

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) No. 291/2007**

% Judgment delivered on: 19.05.2009

Smt. Sonia @ Sona Petitioner
Through: Mr. Prashant Jain with Mr. Umesh
Kumar, Advocate

versus

Ministry of Railways & Ors. Respondent

Through: Mr. Kumar Rajesh Singh with
Ms. Punam Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. (Oral)

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1. By this writ petition filed under Article 226 of the Constitution of India the petitioner seeks directions to the respondent to release family pension of the petitioner.

2. Brief facts of the case are as under:-

Mr. Suresh Kumar was working in the Railways and as stated by the petitioner she was married to him in the year 1981. Shri Suresh Kumar turned blind during his service in the year 2001 while working as Ticket Collector and he was accordingly retired on medical grounds by respondent No. 1 on 11.01.2001. That at the time of submission of his documents regarding final payment of retiral dues and pension, his father Shri Durga Dutt Sharma and brother Rakesh Trikha had mentioned him as bachelor in order to get all his retirement and other benefits. Since Shri Suresh Kumar was blind, he was not able to read and write papers and affixed his thumb impression on that. After retirement Shri Suresh Kumar himself sent letter to the Circle Officer (Settlement) regarding the appointment of the petitioner on compassionate ground because he was retired by the respondent on medical grounds and there was no other source of income for their livelihood. Shri Suresh Kumar died on 6.8.2003 and thereafter the petitioner applied for the family pension of her husband and also to seek her appointment on compassionate grounds. Both the petitioner and her husband lived together till his death. The petitioner while applying for the pension submitted certain documents with the respondents to show that the petitioner is the wife of Late Shri Suresh

Kumar. Respondent No. 3 vide its letter No. 720-E/3/32752/PA/P-13 dated 12.12.2005 informed the petitioner that late Shri Suresh Kumar, Ex.-TCR/Delhi showed himself as unmarried in the statement of family members and there is no document available in the office of the respondent to show the petitioner as the wife of late Shri Suresh Kumar.

3. Counsel appearing for the petitioner submits that the petitioner is the legally wedded wife of late Suresh Kumar with whom she had married in the year 1981. Counsel further submits that the petitioner lived with her husband at the premises allotted by the respondents till the date of his death i.e. 6.8.2003. Counsel further submits that unfortunately her husband became blind in the year 2001 while working on the post of ticket collector and later on he retired from his service on medical grounds on 11.1.2001. Counsel further submits that her late husband had submitted requisite documents to seek his retiral benefits and pension etc. and in the said documents the father of her husband and his brother Shri Rakesh wrongly disclosed his status as that of bachelor. Counsel submits that since husband of the petitioner was blind and, therefore, taking advantage of his blindness his status was deliberately disclosed as bachelor in the said

documents with a sole motive to deprive the petitioner from enjoying the benefit of pension and the money to be received by her towards retiral benefits. Counsel further submits that after retirement of Shri Suresh Kumar he himself had sent a letter to seek appointment of the petitioner on compassionate grounds vide application dated 4.4.2002 submitted by him with the respondents. Necessary affidavits were also annexed with the said application signed by the petitioner as well as by her husband. The husband of the petitioner Shri Suresh Kumar died on 6.8.2003 and thereafter the petitioner had applied to seek family pension and also for her appointment on compassionate grounds. Number of representations were made by the petitioner to follow up the case for compassionate appointment and for release of retiral benefits, but vide letter dated 12.12.2005 respondent No.3 informed the petitioner that her husband late Shri Suresh Kumar had disclosed his status as that of unmarried person in the pension papers and also the same status in the application for issuance of the medical card. Counsel for the petitioner further submitted that the stand taken by the respondent is absolutely illegal in the presence of various documents supporting the fact that the petitioner was legally wedded wife of late Shri Suresh Kumar and was residing with him till the date

of his death. Not only this, the petitioner is also in possession of ration card where name of her husband is disclosed as Suresh Kumar and even various travel passes were issued by the respondents in favour of the petitioner during the life time of her husband. One of the essential criteria for the issuance of the travel pass is that a declaration has to be given by the employee that information provided by him to obtain travel pass is correct. Contention of counsel for the petitioner is that no employee would dare to give a wrong information in the said declaration as wrong information can lead to disciplinary action against such an employee for major penalty proceedings. Counsel further submits that even the medical facilities were being availed by the petitioner in her capacity as the legally wedded wife of the said employee Shri Suresh Kumar and ignoring all these documents the respondent till date has not taken any decision to release family pension to the petitioner after the death of her husband.

4. Refuting the said submissions of counsel for the petitioner, counsel for the respondent submits that the respondent is bound by the declaration given by the deceased employee himself. Counsel further submits that in the application submitted by the said employee

himself he has disclosed his status as that of an unmarried person in the relevant format concerning the statement of family members. Even in the application submitted by the said employee for the issuance of medical card he had disclosed his status as that of a bachelor and not of the married person. Counsel based on these facts submits that once the said employee himself disclosed his status as that of a bachelor so there is nothing wrong or illegal on the part of the respondent to disbelieve the petitioner, who was never shown to be his legally wedded wife in the pension paper submitted by the said employee.

5. I have heard learned counsel for the parties at considerable length and perused the record.

6. Indisputably, the said employee Suresh Kumar before his retirement became blind in the year 2001. It is also not in dispute that pension papers submitted by him were not filled by him in his own hand writing as by that time he had already lost his eyes. It is clear that somebody must have helped him in filling the necessary columns in the said application form. In that process, the person filling the form might have wrongly disclosed his status as that of bachelor. In the face of the said pension papers and one or two applications

submitted by the employee to seek medical card, the genuineness and authenticity of documents reliance on which was placed by the petitioner cannot be washed off. Counsel for the petitioner has produced original ration card and the original election card during the course of the arguments. Photocopies of which were already submitted by the petitioner to claim family pension of her husband. Not only these documents, the petitioner had also availed free travel passes in her capacity as that of the legally wedded wife of the said employee and it is not in dispute that for availing such free travel the employee himself has to fill a declaration form to affirm the correctness of the particulars given therein. It is beyond one's comprehension that if the petitioner was not the legally wedded wife of the same employee, then, why the respondents were issuing free travel passes in her favour and even had extended medical facilities to her. It appears that the respondent has not given any weightage to all these documents, authenticity of which cannot be doubted and which pertain to the period before 2001, when the husband of the petitioner lost his eye sight.

7. The documents like ration card and election ID cards are issued by the Government departments and their genuineness can be

presumed under law. Also, it is a well settled proposition that a person may lie but documents do not. In this regard this Court observed as under in **Jasbir Kaur & Ors. vs Rakesh Kumar & Ors. 138 (2007) DLT 743** and the relevant para of the same is reproduced as under:-

“Person can tell a lie but documents cannot. When there is any documentary evidence, no amount of oral evidence to that effect can be considered.”

8. Also, as per Section 112 of the Indian Evidence Act, if a man and woman are living together for a long time then their marriage is presumed by law. In the instant case there is not only presumption of the petitioner being wife of Mr. Suresh Kumar, but there are documents issued by Government which prove this fact.

9. In view of the above discussion, I feel that the respondents act of not granting the family pension to the petitioner is arbitrary and illegal and has caused undue harassment to the petitioner. The respondents did not appreciate that already the petitioner has been suffering due to death of her husband, and on top of that denial of the respondent in granting her legal right to family pension has further caused mental pain and agony to the petitioner.

10. In view of the foregoing discussion, the petition is allowed and respondent is directed to release the family pension to the petitioner within two months from the date of this order.

May 19, 2009
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KAILASH GAMBHIR, J.