

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4951/2009

THE STATE OF PUNJAB & ANR.

APPELLANT(S)

VERSUS

MOHINDERJIT KAUR (D) TH. L.R.

RESPONDENT(S)

WITH

CIVIL APPEAL No. 4952/2009

J U D G M E N T

KURIAN, J.

These appeals are filed by the State aggrieved by the judgment of the High Court, wherein the High Court has taken a stand that the employees transferred to non-pensionable establishments will also be entitled to family pension in case they are covered under Rule 5.3 of the Punjab Service Rules. The said Rule reads as follows:-

"5.3(1) When a Government employee is transferred from pensionable Government service to a non-pensionable establishment, he cannot be granted any pension or gratuity admissible to him for the qualifying portion of his service until he actually retires from the non-pensionable establishment to which he is transferred.

(2) A permanent Government employee who may be permitted to be permanently absorbed in a service or post in or under a corporation or a company wholly or substantially owned or controlled by Government or in or under a body controlled by Government or in or under a body controlled or financed by Government, or Municipality, Panchayat Samiti or Zila Parishad, shall, if such absorption is declared by Government to be in the public interest, be deemed to have retired from the Government service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from the date of such absorption or the date of his voluntary retirement, whichever is later. Each such Government employee is required to exercise an option within six months of his absorption for either of the alternative indicated below:-

(a) receiving the monthly pension and death-cum-retirement-gratuity under the usual government arrangements; or

(b) receiving the death-cum-retirement-gratuity and a lump sum amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.

(3) Where no option is exercised within the specified period, the employee will be automatically governed by alternative (b).

An employee opting for alternative (a) is entitled to commutation of a portion of the pension admissible to him in accordance with the provisions of rules contained in Chapter XI:

Provided that Government shall have no liability for the payment of family pension in such a case:

Provided further that no declaration regarding absorption in the public interest in a service or post in or under such corporation, company, Municipality, Panchayat Samiti or Zila Parishad shall be required in respect of Government employee whom Government may, by order declare to be a scientific employee."

2. It is the persuasive submission of the learned counsel appearing for the State that the proviso under Rule 5.3 is applicable only in case of the pensioners covered under Rule 5.3(2)(a). In other words, it is the case of the appellants that in the case of Government employees transferred to non-pensionable establishments, even if they are in receipt of monthly pension, after their death, the surviving family members will not be entitled for family pension since the proviso under Rule 5.3(3) has carved out an exception, whereby the Government has been exempted from the liability.

3. We find it difficult to appreciate the submission. Family Pension Scheme is provided under Rule 6.17, which reads as follows:-

"6.17. The provisions of this rule shall apply:

(a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and

(b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provision of Family Pension Scheme, 1964, for Punjab government Employees."

4. It is not in dispute that the pensioners in these appeals are covered under the Scheme under Rule 6.17(b). Nowhere under the Family Pension Scheme is there a provision carving out the class of pensioners in receipt of monthly pension so as to deny the benefit of family pension. The Scheme having granted the benefit of family pension to such pensioners, the proviso, even assuming it applies to everybody, under the general rules cannot take away the benefit since the Family Pension Scheme is a special benefit granted to the pensioners.

5. Thus, we wholly agree with the view taken by the High Court. These appeals are, accordingly, dismissed.

6. The arrears of pension shall be disbursed to the respondents within a period of twelve weeks from today and if not, the same shall carry interest @ 12% from the date of the judgment of the High Court and the officers responsible for the delay shall be personally liable for the same.

7. Pending applications, if any, shall stand disposed of.

8. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

NEW DELHI;
AUGUST 17, 2017.