

**HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU**

**SWP No.3149/2014, MP No.4231/2014**

**Date of Order : April 28, 2016**

**Ram Payari & Anr.                      Vs.                      Union of India & Ors.**

**Coram**

*Hon'ble Mr. Justice Ramalingam Sudhakar*

Appearing counsel:

For petitioner(s)	:	Mr. Ajay Abrol, Advocate.
For respondent(s)	:	Mr. P.N. Sadotra, CGSC, for Respondents-1 to 3. Mr. Sudershan Sharma, Advocate, for Respondent-4

i)	Whether approved for reporting in Press/Journal/Media	Yes/No
ii)	Whether to be reported in Digest/Journal	Yes/No

Writ petition filed by mother and sister of deceased Ravi Kumar, who was Constable in CRPF and he was in a pensionable service. He was appointed on 01-04-2006. He was covered by the New Pension Scheme, which came into effect from 1-1-2004. During his service as is required under the Pension Scheme, he submitted the details of his family in Form No.3 showing Tilak Raj, 50 years (Father); Ram Pyari, 40 years (Mother) and Kiran Choudhary as wife, and that is recorded on 09-05-2012 (Annexure R-2). In the Form of Nomination in the General Provident Fund Account, as per First Schedule in Rule 5(3) in relation to his Service No.0650736, Rank CT/GD, the deceased

nominated his wife Kiran Choudhary R/o Village Chak Phana, P/O Raikha Lavana, Tehsil Bishnah, District Jammu State of J&K as nominee. In that Form, the column No.6, name, address and relationship of the person(s) to whom the right of nominee shall pass in the event of his/her predeceasing the subscriber, Mother's name has been shown as Ram Pyari , Age 40 years. This was done before the two witnesses who signed on 09-05-2012 duly attested by Officer Commanding F/2 Bn CRPF. Similarly, nomination has been made in respect of Gratuity on the same date, i.e., 09-05-2012. There is also another Form on record bearing the date 09-05-2012, wherein specifically in respect of the Family Pension, Kiran Choudhary, wife, having date of birth 08-08-1990 in Column 4 was shown as married to the deceased. On his death, the spouse Kiran Choudhary made the claim for gratuity and pension. Similarly, Mother (Petitioner-1 here in this petition) claimed for pensionary benefits. No decision has been taken by the Authority on that till date in view of the writ petition filed by the mother along with her daughter (sister of the deceased) as petitioner-2.

The core issue that arises for consideration is as to whether the mother is entitled to family pension during the life time of wife, now claimed by the petitioner to be deserter even during the life time of the deceased Ravi Kumar. Rule position is as follows:

Family Pension is provided under Rule 54 of the CCS Pension Rules, 1972. Rule 54 (6) (i) reads as follows:

**“54 (6)(i) The period for which family pension is payable shall be as follows: subject to first proviso, in the case of a widow or widower, upto the date of death or re-marriage, whichever is earlier.”**

It is to be mentioned here that widow has a male child and she seeks the benefit of pension in terms of the above stated Rules. The case of the mother hinges upon Rule 54 (21), which reads as follows:

**“54(21) Dependent parents and widowed/divorced daughter also included in the definition of family from 1-1-1996. – The purpose of grant of Family Pension, the definition of Family shall also include:**

- (a) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.”

The question that arises for consideration is whether overriding and overlooking the claim of the widow and the child, whether the parents (mother) will be entitled to family pension? On going through the above stated Rules, more particularly Rule 54 (6), it is clear that the said provision provides that there is a particular mode by which the family pension should be granted and Clause (i) of Sub Rule (6) provides for family pension in case of a widow, upto the date of death or re-marriage, whichever is earlier. In so far as the parents are

concerned, they fall under Clause (iv) of Sub Rule (10-A). Sub-rule (10-A) reads as follows:

**“54 (10-A)(a) Family pension to the parents shall be payable if the parents were wholly dependent on the Government servant immediately before his or her death and the deceased Government servant is not survived by a widow or an eligible child.”**

Reading of Sub Rule (10-A) makes it clear that the Family pension to the parents shall be payable, where parents are wholly dependent on the Government servant immediately before his or her death and the deceased Government servant is not survived by a widow or an eligible child.

Reading of Sub-rule (6) (iv) and Sub-rule (21) of Rule 54 makes it clear that the parents will be entitled to family pension, however, subject to the claim of surviving widow / eligible child. Sub-rule (21) of Rule 54 provides for family pension to dependents mentioned therein. However, it specified that the parents will be entitled to the benefit of family pension provided the deceased employee had left behind neither widow nor a child. Clause (a) Sub-rule (21) of Rule 54 is very clear and unambiguous. The petitioners (mother and sister) cannot claim parity with the widow and the child. In the facts of the present case, they (the widow and the child) alone will be entitled to benefit of the Pension Rules. The plea that respondent wife of deceased deserted him during the life time of the deceased Government servant is

of no avail in the present case because there is no acceptable material or evidence produced by the petitioners to the effect that the widow is re-married or that the marriage between the deceased Ravi Kumar and wife respondent stood annulled by law. A mere statement of the Sarpanch is of no consequence.

I find no merit in this petition. The writ petition is dismissed.

Connected MP closed.

**28.04.2016**

**\*Secretary.\***

**(Ramilingam Sudhakar)**  
**Judge**