

[1]

Neutral Citation No. - 2024:AHC-LKO:67274-DB

Court No. - 2

Case :- WRIT - A No. - 3735 of 2022

Petitioner :- Sushila Kumari

Respondent :- Union Of India Thru.Secy.To The Of India Mini.Of Defence And Others

Counsel for Petitioner :- Shachindra Pratap Singh,Mayankar Singh

Counsel for Respondent :- A.S.G.I.,Bhanu Pratap Singh Chauhan,Raj Kumar Singh,Sharad Kumar Shukla,Yash Pal Singh

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(1) Heard Sri Shachindra Pratap Singh, learned counsel for the petitioner, Sri Raj Kumar Singh, learned counsel for the respondent Nos.1 to 3-Indian Army/Union of India, Sri Sharad Kumar Shukla, learned counsel for respondent Nos.4 and 5-Central Bank of India, Sri Bhanu Pratap Singh Chauhan, learned counsel for the respondent No.6, Sri Yash Pal Singh, learned counsel for the Intervenor- Ms. Shiva Singh, who was the maternal grand daughter of late Bharat Singh, borne out of the wedlock of his daughter, namely, Malti Singh with Jitendra Singh.

(2) By means of this petition, the petitioner- **Sushila Kumari** has challenged the order dated 31.03.2022 passed by Armed Forces Tribunal, Regional Bench, Lucknow (hereinafter referred to as "**Tribunal**") in Original Application No.207 of

2016 and review order dated 23.05.2022 passed by Tribunal in R.A. No.46 of 2022 with M.A. No.428 of 2022 in Re: O.A. No.207 of 2016.

(3) The contention of the counsel for the petitioner is that the petitioner herein got married to late Bharat Singh in 1992 after the death of his first wife in 1990. Bharat Singh was dismissed from the Indian Army on 11.09.1991. He was court martialed. The said dismissal was converted into discharge on a mercy petition being filed by him, as informed by the counsel for Union of India. Based on the aforesaid, writ petition bearing No.30 (S/B) of 1993 was filed by the Bharat Singh which was decided on 02.02.1995 with a direction to pay him pension, accordingly, the Pension Payment Order (hereinafter referred to as "**PPO**") bearing No.317 of 1995 dated 28.04.1995 was prepared.

(4) Counsel for the Union of India has placed before us the original PPO so has the Counsel for the Central Bank of India (hereinafter referred to as "**Bank**"), as, such PPO is available in the Bank also because the pension account of late Bharat Singh was in the Central Bank of India, initially at Lucknow Branch, which was subsequently transferred to Faizabad Branch. At Faizabad Branch, the petitioner herein,

[3]

was joined as joint account holder in the said account on the request of Bharat Singh, a fact which is accepted by the counsel for the Bank. In the PPO, however, the name Sushila Kumari, the first wife is mentioned as stated by counsel for the Indian Army/Union of India. Petitioner claims her name is also Sushila Kumari but as per counsel for the Indian Army/Union of India PPO contains the names of first wife and there is no mention of second wife in the descriptive roll of late Bharat Singh with the Army. He has produced before us a descriptive roll of late Bharat Singh wherein the date of his marriage with his first wife Sushila Kumari is mentioned as 05.06.1965, therefore, obviously the said Sushila Kumari cannot be the petitioner herein, a fact which is not in dispute.

- (5) It is informed by Sri Raj Kumar Singh that the PPO which was prepared at that time included the name of the wife and also the family pension which would be admissible to her in the event of death of army personnel, who in this case was Bharat Singh. The submission of Sri Raj Kumar Singh was that as and when Bharat Singh died, the first wife Sushila Kumari would automatically be paid the family pension by the Bank without any reference to any department of the Indian Army, this was the procedure at the relevant time. The date of death of the first wife is disputed. Now the petitioner

[4]

claims that Bharat Singh had married her and she used to reside with Bharat Singh. There are no issues borne out of the said alleged wedlock. However, there are various documents on record as claimed by the petitioner, according to which, it is clear that during the life time of Bharat Singh, he claimed that the petitioner was his wife and had also got several documents prepared in this regard, both from Sanik Kalyan Nigam and also other departments such as the Central Bank of India etc. Most important, before his death on 20.10.2014 as stated by the petitioner's counsel, Bharat Singh executed a Will in favour of the petitioner, Sushila Kumari and got it registered in the Office of Sub-Registrar, Faizabad on 13.01.2014 wherein he has categorically mentioned about his first wife and the children borne out of the said first marriage, the marriage solemnized by him with the second wife, who is the petitioner, as also the adoption of Ms. Shiva Singh, the intervenor and various other facts and has clearly stated that after his death, it is the petitioner, Sushila Kumari, who would be entitled to succeed to his estate including pension. Entitlement to family pension depends upon the status as wife and not otherwise.

- (6) The submission of petitioner's counsel is that this registered Will which was on the record of the Tribunal has not even

[5]

been seen by the Tribunal and merely relying upon an enquiry report submitted by the Bank which was a slipshod enquiry without looking into relevant aspects, facts and documents, the Tribunal has recorded a finding of fraud and fabrication of documents etc. against the petitioner and that she is an imposter, which jurisdiction, the Tribunal did not have, and has dismissed the Original Application wherein the petitioner herein has claimed pension and arrears of pension consequent to the death of her husband, late Bharat Singh. This registered Will is under challenge by the respondent No.6, son of Bharat Singh from his first wife in Civil Suit No.1857 of 2015 which is pending in the Court of learned Civil Judge (Junior Division), FTC-I, Gonda. The submission on behalf of the petitioner is that as this registered Will is there, it proves that the petitioner is second wife of late Bharat Singh and is entitled to family pension. Counsel for the petitioner took us through various documents, which are on record, which, according to him, amply prove that the petitioner is the wife of late Bharat Singh and, therefore, entitled to family pension as claimed.

- (7) Counsel for the petitioner also submitted that, in fact, the respondent No.6 lodged an F.I.R. bearing No.0489 of 2018 on 10.08.2018 under Sections 419, 420, 467, 468, 471 I.P.C.,

[6]

Police Station Kotwali Ayodhya, District Faizabad (now Ayodhya) making the same allegations which he made in his complaint and also before the Tribunal and this Court that the petitioner was an imposter but on investigation, no truth was found therein and a final report was submitted to which respondent No.6 submitted a protest application whereupon further investigation was held and again a final report has been submitted but again the respondent No.6 has filed a protest petition and the matter is pending before the court below.

- (8) Sri Raj Kumar Singh, learned counsel for the Union of India has submitted that in the scenario which has presented itself before this Court once late Bharat Singh died then the proper course was for the petitioner herein to have moved an application before concerned department of Indian Army seeking family pension claiming herself to be the second wife of late Bharat Singh based on the document which was in her possession whereupon a decision would have been taken by the Indian Army in terms of Part II and if it was found that she, in fact, was the second wife then as per rules her entitlement to family pension would have been considered and decided but there is no way that she could have been paid the family pension straight away based on the

[7]

PPO dated 28.04.1995 as her name did not find mention therein. It is a mere coincidence that the petitioner is also Sushila Kumari and the first wife of late Bharat Singh was also Sushila Kumari but Sushila Kumari mentioned in PPO is the first wife and not the petitioner. He also says that so far as the payment of pension for a limited period after the death of Bharat Singh i.e. after 30.10.2014 till June, 2015 it was irregular and should not have been paid.

(9) The counsel for the Bank, Sri Shukla, says that the petitioner was joint holder of the account wherein the pension was to be paid with late Bharat Singh and she was added as a joint holder on the request of late Bharat Singh, who was alive, therefore, the Bank had no basis to believe that the petitioner was not the Sushila Kumari mentioned in the PPO. It is only when a complaint was received in 2015 and a copy of which was received through the Reserve Bank of India that an enquiry was got conducted and a doubt was created as to the identity of the petitioner as to whether she was Sushila Kumari or some other person, as she also referred as Pushpa.

(10) As regards the enquiry report submitted before the Tribunal, learned counsel for the Bank submitted that the Tribunal had ordered for such an enquiry, therefore, the report was

[8]

submitted on the basis of the documents collected which included the documents supplied by the respondent No.6 herein, according to which, it was highly doubtful that the petitioner was also Sushila Kumari, her name appears to be Pushpa. He also invited our attention to the original records available with the Bank specially the PPO where according to him the photographs of the petitioner, Sushila Kumari, the first wife along with late Bharat Singh is attached (not stapled). In response, learned counsel for the petitioner submitted that this is never the practice in the Indian Army to staple or attached the photographs of the persons in favour of whom the PPO is prepared. We asked Sri Raj Kumar Singh, learned counsel for Indian Army/Union of India, who acceded to this plea of the petitioner's counsel subject, however, to the caveat that ordinarily it is not so but in rare cases where some photograph is given it may be stapled but in most of the PPOs numbering about more than fifty originals of which has been placed before us today by him, except in one, the photograph is not pasted.

- (11) The counsel for the Bank, however, accepted the fact that so far as the original documents pertaining to the pension account, the same contained the photograph of the petitioner with late Bharat Singh.

- (12) The counsel for respondent No.6 has vehemently opposed the claim of the petitioner and has submitted that there are various documents on record including reports of Lekhpal etc. wherein it has been found that the petitioner is an imposter and she is not Sushila Kumari, in fact, her name is Pushpa Singh. He also submitted that in one of criminal cases, the petitioner had deposed before the trial Court that she had not been married till 2009 but here she is claiming that she got married to late Bharat Singh in 1992 which itself goes to show the fraud which she has committed. He advanced various other arguments based on documents which he has filed and claims to be in possession thereof, according to which, he says that the petitioner has no claim for pension.
- (13) The counsel for the Intervenor, however, supports the claim of the petitioner and says that Ms.Shiva Singh is a witness to the fact that the petitioner had been living with late Bharat Singh as his legally wedded wife ever since the childhood of the intervenor and she is still living with the petitioner.
- (14) The Counsel for the Indian Army and counsel for respondent No.6 have stated that so far as the documents prepared by the District Sainik Kalyan Nigam are concerned, late Bharat

[10]

Singh was alive then if he had stated that his wife was Sushila Kumari the documents would readily be prepared as nobody would suspect that she was not the same Sushila Kumari, who is mentioned in PPO etc., therefore, the documents do not have any evidentiary value. However, the counsel for the petitioner reiterates his emphasis on the registered Will and he says once Bharat Singh himself has stated in his registered Will that the petitioner is his wife then the Army or the Bank cannot dispute it, the respondent No.6 has disputed it but the result of the suit is still awaited, therefore, mere pendency of suit cannot be made a ground for not paying family pension.

- (15) Having heard learned counsel for the parties and having perused the record, the first and foremost question which arises for consideration is as to whether there is any order of the Indian Army entitling the petitioner to family pension or deciding her claim to the said benefit. We do not find any such order. This is the first issue which should have been seen by the Tribunal. Secondly, the Tribunal did not see any other evidence on record except the report of the Bank which by itself should not have been made the basis for rejecting the claim of the petitioner.

(16) Moreover, we find that the Tribunal has been constituted under the Armed Forces Tribunal Act, 2007 (hereinafter referred to as "**Act, 2007**") to provide for the adjudication or trial by Tribunal or disputes and complaints with respect to commission, appointments, enrollment and conditions of service in respect of persons subject to the Army Act, 1950, Navy Act, 1957 and Air Force Act, 1950 and also to provide for appeals arising out of orders, findings or sentences of court martial held under the said Acts and for matters connected therewith or incidental thereto. We may refer to Section 14 of the Act, 2007 dealing with jurisdiction, powers and authority of the Tribunal and as per sub section 1 of Section 14, save as otherwise expressly provided in the Act, 2007, the Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority, exercisable immediately before that date by all courts (except the Supreme Court or a High Court exercising the jurisdiction under articles 226 and 227 of the Constitution) in relation to all service matters. Now the word "service matter" has been defined in Section 3(o) of Act, 2007 to mean all matters relating to conditions of service in relation to the persons subject to the Army Act, 1950, the Navy Act, 1957 and the Air Force Act, 1950. Section 3 (o) of Act, 2007 reads as under :-

"3(o) "service matters", in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950), mean all matters relating to the conditions of their service and shall include—

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;

(iii) summary disposal and trials where the punishment of dismissal is awarded;

(iv) any other matter, whatsoever, but shall not include matters relating to—

(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950), sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950 (45 of 1950); and

(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Arm Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);

(iii) leave of any kind;

(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months "

(17) On a bare reading of the aforesaid provision, it is apparent that essentially the Tribunal is required to decide service matters pertaining to the persons covered by the Army Act,

[13]

1950, Navi Act, 1957 and Air Force Act, 1950 in terms of Section 14 read with Section 3(o) of the Act, 2007 and matters connected an incidental thereto. The Tribunal does not have any jurisdiction to decide the identity of a person per se, if it is seriously disputed or for that matter to decide the marital status of a person per se, if it is genuinely and seriously disputed. It had no jurisdiction to record findings such as the one which has been recorded by it that the petitioner herein was an imposter or had committed a fraud and fabrication of documents with regard to her marital status and her identity. It would have been justified in saying that considering the disputes pertaining to the aforesaid status it should be got declared from a court of competent jurisdiction or that a decision should be taken by the Indian Army itself as to the entitlement of the petitioner to pension being claimed. However, as already stated earlier, firstly the petitioner should have raised a claim for family pension before the concerned department of Indian Army as her name did not figure in the PPO dated 24.04.1995 but for some reason as she was already a joint account holder with late Bharat Singh with the Bank concerned, she was paid family pension based on PPO already issued, may be because her name was also the same as claimed as the first wife. We do not intend to venture any further into this issue. Suffice it to

[14]

say that the petitioner will now have to apply for family pension as per rules before the concerned department of Indian Army which as informed by Sri Raj Kumar Singh, counsel for the Indian Army/Union of India is Adjutant General's Branch, Personnel Services, AG's Branch, PS-4 (Personnel/Legal), Integrated Head Quarter of Ministry of Defence (Army), Delhi - 900256 C/o 56 APO claiming family pension whereupon the concerned department of Indian Army shall hold an enquiry and take a decision regarding her entitlement to the same and in this process all the documents including the registered Will being relied by the petitioner and other documents relied by respondent No.6 would be considered and an independent enquiry shall also be got done as far as it may be possible and permissible in law as to whether she is the legally wedded second wife of late Bharat Singh. The respondent No.6 and the Intervenor would also be heard in the matter.

- (18) It is also put on record that on earlier date we had kept photocopies of certain documents provided by the counsel for the Bank duly attested by him in sealed cover but in spite of best efforts of the staff, the said sealed covered is not traceable, however, it does not make any difference as the documents were only photocopies and the copies of the said

[15]

documents are already available with the petitioner's counsel and with the counsel for the Bank. Originals are also available with the Bank and we have also perused the originals today.

(19) In view of the above discussion, we set aside the judgment dated 31.03.2022. The review application has been rejected by the Tribunal only on the ground that the grounds taken therein are beyond the scope of review. As we have quashed the original order, the review order also has to be quashed. Hence, the review order 23.05.2022 passed by the Tribunal is also set aside. However, liberty is granted to the petitioner to move an appropriate application before the concerned Authority claiming family pension as per rules whereupon a decision shall be taken in light of what has been discussed hereinabove, expeditiously say within six months.

(20) The decision to be taken by the Indian Army would be subject to the result of the civil suit but it will not defer the decision merely on account of pendency of the said suit.

(21) It is made clear that we have not at all adjudicated any of the issues involved regarding the marital status of the petitioner, her identity as Sushila Kumari or her entitlement to family

[16]

pension as is being claimed by her nor for that matter the objections raised by counsel for the Bank and the respondent No.6 in this regard.

(22) Petition is **disposed of** in the aforesaid terms.

(23) The original documents are returned back to the respective counsel.

(24) Application for Correction [C.M. Application No.IA/15/2024] filed by Sri Bhanu Pratap Singh Chauhan, learned counsel for the respondent No.6 is also disposed of.

[Om Prakash Shukla, J.]

[Rajan Roy, J.]

Order Date :- 27.9.2024

Shubhankar