains undisturbed and the matter is remitted to the trial Court for fresh consideration on the question as to whether the respondent is dependent of the deceased employee so as to claim pension in terms of the rules
E to which we have adverted to. Appeal is allowed in part. No costs.

V.S.S. Appeal partly allowed.