

GAHC030003982022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/96/2022

Rohlpuii and 2 Ors.
Durtlang North, Aizawl, Mizoram

2: Larchhuakmawia

3: Lalremruat

VERSUS

Union of India R/b Secretary to the Govt. of India, Ministry of Info. and Broadcasting
and 5 Ors.

Dr. Rajendra Prasad Rd, Shastri Bhavan, New Delhi-110001 2:The Director
General

3:The Dy. Director (Admin.)

4:The Director

5:The Director General
Assam Rifles
Ministry of Home Affairs

6:Bahaduri Kala
First wife of Dal Bahadur (L

Advocate for the Petitioner : Mr Lalchhanliana Khiangte

Advocate for the Respondent : Ms Zairemsangpuii, CGC for R1-R5

:::B E F O R E:::

HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 05.08.2024 & 06.08.2024
Date of Judgment : 13.08.2024

J U D G M E N T & O R D E R

Heard Mr. Lalchhanliana Khiangte, learned counsel for the petitioners and Ms. Zairemsangpuii, learned CGC for the respondent Nos. 1 to 5. None appears for the respondent No. 6 despite notice.

[2.] Brief facts essential for disposal of the instant writ petition is that the petitioner No. 1 is the wife of late Dal Bahadur and the petitioner Nos. 2 & 3 are the son and daughter born out of the marriage between the petitioner No. 1 and late Dal Bahadur. According to the petitioner No. 1, although their marriage was not officially solemnized, but the bride's price was paid on 12.04.1982 as per local custom. They lived together as husband and wife and the petitioner Nos. 2 & 3 were born to them. Later, after late Dal Bahadur joined Doordarshan Kendra, Aizawl as a Security Guard, a Marriage Certificate was belatedly issued to them by Lt. R. Rotluanga of the Salvation Army, which is a denomination of the Christian Church.

[3.] Late Dal Bahadur initially was serving in the Assam Rifles as a Rifleman since

10.05.1965 and he was discharged on voluntary retirement from the Assam Rifles on 31.01.1988. Thereafter, on 03.05.1993, he was appointed as a Security Guard in the Doordarshan Kendra, Aizawl. Subsequently, Sh. Dal Bahadur expired on 02.09.1999.

[4.] It is the case of the petitioners that late Dal Bahadur during his lifetime while serving at Doordarshan Kendra, Aizawl got the names of the petitioners recorded in his Service Book as per Form-3. Also as per Form-1, he had nominated the petitioner No. 1 to receive 30% of the Death-cum-Retirement Gratuity (DCRG) and 35% each to the petitioner Nos. 2 & 3. The nomination and entries were duly countersigned by him as well.

[5.] After the death of Sh. Dal Bahadur on 02.09.1999, the petitioner No. 1 approached the authorities of Doordarshan Kendra, Aizawl for payment of Family Pension and other benefits of her late husband. The respondent No. 4 in the course of processing the application submitted by the petitioner No. 1 was informed by the Record Officer of the Directorate General of Assam Rifles vide Communication dated 26.07.2001 that late Dal Bahadur of 26th Assam Rifles voluntarily retired from service on 31.01.1988 and he was granted pension @ Rs. 438/- per month and Family Pension was also sanctioned in advance to his wife Smt. Bahaduri Kala payable in the event of the death of the pensioner. It was also stated in the Communication that the name of the petitioner No. 1 was not

recorded in the Service Record of the pensioner as his wife and hence, no family pension was sanctioned in her favor.

[6.] Thereafter, the petitioner No. 1 received information from the Pay & Accounts Office of the Information & Broadcasting Ministry, Govt. of India through Communication dated 10.05.2002 to the effect that no Civil Family Pension can be sanctioned for the service in Civil Department as per paragraph No. 13(B) of Rule 54 (CCS) since the family pension of late Dal Bahadur from Defence Department had already been sanctioned to his wife i.e. the respondent No. 6 and that the nomination in favor of the second wife is void if the first wife is alive. Further, the Record Officer of the Directorate General of Assam Rifles vide his Communication dated 29.12.2003 also informed Doordarshan Kendra, Aizawl that the second wife is not entitled to the family pension as per Sub-Rule - 14 of Rule 54 of the CCS (Pension) Rules, 1972. Drawing & Disbursing Officer of Doordarshan Kendra, Aizawl vide letter dated 08.01.2007 had also requested the Directorate General, Assam Rifles, Record Branch (NE-II) to settle the DCRG of late Dal Bahadur in view of the persistent demand by the petitioner No. 1.

[7.] Although the petitioner No. 1 had received the General Provident Fund (GPF) and Leave Encashment of late Dal Bahadur but the Family Pension and DCRG for the services rendered under the Doordarshan Kendra, Aizawl was not paid to the petitioners who are the only nominees of late Dal Bahadur in the Service Records

of the Doordarshan Kendra, Aizawl. Meanwhile, Circular No. 504 dated 17.01.2013 came to be circulated by the Office of the PR Controller of Defence Accounts (Pensions) which was to the effect that the families of Armed Forces Pensioners who got re-employment in Central Civil Departments or State Government etc., after getting retired/discharged from Military Service and in receipt of ordinary family pension would be entitled to draw two (2) Family Pension i.e., the Ordinary Family Pension from the Military side in addition to the Family Pension authorized by the re-employer for Civil Service rendered on re-employment, subject to fulfillment of the prescribed conditions. The provision of the Circular was made effective from 24.09.2012.

[8.] In view of the enabling provisions for enjoying two (2) pensions by a retired Military Personnel who is re-employed in a civilian service, the petitioner No. 1 through her counsel sought for certain information from Doordarshan Kendra, Aizawl while approaching the respondent authorities to grant her the Family Pension and the DCRG as per entitlement. After a number of correspondences between the petitioner No. 1, Doordarshan Kendra, Aizawl and the Directorate General, Doordarshan, New Delhi, a decision was taken by the Directorate General, Doordarshan, New Delhi informing the Head Office, Doordarshan Kendra, Aizawl that the competent authority has decided that the DCRG of late Dal Bahadur be paid to respondent No. 6 and in so far as the Family Pension is concerned, the

same be divided equally in the ratio of 50:50 between the respondent No. 6 and either of the children of the petitioner No. 1 who is eligible. In so far as the petitioner No. 1 is concerned, it was stated that she will not have any claim for Family Pension as she is not holding the status of a legally wedded wife. Aggrieved with the said decision, the petitioners are before this Court.

[9.] Mr. Lalchhanliana Khiangte, learned counsel for the petitioners submit that the respondent No. 6 is enjoying the Family Pension given to her for the services rendered by late Dal Bahadur in the Assam Rifles and that the petitioners are not claiming any share of such benefit. Likewise, the respondent No. 6 has not made any claim on the Family Pension and DCRG payable for the services rendered by late Dal Bahadur under Doordarshan Kendra, Aizawl. He submits that the petitioner No. 1 and late Dal Bahadur were married as per the Christian rites as can be seen from the Certificate issued by the Officer of the Salvation Army on 12.04.1982 and also, in the information provided by Doordarshan Kendra to the Director General, Legal Cell, Doordarshan, Mandi House, New Delhi on 17.06.2019. Late Dal Bahadur had also entered the names of the petitioners as his nominee for receiving DCRG under his signature in Form-1 which is as per to Rule 53 (1) of the CCS (Pension) Rules, 1972. Late Dal Bahadur had also submitted the details of his family by entering the names of all the petitioners in Form - 3 which is again as per Rule 54 (12) of the CCS (Pension) Rules, 1972. Under the circumstance, the learned

counsel submits that the benefit of Family Pension and the DCRG cannot be denied to the petitioners. He submits that not only has the respondent No. 6 made any claim to the said benefits but her whereabouts is unknown as the respondent No. 6 has failed to respond to the notice served in the address given by the respondent No. 5 and also, to the newspaper publication made in two (2) local dailies, widely circulated in Shillong, Meghalaya. He also submits that the respondent No. 5 has also failed to give any up-to-date details about the respondent No. 6 receiving Family Pension from the services rendered by late Dal Bahadur in the Assam Rifles apart from stating that Family Pension was paid to respondent No. 6 for the month of September, 2022 which also is derived from the website of Central Pension Accounts Office, New Delhi. He therefore submits that under the facts and circumstances, the impugned decision conveyed vide Communication dated 18.02.2021 (Annexure-XXII) may be set aside and the respondent authorities directed to grant Family Pension to the petitioners and also disbursed the DCRG. In support of his submissions, the learned counsel relies upon the following authorities:-

(i) U Maya -Vs- Union of India & Ors. 2003 (1) GLT 611.

(ii) Order dated 26.10.2017 passed by the High Court of Delhi in WP(C) No. 9379/2017 and CM. No. 38224-226/2017 (Sushma Singh -Vs- Union of India & Ors.)

[10.] Ms. Zairemsangpuii, learned CGC on the other hand by referring to the affidavit-in-opposition filed by the respondent Nos. 1 to 4 submits that although late Dal Bahadur declared the petitioners as his family members and which was entered in his Service Book, he failed to mention that the respondent No. 6 is his first legally wedded wife. The second marriage of the pensioner with the petitioner No. 1 while the first wife being alive is not permissible and an offence not only under Section 494 and 495 of the Indian Penal Code (IPC) but also under Section 17 of the Hindu Marriage Act, 1955. The learned CGC further submits that the same is also in violation of Rule 21 of the CCS (Conduct) Rules, 1964. Referring to the Office Memorandum dated 27.11.2012 issued by the Govt. of India in the Ministry of Personnel, PG & Pensions, Department of Pension & Pensioners Welfare annexed to the counter affidavit of respondent Nos. 1 to 4 as Annexure-II, the learned CGC submits that the share of Family Pension to children from legally wedded wife shall be in the manner given under Rule 54 (7)(c) of the CCS (Pension) Rules, 1972. Accordingly, a decision to that effect was taken and conveyed to the respondent No. 5 by the Directorate General, Doordarshan, New Delhi through the impugned letter dated 18.02.2021 and therefore, the same may not be interfered with by this Court. The learned CGC also submits that in terms of the declaration made by late Dal Bahadur in his Service Book while serving in the Assam Rifles, the respondent No. 6 is his legally wedded wife and she is also enjoying the Family Pension after the death of Sh. Dal Bahadur and therefore, the

petitioner No. 1 has no right to claim for Family Pension since the 1st wife is alive. She further submits that the authorities relied upon by the learned counsel for the petitioners are also not applicable in the given facts and circumstances of the present case. She thus submits that the writ petition has no merit and the same should be dismissed.

[11.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The issue to be decided is as to whether the petitioners are entitled to receive the Family Pension and the DCRG for the services rendered by late Dal Bahadur with the Doordarshan Kendra, Aizawl. Facts not disputed is that late Dal Bahadur joined the Assam Rifles as Rifleman on 10.05.1965 and he was discharged on voluntary retirement on 31.01.1988. Thereafter, he joined as a Security Guard in Doordarshan Kendra, Aizawl on 03.05.1993 and he expired on 02.09.1999. For the services rendered in the Assam Rifles, his first wife Smt. Bahaduri Kala is receiving the Family Pension as can be seen from the statements made in the affidavit-in-opposition filed by the respondent No. 5 on 07.12.2023 at paragraph No. 4(v). After the death of Sh. Dal Bahadur, the petitioner No. 1 approached the authorities of Doordarshan Kendra, Aizawl for payment of Family Pension and other service benefits of her late husband. However, the same was denied to her on the ground that the first wife of late Dal Bahadur i.e., the respondent No. 6 had already been granted Family

Pension and that the name of the petitioner No. 1 did not figure in the records of the Assam Rifles where late Dal Bahadur had served. Therefore, the Family Pension for the Military service rendered by late Dal Bahadur was rightly given to the first wife who is the legally wedded wife as per the records of the Assam Rifles.

[12.] It may be seen that the claim of the petitioners is for the Family Pension and DCRG for the services rendered by late Dal Bahadur with the Doordarshan Kendra, Aizawl. Since there was no provision for enjoying two (2) pensions i.e., one from the Military service and the other from the civilian service, there could not be any second opinion about this fact. However, the Govt. of India in the Ministry of Defence took a policy decision that the families of Armed Force pensioners who get second re-employment in Central Civil Departments or State Governments/PSUs Autonomous Bodies/Local Funds of Central/State Governments would be entitled to draw two (2) family pensions i.e., from the Military as well as the Civil employment. A circular to this effect was issued by the Office of PR Controller of Defence Accounts (Pensions), Allahabad vide Circular No. 504 dated 17.01.2013 wherein, it was provided that the provision of the Circular for enjoying two (2) Family Pensions shall be effective from 24.09.2012. On the strength of the said Circular, the petitioners again through their appointed counsel initiated an application with the prayer for grant of Family Pension and DCRG for the services rendered by late Dal Bahadur in Doordarshan Kendra, Aizawl. Following the application, a number of

communications were made between the Doordarshan Kendra, Aizawl and the Directorate General of Doordarshan, New Delhi and also the Directorate General of Assam Rifles. Consequently, the impugned Communication dated 18.02.2021 was sent to the Head Office, Doordarshan Kendra, Aizawl communicating the decision of the competent authority that the petitioner was not eligible to receive Family Pension and that only one of the children of late Dal Bahadur and the petitioner No. 1 was eligible to receive 50% of the Family Pension. As for the DCRG, it was decided that the respondent No. 6 should be the one to receive the same.

[13.] From the materials available on record, it can be seen that late Dal Bahadur while serving under Doordarshan Kendra, Aizawl in the form to declare the details of family under Rule 54(12) of the CCS (Pension) Rules and in the nomination form for DCRG made as per Rule 53(1) of the same Rules, had declared and nominated the petitioners to be his family members and the beneficiaries to the extent indicated. Apart from the names of the petitioners, no other names were entered. The late Government Servant had duly subscribed his signature in support of the declaration and which was countersigned by the competent authority of Doordarshan. It may be seen that the late Government Servant declared the petitioner No. 1 as his wife and the petitioner Nos. 2 & 3 as his son and daughter. No dispute has been raised by anybody from any quarters about this fact till date. Objections came to be raised about the entitlement of Family Pension and DCRG

only when the petitioners made a claim for payment of Family Pension and DCRG after the death of Sh. Dal Bahadur. The objection made was on the ground that late Dal Bahadur has a legally married wife who is alive and who is receiving Family Pension for the Military service rendered by late Dal Bahadur. As already stated, dual pension came to be admissible with effect from 24.09.2012 in terms of the policy decision of Govt. of India. Late Dal Bahadur after his voluntary retirement from the Assam Rifles joined Doordarshan Kendra, Aizawl on 03.05.1993 as a Security Guard and in his Service Records, he had entered the name of the petitioner No. 1 as his wife and petitioner Nos. 2 & 3 as his son and daughter. The same has not been disputed by the respondent authority concerned during the lifetime of Sh. Dal Bahadur.

[14.] The provision for DCRG is provided under Rule 50 of the CCS (Pension) Rules. Rule 53 provides that a Government Servant shall on his initial confirmation in a service or post, make a nomination in Form - 1 conferring one or more persons the right to receive the DCRG payable under Rule 50. Rule 51(1)(a) of the CCS (Pension) Rules further provides that the gratuity payable under Rule 50 shall be paid to person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53. As already stated, the late Government Servant had nominated the petitioners as per Form-1 to receive the DCRG while also indicating their respective shares. Rule 51(1)(b) further provides that if there

is no nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner provided under the said sub-rule. Therefore, when nomination has been made by the late Government Servant, the question of looking for other eligible person to receive the DCRG by ignoring those who have been nominated will not arise.

[15.] The issue of the late Government Servant having entered into an illegal marriage with the petitioner No. 1 has been raised but the Family Pension and DCRG claimed by the petitioners is in respect of the services rendered under the Doordarshan Kendra, Aizawl by the late Government Servant and not for the services rendered under the Assam Rifles. The respondent No. 6 as it is, is already enjoying the Family Pension for the Military service rendered by the late Government Servant. The respondent Nos. 1 to 4 as can be seen at no point of time had disputed the declaration made by the late Government Servant in his Service Book, which was also countersigned by the competent authority. It may be further noticed that the late Government Servant and the petitioner No. 1 were married on 12.04.1982 even before the late Government Servant was discharged on voluntary retirement from the Assam Rifles. On his death, the Family Pension came to be enjoyed by the respondent No. 6 for the services rendered by the late Government Servant in the Assam Rifles. The claim for Family Pension and DCRG made by the petitioners being in respect of the services rendered with the

Doordarshan Kendra, Aizawl and in terms of the declaration made by the late Government Servant which was accepted and acted upon by the competent authority and further, in the absence of any claim made by any other person other than the petitioners for such benefits, the petitioners in the considered view of this Court should not be deprived of the claimed benefits.

[16.] In the case of *Sushma Singh* (supra), the issue before the Delhi High Court was whether Family Pension was payable to those family members who were not included in the details of the family of the Government Servant. In the given facts of that case, the deceased employee had furnished his employer the details of his family which included his parents and his younger son who was physically challenged only and leaving out his wife and the older son. Therefore, the wife filed the writ petition before the High Court and the High Court held that the last details of family submitted by the employer would be relevant for grant of Family Pension wherein, the employer nominated his parents and his younger son and that any documents submitted prior to the last details of family by the employee would lose its significance. Likewise, since the petitioners in the instant case have been declared as family members of the late Government Servant and also nominated to receive DCRG, similar principles will apply as well.

[17.] Pursuant to the notice issued by this Court in the instant case on 08.09.2022, the notice sent to the respondent No. 6 by registered post with A/D

returned back with a postal note 'No such person under Happy Valley area. Return to sender'. Under the circumstance, permission was granted to the petitioners to serve notice to the respondent No. 6 in a substituted manner by newspaper publication in the local daily widely circulated in Shillong, Meghalaya. The petitioners accordingly made the newspaper publication in two (2) local dailies on 23.11.2022 and 26.11.2022. Despite the same, the respondent No. 6 has failed to enter appearance. The affidavit-in-opposition of respondent No. 5 goes to show that the respondent No. 6 had been paid Family Pension for the month of September, 2022 and which therefore indicates that the respondent No. 6 is enjoying the Family Pension out of the Military service rendered by late Government Servant. Therefore, in view of the declaration made by the late Government Servant not having disputed by the respondent No. 5 during his lifetime and in view of the dual pension having been made permissible with effect from 24.09.2012, the petitioner No. 1 cannot be denied the Family Pension as admissible and likewise, all the petitioners cannot be denied from receiving the DCRG as per the their respective shares recorded in Form - 1 of the Service Records of the late Government Servant. Thus, the impugned decision as conveyed vide letter dated 18.02.2021 (Annexure-XXII) is hereby set aside. The official respondents are accordingly directed to grant and disburse the Family Pension and DCRG to the petitioners by doing all the needful within the outer limit of three (3) months from the date of receipt of a certified copy of this Order.

[18.] With the above observation and direction, the writ petition stands disposed of as allowed. No cost.

JUDGE

Comparing Assistant