

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 3053/2024

MAJ. WASIF MAJIED TAK

...Petitioner/Appellant(s)

Through: Mr. I. A. Parray, Advocate.

Vs.

UNION OF INDIA AND ORS

...Respondent(s)

Through: Mr. T. M. Shamsi, DSGI with
Mr. Faizan Ahmad Ganie, CGC for R 1 to 3.
Mr. Shabir Ahmad, Advocate for R 4.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

06.10.2025

(ORAL)

1. In the instant petition filed under Article 226 of the Constitution, petitioner herein has sought the following relief: -

- I) Certiorari: Directing- Quashment/setting aside of Order bearing No 0420/774/DV-3/HR dated 19-october-2024 issued by Headquarters Western Command for Grant of maintenance allowance to Mrs. Rofi Maqbool Khan wife of Maj Wasif Majied Tak (petitioner herein).
- II) Staying the execution of the show-cause notice bearing No.0420/77/DV-3/HR dated 27-june-2024 issued by Headquarters Western Command for grant of maintenance allowance to Mrs. Rofi Maqbool Khan wife of Maj Wasif Majied Tak. Directing the Respondent No 4 to let Civil Court decide the maintenance petition.

2. Facts emerging from the record and as are stated in the petition are that the petitioner herein is working as a Major in the Indian Army and had got to marry to respondent 4 herein on 07-10-2022 and that immediately after 18 days of the marriage, the said respondent compromised with the petitioner's official G-Mail account as also unauthorizedly used the petitioner's official laptop containing sensitive military information which resulted into filing of a report to the Cyber Police Srinagar by the petitioner herein whereafter a frivolous complaint came to be filed by the respondent 4 herein against the petitioner herein before the Disciplinary and Vigilance

Wing of the Army on 27-08-2023 besides, filing a maintenance claim through Army Wives Welfare Association before Army Authorities on 27-08-2023 itself, which consequently resulted into passing of order dated 19-10-2024, under the provisions of Section 19(i) of the Army Act 1950 read with Army Rule 193 of the Army Rules of 1954, whereby sanction came to be accorded to the deduction of 12% of the reckonable pay and allowance of the petitioner as maintenance payable each month to the respondent 4 herein aggrieved whereof the petitioner has maintained the instant petition.

3. Petitioner herein has challenged the order dated 19-10-2024, *inter alia*, on the premise that the respondents in response to the show cause notice issued to the petitioner herein in connection with the aforesaid maintenance proceedings, came to be requested by the petitioner herein to furnish him the copies of complaint(s)/application filed by respondent 4 herein for grant of maintenance which, however, was not furnished and that the petitioner was not provided an adequate opportunity to contest the said maintenance proceedings and that the petitioner herein has also filed a suit for restitution of conjugal rights for resumption of matrimonial relations with respondent 4 herein before the District Judge Anantnag and that the respondent 4 herein had also filed a domestic violence case against the petitioner herein and his family, as such, in presence of the said cases, the respondent 4 herein could not have been granted the maintenance in terms of order impugned as otherwise also respondent 4 herein is a working lady and is pursuing Ph.D course while working as Assistant Professor in SRM University Haryana.

4. **Objections** to the petition have been filed by respondents 1 to 3, whereas, the respondent 4 herein has chosen not to file objections to the

petition. The petition is being opposed by respondents 1 to 3 on the premise that the same has been filed without any justifiable cause of action and that on 08-10-2023 a letter was sent out by HQ Western Command (DV-2) arising out of a complaint alleged illicit relationship by the petitioner herein outside of his marriage and also for confiscating of digital artifacts of the petitioner and that the same were confiscated and an investigation into the allegation was initiated by the Court of Enquiry which allegation were found to be corroborative and that in the meantime a letter was received from the Welfare Complex (COAS Sectt) of IHQ of MoD (Army) on 02-12-2023 directing for marriage counseling of the petitioner with respondent 4 herein whereupon a formal counseling was conducted on 05-12-2023 and in this regard, one Dr. Prabhleen Kaur, a professional marriage counselor, was engaged for counseling the petitioner herein and respondent 4 herein and that in the claim for maintenance lodged by respondent 4 herein a show cause notice was issued to the petitioner on 27-06-2024, requiring him to submit his reply within 30 days' time, however, on 09-07-2024, he replied there to on 09-08-2024, whereupon the impugned order came to be passed directing deduction of 12% pay and allowance from the reckonable pay and allowance of the petitioner herein payable to the respondent 4 herein and said payment/deduction was ordered to remain in force for a duration of three years starting from 27-08-2023.

It is further stated that the said deduction was ordered for payment of maintenance by the petitioner herein to respondent 4 herein in terms of the provisions of Section 90(i) of the Army Act 1950, read with Army Order No. 06/2020/AG/DV dated 17-07-2020, and that the grant/deduction of maintenance from the pay and allowance of the army personnel to be

payable to his wife is an independent proceeding and does not debar the deduction/payment of the same.

Heard counsel for the parties in perused the record.

5. Before proceeding to advert to the case set up in the instant petition by the petitioner as well as the respondents, it would be appropriate to note here that Section 90(i) of the Army Act, 1950 provides a penal deductions to be made from the pay and allowance of an officer and postulates that whereunder a deduction can be ordered to be made from the pay and allowances of an officer by the Central Government or any Prescribed Officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child. Rule 193 of the Army Rules of 1954 provides for the Prescribed Officer for the purposes of clause (i) of Section 90 as the Chief of the Army Staff or the Officer Commanding the Army.

It is also pertinent to mention here that Army Order No. 06/2020/AG/DV dated 17-07-2020 provides for the payment of maintenance and allowances to the wives and children of army personnel under the Army Act which, *inter alia*, also provide that all personnel subject to the Army Act are legally and morally bound to maintain their wives and children whether or not the harmonious relationship exist between them and that power of grant of such maintenance under the Army Act is independent of the provisions of the Code of Criminal Procedure and that the case for maintenance can be processed simultaneously while court proceedings are in progress and that such court proceedings do not debar the Army Authorities to process and grant of the maintenance to a claimant subject to the conditions provided under the said Army Order, while providing further that

in acknowledging a wife's request for grant of maintenance, such wife should be asked to intimate by means of an affidavit whether or not she is an employee and if so, indicate her emoluments besides indicating the details of any dependent source of income inasmuch as movable/immovable property she may be possessed of and any income therefrom. The said Army order also provides that while considering the case for grant of maintenance to a wife, the details of wife/children ought to be checked from the unit record as also cross checked in case of doubt and thereafter each case be processed on its merits while ensuring that the claimant is legally wedded wife of a personnel or is legitimate or illegitimate child and that the personnel complained against is neglecting to maintain the claimant and that the claimant is unable to maintain herself. The said Army order also provides that amount of maintenance sanction shall not exceed 33% of pay and allowance and will not be at a rate higher than 22% of the pay and allowance in respect of wife and that with a view to encourage the wife to seek simultaneous redress through the court of law the maintenance and allowance shall be initially granted for the period of three years which may be further extended by two years in case of non-finality of process the wife has to take recourse.

6. Keeping in mind the aforesaid provision of the Act of 1950 as also the Army order supra and reverting back to the case in hand, it is not being disputed by the petitioner herein that respondent 4 herein is his legally wedded wife. What is however, being complained of against the impugned order by the petitioner herein is that the official respondents before passing of the impugned order and after the issuance of show cause notice dated 27.06.2025 did not furnish him the copy of maintenance petition and

documents attached thereto in order to enable him to contest the same. However, perusal of the record available on the file would reveal that the petitioner before passing of the impugned order indisputably had been issued the show cause notice qua maintenance claim of respondent 4 herein on 27.06.2024 in response to which however, the petitioner sought copies of the claim petition and documents attached thereto however, did not dispute and deny either his relationship with respondent 4 herein as her husband or else stated that he is paying any kind of maintenance to the respondent 4 herein. A closer examination of the record available on the file would reveal that the competent authority while passing the impugned order has taken note of the claim of respondent 4 herein, the affidavit filed by her indicating that she is working and earning Rs.30,000/- per month either to maintain herself as also to pay and allowance drawn by the petitioner herein and also not been oblivious to the procedure prescribed in the Army Order dated 17.07.2020 as also the time frame for which the maintenance could be granted to respondent 4 herein till the time the issue of maintenance could be adjudicated upon by a competent court. Seemingly the respondents while passing the impugned order have not commit any illegality, irregularity or perversity and have issued the impugned order in tune with the provisions of the Army Act, Rules framed thereunder as also the Army Order supra.

Viewed thus, the petitions fails and is accordingly **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

06.10.2025

Ishaq

Whether the order is speaking ?

Yes/No

Whether approved for reporting ?

Yes/No