

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.8573 of 2013

Decided on: 30th July 2021

Sunita Devi

Petitioner.

Versus

State of H.P. & Ors.

..Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge

¹ *Whether approved for reporting? No*

For the Petitioner:

Mr. Anuj Nag, Advocate.

For the respondents:

Mr. Ashok Sharma, Advocate General, with Mr. Vinod Thakur, Mr. Shiv Pal Manhans, Mr. Hemanshu Misra, Addl. A.Gs., Mr. J.S. Guleria and Mr. Bhupinder Thakur, Dy. A.Gs.

Tarlok Singh Chauhan, Judge *(Oral)*

The instant petition has been filed for the grant of following substantial reliefs:-

I) "That this Hon'ble Court may kindly be pleased to issued writ of mandamus or any other appropriate writ, order or direction in favour of petitioner and

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*

against the respondents directing them to grant family pension to the petitioner as per the "Himachal Pradesh Privately Managed Recognized Government Aided and other Private Recognized Employees Self Contributory Pension and Gratuity" scheme.

II) "That the petitioner be paid all arrears and other consequently benefits along with 12% interest, from the date of death of husband of the petitioner i.e. 31.8.2008."

2. The husband of the petitioner was appointed as Shastri/OT on 1.9.1995, in Aadarsh High School, District Bilaspur, Himachal Pradesh where he served for about 13 years and unfortunately died on 31.08.2008.

3. It was prior to his death that the Self Contributory Pension and Gratuity Scheme for employees of privately managed recognized government aided and recognized school was launched by the Government on 05.03.2008.

4. In this policy, it is mentioned that an employee holding regular post in the government aided and private

recognized school on the date coming into force of this scheme may opt out from this scheme within a period of three months. The employee who fails to opt out from this scheme within the specified period shall be deemed to have opted for the scheme. It is further provided that the option once exercised shall be final. The husband of the petitioner automatically became a member of the scheme as he was in service at that time and did not opt out from the scheme, but before he made any contribution to the scheme, he unfortunately died of cancer.

5. Since no contribution was made by him towards this scheme, the claim of the petitioner for family pension was denied by the respondents constraining her to file CWP No.3859 of 2009 in this Court, which came to be disposed of on 12.12.2011 with the following directions:-

“Thus, in view of the above peculiar circumstances, respondents are hereby directed to consider the case of the petitioner sympathetically and fifth respondent shall recommend the case of the petitioner for family pension to the Life Insurance Corporation, as per the Scheme

within a period of one month on the receipt of the premium/contribution by the petitioner.”

6. In compliance to the aforesaid orders, the fifth respondent i.e. Head Master Aadarsh High School, Ghumarwin, District Bilaspur, took up the matter with the Life Insurance Corporation. However, “the same was rejected with the observation that the claim of late Sh. Kishori Lal has been sought who died on 31.08.2008, whereas, the commencement of the policy was from 25th September, 2010, which was not payable.”

7. The petitioner thereafter filed an execution petition No. 38 of 2012 titled as Sunita Sharma vs. State of H.P. & Ors. which came up for final hearing on 21.05.2012 and was disposed of with the following directions:-

“It is contended that the Life Insurance Corporation have turned down the reference made by the 5th respondent vide annexure P3 dated 3.4.2012. Though reply by respondent No.6 to this Execution Petition stands

filed but the impugned judgment cannot be executed against them as they were not a party and the direction was to the extent that 5th respondent, i.e. Adarsh High School, Ghumarwin shall recommend the case of the petitioner for family pension, as per scheme, within the stipulated period. In my opinion, the impugned judgment cannot be executed against the Life Insurance Corporation as they being not a party to the main petition. However, the petitioner is at liberty to seek appropriate remedy against the Corporation aforesaid, if permissible under the law. The present Execution petition stands dismissed as 5th respondent has already complied with the judgment as directed."

8. It is not in dispute that the policy in question has commenced only from 25.09.2010, whereas, the husband of the petitioner unfortunately died prior to this, on 31.08.2008. Since the policy was to operate and in fact was operative only prospectively, therefore, no fault can be found with the action of the respondents whereby they have denied the family

pension to the petitioner.

9. In view of the discussion made above, I find no merit in this petition and the same is accordingly dismissed, so also the pending application(s), if any, also stands disposed of. Leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

July 30, 2021
(himani)