REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6271 OF 2008
(Arising out of SLP (C) No.1502 of 2006)

State of Haryana & Ors. **… Appellants**

Versus

Shakuntla Devi **… Respondent**

WITH

CIVIL APPEAL NOS. 6272 & 6273 OF 2008
(Arising out of SLP (C) No.2759/06 and 529/08)

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Whether the respondents being dependents of the deceased ad hoc appointees are entitled to grant of 'family pension' in terms of the provisions of Punjab Civil Services Rules (for short, 'the Rules') and

Family Pension Scheme, 1964 (For short, 'the 1964 Scheme) is the question involved in these appeals, which arise out of judgments and orders dated 4.5.2005 and 24.4.2007 passed by the High Court of Punjab and Haryana at Chandigarh in CWP Nos.8401 of 2003, 1858 of 2004 and 13112 of 2006.

3. Respondent Shakuntla Devi is the widow of Late Balwant Singh Driver; Respondent Rama Devi is the widow of Late Karan Singh; and Respondent Sohni Devi is the widow of Late Dharam Pal.

4. All of them were appointed on ad hoc basis for a period of six months on diverse dates.

Their offers of appointment containing the terms and conditions thereof, read as under :

(a) Offer of Appointment of Late Karan Singh

> "The following applicants are appointed as J.B.T. on the basis of six months, on pay of Rs.125/- and prescribed allowances total grade of Rs.125/250 in the Schools mentioned against each. They are directed to submit their joining reports to the concerned Head Master/Head Mistress, Block Education Officer by 11.7.73 (F.N.). If he fails to join by this date, other applicants will be appointed in their place.
>
> The service is temporary and liable to be removed from service at any time without any notice.

Name of applicant & address	Registration No.	Place of Appointment	Remarks
Sh. Karan Singh s/o Deep Chand, Village Manpur, The. Nuh, Gurgaon	2879/73	Govt. Secondary School, Kondal	Nil

Endst. No. even."

(b) Offer of Appointment o Late Balwant Singh

"Sub. Ad hoc appointment of Drivers.

On the recommendations of the State Employment Exchange, Haryana, you are hereby offered a post of temporary Driver in the Pay scale of Rs.1200-30-1500-EB-40-2040 plus usual allowances as sanctioned by the Haryana Government from time to time for a period of six months or till such a recommendee of Subordinate Services Selection Board, Haryana reports for duty, whichever event is earlier.

2. Your appointment is temporary and your services can be terminated without assigning any reason and without any notice of discharge."

(c) Offer of appointment of Late Dharam Pal

"Subject – Appointment on ad hoc basis

The Director of Industrial Training & Vocational Education Haryana is pleased to appoint you to the post of Clerk in the grade of 400-104-90/540-15-600-EB-20-660 plus allowance as admissible under rule purely on ad hoc basis for a period of six months, or till a regular candidate duly recommended by the Subordinate Services Selection Board, Haryana joins, which ever is

> earlier, on the terms and conditions mentioned below :-
>
> i) that your services are liable to be terminated at any time without notice and without assigning any reasons.
>
> ii) That conditions of your ad hoc services will be governed by the rules and instructions issued by the Haryana Government from time to time……."

All the aforementioned offers of appointment, thus, categorically go to show that the same were ad hoc in nature. Appointments were made for a period of six months only. The services of the appointees were liable to be terminated without any notice or without assigning any reason.

5. Temporary servants may be appointed by the State for satisfying the needs of a particular contingency. Conditions of service of the temporary servants may be regulated either by laying down the conditions therefor in the offer of appointment and/or the rules operating in the field.

If an appointment, it is trite, is made to a temporary post, there can be no permanent appointment therein. He would be deemed to be in temporary service only. Even where a temporary post is made permanent, the same by itself does not render the employment permanent and, thus, temporary employee continues to remain on temporary service. Until a declaration is made under the relevant rules, he cannot be deemed to be in a quasi

permanent service or absorbed permanently in Government service. [See Arundhati Ajit Pargaonkar v. State of Maharashtra & Ors. [AIR 1995 SC 962].

6. The legal position in relation to termination of services of temporary employees is, thus, to a substantial extent, similar to that of a probationer, as such an employee has no right to the post except in cases where the same is arbitrary in nature.

7. Indisputably, however, despite expiry of a period of six months from the date of their respective dates of appointment, they were allowed to continue in service. It is furthermore not disputed that neither their status had been changed nor their services had been regularized. In fact, so far as the case of Balwant Singh is concerned, his prayer for regularization of his services was specifically rejected by the State.

8. For better appreciation of the factual matrix of the matter, the respective dates of appointment of the husbands of the respondents, dates of their death, dates of making demand/legal notice for benefit of family pension, dates of rejection of such prayers and the dates of filing of the writ petition may be noticed, which are as under :

Name	Date of appointment	Date of Death	Date of making demand/ legal notice for Family Pension	Date of Rejection of such prayer	Date of filing the writ petition
Balwant Singh	5.1.1990	11.12.1994	15.5.2003	6.10.2003	13.12.2003
Karan Singh	3.7.1973	13.12.1977	01.10.2001	28.5.2002	26.5.2003
Dharam Pal	24.3.1987	13.7.1989	--	17.11.1989	11.5.2006

9. The matter relating to grant of family pension is covered by the Punjab Civil Services Rules Volume II Part I (for short, 'the Rules'). In terms of the Rules, Family Pension Scheme, 1964 was framed.

The Rules which are relevant for this case, are as under :

> **"2.4.** In the following cases no claim to pension is admitted:-
>
> (a) When a Government employee is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged.
>
> (b) When a person is employed temporarily on monthly wages without specified limit of time or duty; but a month's notice of discharge should be given to such a person and his wages must be paid for any period by which such notice falls short of a month.

(c) When a person's whole-time is not retained for the public service, but he is merely paid for work done, such as Government Pleaders and Law Officers not debarred from private practice.

(d) When a public servant holds some other pensionable office, he earns no pension in respect of an office of the kind mentioned in clause (c) or in respect of duties paid for by a compensatory allowances.

(e) When a Government employee serves under an agreement which contains no stipulation regarding pension, unless the competent authority specially authorizes him to count such service towards pension.

Note:- The agreements should be so worded as to preserve the inviolate and indefeasible right of Government to modify the rules from time to time, at their discretion, so that no claim may arise to the benefit of the rules as they stood at the date when the agreement was executed.

3.12 The service of a Government employee does not qualify for pension unless it conforms to the following three conditions :-

First – The service must be under Government.

Second – The employment must be substantive and permanent

Third – The service must be paid by Government.

These three conditions are fully explained in the following rules.

> **Note.**- The question whether service in a particular office or department qualifies for pension or not is determined by rules which were in force at the time such service was rendered; orders subsequently issued declaring the service to be non-qualifying, are not applicable with retrospective effect.
>
> XXX XXX XXX
>
> 3.17. In the case of an officer retiring on or after 5th January, 1961, if he was holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post, shall count in full as qualifying service except in respect of :-
>
> (i) Period of temporary or officiating service in non-pensionable establishment.
>
> (ii) Deleted.
>
> (iii) Period of service paid from contingencies."

Rule 6.16A(2)(b) of the Rules (as applicable to Haryana) reads as under :

> "Rule 6.16(2)(b) : The family of a pensionable employee who dies before completing five years of qualifying service shall also be eligible for the gratuity equal to six months employments of a Government employee at the time of his death except in cases in which death occurs in the first year of service where the gratuity admissible shall be equal to two months emoluments."

Rule 12.2 of the C.S.R. Vol.I, Part I is reproduced hereunder :

> Rule 12.2 : A service book in the form prescribed by the Comptroller and Auditor-General in Article 188 of Audit Code (reproduced in Part 11 of Appendix 11) must be maintained for every employee at the time of First Entry into Government service has to get himself medically examined. The only exception provided is under Rule 3.3.(3) of C.S.R. Vol.No.1, Part I there is no requirement of medical certificate for those employees who are appointed on six months basis."

10. The 1964 Scheme was formulated to afford further reliefs stipulated therein to the family of the deceased employees.

The said scheme came into force with effect from 1st July, 1964 and was applicable to all regular employees on pensionable establishments.

Para 4 and Note 1 of the 1964 Scheme read as under :

> "4. This scheme is administered as below:-
>
> (i) The family pension is admissible in case of death while in service or after retirement on or after the 1st July, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. The Family Pension will not be admissible in case of

> death after retirement if the retired employee at the time of death was in receipt of gratuity only. In case of death while in service a Government employee should have completed a minimum period of one year of continuous service without break.
>
> **Note 1.-** The term one year continuous service used in para-4(i) above is inclusive of permanent/temporary service in a pensionable establishment but does not include periods of extraordinary leaves, boy service and suspension period unless that is regularized by the competent authority or before completion of one year continuous service provided the deceased Government employee concerned immediately prior to his recruitment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service."

11. The High Court delivered the main judgment in Rama Devi's case.

It noticed the relevant dates, the terms of appointment as also the relevant rules. It, in its judgment, took into consideration the decision of this Court in S.K. Mastan Bee. v. The General Manager, South Central Railway & Anr. [(2003) 1 SCC 184] as also the decisions of the High Court of Punjab and Haryana including the decision of Kanta Devi v. State of Haryana [2000 (2) SCT 32]. The High Court opined that having regard to the paragraph 4 of the Scheme (wrongly stated to be Rule 4) as also Note 1 appended thereto, any employee who has completed more than one year's

service would become eligible for grant of family pension. In arriving at the said decision, it furthermore took into consideration the fact that for the said purpose, it was not necessary that the concerned employees should have been appointed on a permanent or a temporary post.

12. Mr. Patwalia, learned senior counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in arriving at the said finding insofar as it failed to take into consideration the import and purport of the rules vis-à-vis the scheme. It was contended that in terms of Rule 3.12, for becoming eligible for grant of family pension, it was necessary that the employment was to be substantive and permanent in nature as explained in Rule 3.17, which means that the employee should be holding substantively a permanent post on the date of his retirement, temporary or officiating service under the State Government, followed without interruption by confirmation in the same or another post and in view of the fact that the employees were not appointed on a substantive basis, the claim for grant of family pension could not have been allowed. It was furthermore urged that in any event as the concerned employees were appointed for a limited period as envisaged under clause (a) of Rule 2.4, the impugned judgments cannot be sustained.

13. Ms. Shikha Roy, Pabbi and Mr. Prem Malhotra, learned counsel appearing on behalf of Shankuntla Devi and Rama Devi, on the other hand, would contend that for the purpose of grant of family pension in terms of the scheme, it was not essential that the appointees should have been regularized in their respective services.. Drawing our attention to the terms of appointment, it was contended that as the employees were appointed on temporary basis and they having been in service admittedly for a period of more than one year, payment of family pension was legally permissible.

What was only necessary, according to the learned counsel, was one year's service without break as would appear from paragraph 4 of the Scheme read with note thereto. It was urged that Rule 3.17 of the Rules would apply only in a case of retirement and not in a case of death. It was furthermore contended that as the service records of the concerned employees were being maintained and they have been asked to file medical certificate(s) at the time of appointment, they were in effect and substance appointed against a permanent vacancy on a temporary basis and not on an ad hoc basis for a period of six months as contended by the appellant

The Rules, as applicable to the State of Haryana, were framed in terms of the 'Proviso' appended to Article 309 of the Constitution of India.

Volume I, Part I of the said Rules provides for the main rules whereas Part II thereof contains appendices and forms. Volume II of the Rules relate to 'Pension and Provident Fund'. The said Rules having been framed under 'Proviso' to Article 309 of the Constitution of India evidently apply to the Government employees. The Government employees having regard to the said Constitutional provision enjoy a 'status'. Their appointment must be made in terms of appropriate recruitment rules and upon compliance of the equality clauses contained in Articles 14 and 16 of the Constitution of India.

14. The provisions contained in Volume II of the Rules apply to those Government employees to whom the Rules in Volume I thereof apply. Rule 1.2 read as under :

> "**1.2.** Except as otherwise provided in rule 1.4 *Infra* or in any other rule or rules, these rules shall apply to all Government employees belonging to the categories mentioned below, who are under the administrative control of the Haryana Government and whose pay is debitable to the Consolidated Fund of the State of Haryana :-

(1) Members of State Services, Classes I and II;

(2) Members of State Services, Class III;

(3) Members of State Services, Class IV;

(4) Holders of Special Posts; and

(5) Any other Government employee or lass of Government employees to whom the competent authority may, by general or special order, make them applicable."

15. We may, therefore, at the outset, notice the definitions contained in the Rules.

It is trite that each Government employee should be borne in their respective cadre, 'Cadre' having been defined to mean the strength of a service or a part of service sanctioned as a separate unit.

'Active service' has been defined in Rule 2.3 to mean:

> "**2.3.** *Active Service*, for the purpose of pension, includes besides time spent on duty in India :-
>
> (i) Leave of all kinds except extraordinary leave not counting towards increment under rule 4.9(b)(ii);
>
> (ii) Time spent on the voyage to India by a Government employee who is recalled to duty before the expiry of any recognized leave out of India : provides his return to duty is compulsory.
>
> (iii) The period of absence from India of a Government employee deputed or detained out of India on duty."

16. In terms of Rule 1.3 of Volume II of the Rules, the terms defined in Chapter II of Volume I of the rules have, unless there is anything repugnant

in the subject or context, the same meaning and implications ,when used in Chapter II Volume I.

17. Rule 2.1 states that every pension shall be held to have been granted subject to the conditions contained in Chapter VII of the rules. Clause 2.6 provides for claims of widows or heirs, stating:

> "If a Government employee dies before actually retiring or being discharged, his heirs have no claim to anything in respect of his pension except as provided in rules 6.16-A to 6.16-C."

18. Clause 3.12 occurring in Chapter III provides for 'Conditions of Qualifications' which are; firstly, the service must be under Government; secondly, the employment must be substantive and permanent; and thirdly, the service must be paid by the Government.

19. The second qualification, namely, what would be meant by substantive and permanent employment has been explained in Rule 3.17 which, as noticed hereinbefore, means that the employee must be holding substantively a permanent post on the date of his retirement, his temporary or officiating service under the State Government.

20. Family Pension Scheme was formulated to afford further relief to the family of the deceased Government employees, i.e. something more than what was contemplated in the Rules. The same, however, would not mean that the dependents of those employees who were otherwise not eligible in terms of the Rules would get the benefit thereunder. In other words, the eligibility clause must be satisfied so as to enable the dependent of a Government employee to obtain the said benefit.

The 1964 Scheme is subject to Part II of the Rules. Rules contained in Part II are subject to Part I, which in turn would be subject to the constitutional provisions. Thus, before a person can be said to have been acquired a right to obtain the benefits of 1964 Family Pension Scheme must satisfy the eligibility as envisaged under the Rules. Family pension can be granted to the dependent of the deceased Government employee under the Family Pension Scheme only by way of a further relief and not by independent of the main Pension Rules. In other words, if a person was not a Government employee, the question of his dependent becoming entitled to the benefits of family pension scheme would not arise.

21. The primary question, therefore, is who would be a Government employee within the meaning of the said scheme.

We will advert to this a little later. The second question would be, can the scheme be read independent of the Rules.

Answer thereto must be rendered in the negative. We say so because in terms of the Rules, the following conditions precedent must be fulfilled before the benefit of family pension can be extended:

1. The employee must be a Government employee.
2. He must be employed in a pensionable establishment.
3. He must have become eligible to derive the benefit thereof.

22. Chapter II of Volume II of the Rules provides for different provisions relating to grant of pension. The distinction between a pensionable establishment and a provident fund establishment must, therefore, be borne in mind. Pension although is not a bounty, the entitlement thereto is only under a statute. Only when the conditions precedent provided for in the statute are fulfilled, an employee would be entitled thereto.

23. We would begin our discussions with the status of an employee. A Government employee enjoying a status indisputably must be recruited in accordance with Rules. The offers of appointment made in favour of the employees in no uncertain terms show that they were appointed on an ad hoc basis. The appointment was not regular, although in relation to the case

of Balwant Singh, the names were said to have been called for from the Employment Exchange. Nothing has been placed on record to show as to what was the cadre strength in the posts to which they were appointed.

No material has been brought on records to show that the equality clause contained in Articles 14 and 16 had been complied with. Any recruitment made in violation of the constitutional scheme, as adumbrated therein as also the recruitment rules framed by the State would render the same illegal and invalid.

24. The very fact that a regularization scheme was framed by the State is a clear pointer to show that the concerned employees were not regularly employed. They had sought for regularization of their service and at least in one case, as noticed hereinbefore, for one reason or the other, the said request was turned down. The validity thereof was not questioned. It attained finality.

In the case of Rama Devi, a contention was raised in the writ petition that the offer of appointment in law was not for a period of six months but for an indefinite period. Such a contention cannot be upheld. If the initial appointment was for a fixed period and the appointment could be terminated without any notice and without assigning any reason, such appointment

cannot be said to be an appointment on a permanent post or a temporary sanctioned post. Unless and until the post itself is a permanent or a temporary one, the same would not answer the description of a substantive and permanent employment. In this case, it had been shown that the services of Karan Singh was being renewed for a period of six months on the expiry of the original or extended tenure.

25. Clause 3.17 of the Rules in no uncertain term explains as to what is meant by substantive and permanent employment.

The contention of the counsel that it applies only to a person who has retired is not correct because holding of a substantive permanent post on the date of retirement is followed by the words his temporary or officiating service under the State Government.

Confirmation in service, therefore, whether before retirement or before death must be held to be *sine qua non* for becoming eligible for grant of pension. Only when an employee renders service in a pensionable service, he would be entitled to pension.

Only by reason of fulfillment of the conditions laid down under the contract of service and/or the statutory rules governing the same, a person can become a full fledged Government employee. When the terms and

conditions of services are governed by a statute or statutory rules, no doubt the same would prevail over the contract of employment but then for the said purpose, the concerned employee must show that the appointment was regular in nature and on a post which is a cadre post. The Government employee acquires status only when he becomes entitled thereto by reason of a statute or by his employer declaring him to be entitled therefor.

26. When a regularization scheme was framed (assuming that such a scheme is valid and constitutional) the employee must be regularized. At least he must acquire a right to be regularized in service.

27. In M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board [(2004) 9 SCC 755], this Court was considering a case where there existed a conflict between a statutory regulation made under Section 79(c) of the Electricity Supply Act, 1948 and Certified Standing Order or a rule made under the M.P. Industrial Employment (Standing Order) Act, 1961, to hold :

> "42. It is one thing to say that when there exists a conflict between a regulation made under Section 79(c) of the Act and a certified standing order or a rule made under the 1961 Act, the latter shall prevail; but it is another thing to say that in absence of any statutory provision governing the age of retirement, the statutory regulations framed by the respondent Board shall have no application. It is not in dispute that the impugned notification dated 26.12.2000 had been issued by the

> Board in exercise of its power under Section 79(c) of Electricity Supply Act. Section 15 of the Act empowers the Board to appoint a Secretary and such other officers as may be required to enable the Board to carry out its functions. Section 79(c) empowers the Board to make regulations inter alia as regard the duties of officers and other employees of the Board, and their salaries, allowances and other conditions of service. The Board, therefore, was empowered to make regulations which are not inconsistent with the provisions of the Act and the Rules providing for the duties of officers, their salaries, allowances and other conditions of service.
>
> 43. The power of the Board, therefore, to lay down the conditions of service of its employees either in terms of regulation or otherwise would be subject only to any valid law to the contrary operating in the field. Agreement within the meaning of proviso appended to Rule 14A is not a law and, thus, the regulations made by the Board shall prevail thereover."

Yet again in Mahendra L. Jain & Ors. v. Indore Development Authority & Ors. [(2005) 1 SCC 639], it was held :

> "33. For the purpose of this matter, we would proceed on the basis that the 1961 Act is a special statute. vis-à-vis the 1973 Act and the rules framed thereunder. But in absence of any conflict in the provisions of the said Act, the conditions of service including those relating to recruitment as provided for in the 1973 Act and the 1987 Rules would apply. If by reason of the latter, the appointment is invalid, the same cannot be validated by taking recourse to regularization. For the purpose of regularization which would confer on the concerned employee a permanent status, there must exist a post. However, we may hasten to add that regularization itself

> does not imply permanency. We have used the term keeping in view the provisions of 1963 Rules."

It was also held therein that :

> "38. In A Umarani (supra), this Court held that once the employees are employed for the purpose of the scheme, they do not acquire any vested right to continue after the project is over [See paras 41 and 43]. [See also Karnataka State Coop. Apex Bank Ltd. Vs. Y.S. Shetty and Others, (2000) 10 SCC 179 and M.D. U.P. Land Development Corporation and Another Vs. Amar Singh and Others, (2003) 5 SCC 388]."

In M.P. Housing Board & Anr. v. Manoj Shrivastava [(2006) 2 SCC 702] this Court followed the decision in M.P. Electricity Board to hold :

> "15. A daily-wager does not hold a post unless he is appointed in terms of the Act and the rules framed thereunder. He does not derive any legal right in relation thereto.

It was furthermore opined :

> "19. The appointment made by a person who has no authority therefor would be void. A fortiori an appointment made in violation of the mandatory provisions of the statute or constitutional obligation shall also be void. If no appointment could be made in terms of the statute, such appointment being not within the purview of the provisions of the Act would be void; he cannot be brought within the cadre of permanent

> employees. The definitions of 'permanent employee' and 'temporary employee' as contained in the rules must, thus, be construed having regard to the object and purport sought to be achieved by the Act."

28. With the aforementioned legal principles in mind, we may analyse the provisions of the scheme.

The scheme in terms of paragraph 3 is applicable to all regular employees in pensionable establishment, temporary or permanent who were in service. Thus, whether temporary or permanent, the employee must be regular employee which would mean employee appointed on a regular basis, i.e., in accordance with Rules. Only because services of ad hoc employees were continued, the same would not mean that thereby his status has been changed. It will bear repetition to state that status of an employee can change either by reason of a contract or by reason of a statute. Nothing has been shown to us that the concerned employees either under the contracts of service or under any statute or statutory rules became regular employees of the State.

If the scheme did not apply to the respondents, the provisions as to how the scheme would be administered are not of any significance.

29. The contention that the family of an employee would be entitled to the benefit of family pension in the case of the death of Government employee, if he had completed a minimum period of one year continuous service without break cannot be accepted. As stated hereinbefore, an employee must be a Government employee at the first instance. He must be working in a pensionable scheme. He, only in that capacity, should have completed a minimum period of one year of continuous service without break which would mean that he must be a temporary or permanent employee.

30. It is one thing to say that a person was appointed on a temporary post on a regular basis but it is another thing to say that an appointment was ad hoc in nature on a temporary basis. Whereas in the former case, the appointment must be carried out in accordance with law, in the later, it may not be.

From a perusal of the offers of appointment, as noticed hereinbefore, it is evident that the appointments of the concerned employees were made for a period of six months or till a regular appointment was made. The very fact that the posts were to be filled up on regular basis by the competent

authority clearly goes to show that the nature of appointment of the said persons was ad hoc one.

31. It may be that on the expiry of six months, the services were allowed to continue but the same would not, in absence of any statutory interdict, mean that the ad hoc employee ceased to be so and acquired the status of a permanent or temporary employee.

Reliance placed on Note 1 of paragraph 4 is not apposite. What is sought to be explained by Note 1 is the exclusion of the periods which shall not be counted towards one year's continuous service. It by itself does not create any new right.

In Punjab State Electricity Board Ltd. v. Zora Singh and Others [(2005) 6 SCC 776], this Court held:

> "22. The administrative circulars as thence existed as also the regulations indisputably require supply of electrical energy to the agriculturists within a period of two months from the date of receipt of the amount asked for in terms of the demand notice. It may be true that the note appended thereto provides that the period specified therein shall be subject to availability of requisite material but the same does not absolve the appellant from performing its statutory duties.

> 23. In A.P. SRTC v. STAT a Full Bench of the Andhra Pradesh High Court has noticed thus: (An LT p.544, para 31)
>
> "31[24]. The meaning of 'note' as per P. Ramanatha Aiyar's Law Lexicon, 1997 Edn. is 'a brief statement of particulars of some fact', a passage or explanation."
>
> 24. The note, therefore, was merely explanatory in nature and thereby the rigour of the main provision was not diluted."

Therefore, reliance on paragraph 4 of the scheme and Note 1 appended thereto by the High Court, in our opinion is misplaced.

32. Submission of the learned counsel that the names of the concerned employees were being maintained in the records of the State are not denied and disputed may now be examined. The same, in our opinion, in the facts and circumstances of this case, are wholly immaterial. Even assuming for the sake of argument that they are correct, the same would not confer any legal right on him thereby, to which he was not otherwise entitled to.

33. It has categorically been stated that husbands of the respective respondents were not a regular Government employees till their death and, thus, the Family Pension Scheme was not applicable in their cases.

34. The question although not directly but to some extent has been considered in Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. vs. Surji Devi [2008 (1) SCALE 570] wherein it was held :

> "14. The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-à-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. [See Maruti Udyod Ltd. v. Ram Lal and Others, (2005) 2 SCC 638, State of Bihar & Ors. v. Amrendra Kumar Mishra, 2006 (9) SCALE 549, Regional Manager, SBI v. Mahatma Mishra, 2006 (11) SCALE 258, State of Karnataka v. Ameerbi & Ors. 2006 (13) SCALE 319 and State of M.P. and Ors. v. Sanjay Kumar Pathak and Ors. [2007 (12) SCALE 72]
>
> They statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members as the deceased employee if was a work-charge employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularized and he becomes permanent and not otherwise."

The observations made therein apply to the facts of the present case also.

35. For the reasons aforementioned, the impugned judgments cannot be sustained. The same are set aside accordingly. Appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

…….J.
[S.B. Sinha]

..……..….J.
[Cyriac Joseph]

New Delhi;
October 24, 2008