

CASE NO.:
Appeal (civil) 576 of 2008

PETITIONER:
Uttar Haryana Bijli Vitran Nigam Ltd. & Ors.

RESPONDENT:
Surji Devi

DATE OF JUDGMENT: 22/01/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
J U D G M E N T

[Arising out of SLP (Civil) No. 4392 of 2004]

WITH

CIVIL APPEAL NOS.577 and 587-588 OF 2008
[Arising out of SLP (Civil) Nos. 9311 and 19530-19531 of 2004]

S.B. SINHA, J :

1. Leave granted.

2. The short question involved in these appeals, arising out of the judgments and orders dated 18.09.2003 and 5.03.2004 passed by the High Court of Punjab and Haryana in C.W.P. Nos. 631, 1110 of 2003 and Review Application No. 71 of 2004 respectively, is as to whether family members of a deceased employee who was appointed on a work-charged basis would be entitled to family pension?

3. For the purpose of disposal of these appeals, we would note the factual matrix only from the Civil Appeal arising out of SLP (C) No. 4392 of 2004 titled Uttar Haryana Bijli Vitran Nigam Ltd. & ors. v. Surji Devi.

4. Appellant No. 1 was the successor of Haryana State Electricity Board which was constituted under Section 5 and incorporated under Section 12 of the Electricity (Supply) Act, 1948. Respondent (Surji Devi) is the widow of Late Shri Krishan. He was appointed on a work-charge basis on or about 12.08.1974. Indisputably he continued to serve the appellant no. 1 in the same capacity. While in service, he expired on 11.08.1985. Respondent was appointed on compassionate ground in the services of the appellant \026 Corporation in terms of an exgratia scheme.

Concededly, the deceased was a member of a Contributory Provident Fund constituted under a Scheme.

Despite the same, the respondent filed an application for grant of family pension, which pertains to altogether a different scheme.

5. Concededly, Late Shri Krishan\022s services were never regularized. The scheme for regularization also came into force in 1986.

As the claim of the respondent no. 1 for grant of family pension was declined, she filed a writ petition before the High Court of Punjab and Haryana. The High Court by reason of the impugned judgment dated 18.09.2003, relying on or on the basis of its earlier decision rendered in Civil Writ Petition No. 7506 of 1998 titled Kanta Devi v. State of Haryana and Others decided on 16.12.1999, allowed the same directing:

\023\005It is the conceded position that the petitioner

had received the benefit of pension under the EPF scheme, but it is also the admitted position that the amount which the petitioner would now receive on account of family pension will be higher than the amount received by her under the EPF scheme.

Mr. Malik accordingly undertakes that the petitioner will refund/ adjust the amount, which she had already received towards the amount, which she will now receive by way of family pension.\024

6. Mr. Neeraj Kumar Jain, learned counsel appearing on behalf of the appellants, in support of the appeal would submit:

- (i) Having regard to the Punjab Civil Services Rules, Volume 2 as applicable to the State of Haryana, the impugned judgment is wholly unsustainable.
- (ii) Respondent\022s husband having been a member of the Contributory Provident Fund, the Family Pension Scheme was not applicable in her case.

7. Mr. Jasbir Singh Malik, learned counsel appearing on behalf of the respondent, on the other hand, urged:

- (i) Appellants having not questioned the correctness of Kanta Devi (supra), now cannot turn round and contend that the Family Pension Scheme is not applicable.
- (ii) The High Court in Kanta Devi (supra) having interpreted para 4 of the Family Pension Scheme, the appellants are bound thereby.

8. The State of Punjab made the Punjab Civil Services Rules. The said Rules, subject to modifications, became applicable to the State of Haryana. Volume 2 of the said Rules inter alia provide for service qualifying for pension. Rule 3.12 thereof reads as under:
\0233.12 The service of a Government employee does not qualify for pension unless it conforms to the following three conditions: -
First \026 The service must be under Government.
Second \026 The employment must be substantive and permanent.
Third \026 The service must be paid by Government.\024

9. Rule 3.17 of the Rules provides that 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 the pension period of temporary or officiating service in non-pensionable establishment.

10. Rule 3.17-A(g) of the Rules inter alia provides that the entire service rendered by an employee as work-charged shall be reckoned towards retirement benefits provided:

- (i) such service is followed by regular employment;
 - (ii) there is no interruption in the two or more spells of service or the interruptions fall within condonable limits; and
 - (iii) such service is a whole time employment and not part-time or portion of day.
- [Emphasis supplied]

11. Indisputably, there exist two schemes; one in relation to Contributory Provident Fund and another in relation to Pension. The Scheme of grant of Family Pension is contained in Appendix 1 of the said Rules. Relevant

portion of Para 4 of the said Scheme reads as under:

\0234. 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. \026 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.

(iii) The pension is admissible:-

(a) in the case of widow/widower upto the date of death or remarriage, whichever is earlier; and

(b) in the case of son/unmarried daughter until he/she attains the age of 25 years.\024

12. Para 11 of the said Scheme excludes the applicability of the scheme inter alia in relation to the work-charge staff. We may notice that in Kanta Devi (supra) the husband of the appellant therein was in temporary service. Construing Para 4(i) as also Note 1 appended thereto, the High Court held that as the husband of Kanta Devi completed more than one year in temporary service, she was entitled to family pension.

13. We have noticed hereinbefore that Shri Krishan was a member of the Contributory Provident Fund. It has furthermore been noticed by us that even before the High Court the said position stood conceded but she opted for the Pension Scheme only because thereby she considered herself to be entitled to a higher amount.

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.

Furthermore, there exists a distinction between a pensionable and non-pensionable establishment. Shri Krishan being a member of a non-pensionable establishment, Family Pension was not admissible. It is not a case where an employee had been given an option to opt for one or the other schemes. Once a person had opted for non-pensionable scheme, the question of his being entitled to pension or for that matter his family members becoming entitled to family pension did not and could not arise. The High Court only followed Kanta Devi (supra) without noticing the distinctive features thereof. As it is not necessary, we have not gone into the question as to whether Kanta Devi (supra) was correctly decided. Apart from the fact that the fact therein was different, evidently the questions which have been raised before us were not raised therein. The High Court, therefore, committed a serious error in applying Kanta Devi (supra) to the fact of the present case.

15. Mr. Malik contended that it has wrongly been stated in the list of dates that the appeal against Kanta Devi (supra) has remained pending before this Court and, thus, it being a mis-statement, the leave granted should be revoked. It may be so but in a case of this nature this Court is required to lay down the law. We do not, thus, intend to revoke the leave. However, we direct that any benefit paid to the respondent should not be recovered.

16. For the reasons aforementioned, the appeal is allowed with the aforementioned directions. However, in the facts and circumstances of this case, there shall be no order as to costs.