



Sharmila Devi v. Uttar Haryana Bijli Vitran Nigam Limited, (P&H)(DB) : **Law Finder Doc Id # 2384**

PUNJAB AND HARYANA HIGH COURT

(DB)

Before:- S.S. Saron and Swatanter Kumar, JJ.

Civil Writ Petition No. 6837 of 2001. D/d. 25.7.2002

Sharmila Devi - Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Limited - Respondents

For the Petitioner :- Mr. Jagbir Malik, Advocate.

For the Respondents :- Mr. Sandeep Godara, Advocate.

Punjab Civil Services Rules, Vol. II - Family Pension Scheme, 1964 (as applicable in Haryana), Rule 4 - Family pension - Eligibility - Qualifying service - One year's service - Even if the deceased Government employee does not complete one year of continuous service his dependents would still be entitled to the grant of family pension provided he was found medically fit at the time of appointment - The rule does not envisage any such condition of one year's qualifying service - Decision in Smt. Savitri Devi's case 1996(2) RSJ followed.

[Paras [8](#) to [10](#)]

Cases Referred :-

[Smt. Savitri Devi v. State of Haryana, 1996\(2\) Recent Services Judgments 854.](#)

JUDGMENT

S.S. Saron, J. - The husband of the petitioner was appointed on the post of Assistant Lineman on 5.3.1993 on regular basis with the Sub Divisional Officer, Operation, Sub Division, Haryana Bijli Vitran Nigam Limited, Assandh - respondent No. 3. His appointment was in the scale of Rs. 1200-2400 and other allowances as may be in force from time to time by the Haryana State Electricity Board. The appointment was made on temporary basis. The same was made on the basis of selection of candidates by the selection committee of Karnal Circle, constituted vide Secretary/Board memo No. Ch-5/SPL/G-44 dated 23.3.1992 for vacancies of shift attendants and Assistant Lineman advertised against advertisement No. CRA-133.

2. The husband of the petitioner Shri Bijender Singh accepted the terms and conditions of the appointment letter Annexure P-1 and joined duty. Respondent No. 3 on 21.4.1993 intimated about this fact to respondent No. 2 Executive Engineer, Haryana Bijli Vitran Nigam Limited, Power House, Gohana Road, Panipat, and sent the acceptance letter, medical fitness certificate, matriculation certificate, I.T.I. and 10+2 certificate in original. Shri Bijender Singh, the husband of the petitioner died on 9.12.1993. He was the only earning hand in the family.



3. The claim of the petitioner being widow of the deceased is for the grant of the benefit of family pension, according to the Family Pension Scheme, 1964 given in the Punjab Civil Services Rules Volume II. It is contended that the petitioner was appointed on the post of peon under *Ex-gratia* Scheme and all other benefits except family pension have been given to her. The respondent No. 2 forwarded the complete case of the deceased employee for the grant of family pension on 6.3.1988 to the Chief Accounts Officer/Pension, Uttar Haryana Bijli Virtran Nigam Limited, respondent No. 4. Reminders were also sent by respondent No. 2 to respondent No. 4 and that request was made for the release for family pension of the deceased employee. The petitioner contends that according to the oral intimation given to her by respondent No. 4, the family pension is not being released on the ground that the husband of the petitioner had not served the department for atleast one year. Therefore, the present petition.

4. Notice of this petition was given to the respondents, who have filed their written statement through Executive Engineer, Sub Urban Division, Haryana Bijli Vitran Nigam Limited, Panipat.

5. In the written statement, it is contended that the provisions of the Family Pension Scheme, 1964 was submitted (sic substituted) vide circular No. 1/2/(27)/79-2FR II - 29.3.1983 issued by the Haryana State Government. It is further averred that the erstwhile Haryana State Electricity Board and the Haryana Bijli Vitran Nigam Limited has framed its own rules and that the circular dated 29.3.1983 has not been adopted. It is then stated that as per the existing instructions of the Haryana Bijli Vitran Nigam Limited, the persons who expire before completing one year qualifying service are not entitled for the grant of family pension. Therefore, in substance the only objection to the non-grant of family pension by the respondents is that the deceased Shri Bijender Singh had not completed one year of service in the Haryana Bijli Vitran Nigam Limited, inasmuch as he was appointed to the service on 5.3.1993 and he died on 9.12.1993.

6. We have heard the learned Counsel for the parties and given our thoughtful consideration to the matter in issue.

7. The grant of family pension is not bounty payable on the sweet will or pleasure of the respondent-Nigam. On the other hand, it is a valuable right vesting in the Government servant. The only objection, as already noticed above, is that the deceased employee had not completed one year of service.

8. In order to appreciate the contention urged by the respondents, it is necessary to advert to the relevant provisions of the Family Pension Scheme as contained in Note I to the Punjab Civil Services Rules Volume II as applicable to the Haryana State relating to the Family Pension Scheme, 1964. The same reads 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-I. - 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 regularised 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."

This provision has been considered, in some what similar circumstances by a Division Bench of this court in the case of [*Smt. Savitri Devi v. The State of Haryana and others, 1996\(2\) Recent Services Judgments Page 854*](#). After quoting the above referred provision the Division Bench in *Smt. Savitri Devi (supra)* held as follows :-

"3. The mandate of the aforementioned provision appears to be that in case the Government servant at the time of entry into service produces a Medical Certificate of Fitness, the Family would be entitled to Family Pension even if he dies within less than one year. Concededly, the husband of the petitioner did submit the Medical Certificate of Fitness, Copy Annexure P-1.

4. The only interpretation which can be placed upon the Scheme as reproduced above is that even if the deceased Government employee does not complete one year of continuous service, his dependents would nevertheless be entitled to the grant of family pension provided the deceased was medically examined and found fit and a Medical Certificate of Fitness is produced before entry into Government service from a competent Medical Officer. The completion of one year continuous service is, therefore, wholly irrelevant in view of the phraseology of the Family Pension Scheme."

9. In the present case, it is evident that the respondent No. 3 Sub Divisional Officer (Operation) Sub Division, forwarded the relevant documents in respect of the deceased employee to respondent No. 2 Executive Engineer, Sub Urban Division, Uttar Haryana Bijli Vitran Nigam Limited, in terms of his letter dated 21.4.1993 Annexure P-2. A perusal of the said letter shows that the service book and original certificates of the deceased official including the medical fitness certificate in original was forwarded. Besides it is not disputed by the respondents that the deceased employee was not medically fit. Therefore, the ratio of the afore-said judgment in *Smt. Savitri Devi's case (supra)* would apply, the petitioner would be entitled to the grant of family pension.

10. The other contention urged by the learned Counsel for the respondents is that the erstwhile Haryana State Electricity Board and now Haryana Bijli Vitran Nigam Limited had not adopted the circular with respect to the grant of family pension is quite meaningless inasmuch as it is the stand of the respondents that as per the existing instructions of the respondent-Nigam the person who expires before completing one year qualifying service is not entitled to get family pension. Therefore, the main ground for denial of the grant of family pension is that the deceased employee had not completed one year qualifying service. This aspect, as already noticed above, has been duly considered by the Division Bench in *Smt. Savitri Devi's case*. Therefore, in view of the above facts and circumstances, the writ petition is allowed and the respondents are directed to finalise the family pension case of the deceased-husband of the petitioner and to make payment of arrears of family pension to the petitioner with interest @ 9% p.a. No costs.

Petition allowed.