

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**LPA No. 252 of 2026**  
**Decided on : 17.09.2026**

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The State of Himachal Pradesh and others

...Appellants

Versus

Sh. Mahesh Ram and another

...Respondents

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Coram

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.**  
**The Hon'ble Mr. Justice Bipin C. Negi, Judge.**

Whether approved for reporting?<sup>1</sup>

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**For the appellants** : Mr. Rakesh Dhaulta, Additional  
Advocate General.

**For the respondents** : None.

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**G.S. Sandhawalia, Chief Justice (Oral)**

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The State seeks consideration of the judgment passed by the learned Single Judge, in ***Civil Writ Petition No. 2269 of 2024***, titled ***Mahesh Ram Vs. State of Himachal Pradesh and others***, dated 17.09.2025, whereby the directions were issued to enter the name of second wife of the petitioner i.e. Ms. Jawala Devi, in the service record of the petitioner in place of Ms. Kamlesh Devi, who had expired on 20.04.2020.

2. Learned Single Judge had noticed that both the wives of the petitioner were sisters and the second marriage of the petitioner had taken place on account of the fact that no

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

issue had been born out of the wedlock with his first wife. Ms. Kamlesh Devi.

3. The petitioner was retired in the year 2003 and since then, he had been drawing pension under PPO No. 62182/HP, Case No. P-2/62182/M-11/2003-04/183 and on the death of his first wife on 20.04.2020, he had taken up the matter for entering the name of his second wife and the same was rejected vide order Annexure P-5, on the ground that as per Section 5 of the Hindu Marriage Act, 1955, 2<sup>nd</sup> wife would not be entitled for family pension as legally wedded wife vide GID-13 below Rule 54 of (CCS) Pension Rules, 1972 and, therefore, her name cannot be entered in the Pension Payment Orders (PPOs).

4. Reliance had been placed upon the judgment of the Apex Court passed in ***Special Leave Petition (Civil) Diary No. 2365 of 2022***, titled ***Radha Devi Vs. Chief General Manager and others***, while noticing that the afore judgment had been passed by the Apex Court while exercising powers under Article 142 of the Constitution of India, but principle was taken that on account of long cohabitation, status of the spouse as such, would come into play to seek the benefit of family pension, by the learned Single Judge.

5. In ***Letters Patent Appeal No.545 of 2025***, titled ***Umawati Vs. HPSEB and others***, decided on 25.04.2026, we

have also taken a similar view, keeping in view the judgments of the Apex Court and the fact that the family pension as such, is a beneficial right as such and only cause economic empowerment to the women. Reliance had also been placed upon the judgment of the Apex Court passed in ***Rameshchandra Rampratapji Daga Vs. Rameshwari Rameshchandra Daga, (2005) 2 Supreme Court Cases 33***, to this extent. The relevant part of the ***Umawati's case*** (supra), reads as under:-

*“16. In this regard, a reference can be made to (2014) 1 SCC 188 titled as **Badshah vs. Urmila Badshah Godse and another**. Relevant extract whereof reads as under:-*

*14. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:*

*“It is, therefore, respectfully submitted that “social context judging” is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not*

*only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”[5]*

*15. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.*

*16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society’s changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.*

*17. Cardozo acknowledges in his classic “....no system of jus scriptum has been able to escape the need of it”, and he elaborates: “It is true that Codes and Statutes do not render the Judge superfluous,*

*nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute." Says Gray in his lecture "The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."*

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—"libre recherche scientifique" i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano[8] to Shabana Bano[9] guaranteeing maintenance rights to Muslim women is a classical example.

19 In *Rameshchandra Daga v. Rameshwari Daga*

*[10], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act, 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.*

*20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.*

*21. The principles of Hindu Personal Law have*

*developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.*

17. The sole contention urged on behalf of the respondent- Corporation is that, in terms of the Central Civil Services (CCS) Pension Rules, the appellant is not entitled to grant of family pension. The relevant Rule 50 (6) of the CCS Pension Rules reads as follow:-

*(6) The family pension shall be payable to the members of the family of the deceased Government servant or pensioner in the following order, namely:-*

*(i) subject to provisions of sub- rule (8), widow or widower, (including a post-retiral spouse and judicially separated wife or husband),*

*(ii) subject to provisions of sub-rule (9), children (including adopted children, step children and children born after retirement of the pensioner),*

*(iii) subject to provisions of sub-rule (10), dependent parents (including adoptive parents) of the deceased Government servant or pensioner,*

*(iv) subject to provisions of sub-rule (11), dependent siblings (i.e. brother or sister) of the deceased Government servant or pensioner, suffering from a mental or physical disability,*

*Explanation.- For the purposes of this rule, 'widow' and 'widower shall mean a spouse, legally wedded to the deceased Government servant or the pensioner.*

8(c) Where the deceased government servant or pensioner is survived by more widows than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow her share of the family pension shall become payable to her child or children who fulfil the eligibility conditions in sub-Rule (9)

(See GID 22 below this Rule).

(22). Settlement of Family Pension between two wives of a Government servant or Pensioner under Central Civil Services (Pension) Rules, 2021.-It is directed to say that Department of Pension, in supersession of the Central Civil Services (Pension) Rules, 1972 has notified the Central Civil Services (Pension) Rules, 2021 and Rule 50 of the Central Civil Services (Pension) Rules, 2021 deals with payment of family pension on death of a Government servant /pensioner.

2. In accordance with Rule 50 (6) of the CCS (Pension) Rules, 2021. family pension shall be payable to the members of the family of the deceased Government servant or pensioners in the following order. The

(i) Subject to provisions of sub- Rule (8), widow or widower, (including a post-retiral spouse and judicially separated wife or husband)

(ii) subject to provisions of sub-rule (9), children (including adopted children, step children and children born after retirement of the pensioner),

(ii) subject to provisions of sub-rule (10), dependent parents (including adoptive parents) of the deceased Government servant or pensioner,

(iv) subject to provisions of sub-rule (11), dependent siblings (i.e. brother or sister) of the deceased Government servant or pensioner, suffering from a mental or physical disability.

*whereas the Explanation to Rule 50 (6) (1) of the CCS (Pension) Rules, 2021 states that - For the purpose of this rule, 'widow' and 'widower' shall mean a spouse, legally wedded to the deceased Government servant or the pensioners.*

*3. Whereas Rule 50(8)(c) of the CCS (Pension) Rules, 2021 states that-Where the deceased Government servant or pensioner is survived by more widow than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow, her share of the family pension shall become payable to her child or children who fulfil the eligibility conditions mentioned in sub-Rule (9).*

*4. In this regard, references have been received in this department regarding eligibility of family pension to the second wife when the first wife is alive. Having second wife when the first wife is alive is against the provisions of Hindu Marriage Act, 1955 and also contradictory to the provisions of CCS (Pension) Rules, 2021. The matter has been examined and it has been decided that such cases need to be processed in accordance with the provisions of CCS (Pension) Rules, 2021 and the issue of second wife or second marriage being legal or otherwise, may be decided first in consultation with Department of Legal Affairs on case- to-case basis for deciding the eligibility for Family Pension.*

*5. All Ministries/Departments are requested to follow the process of consultation with Department of Legal Affairs before arriving at decision regarding Settlement of Family Pension between two wives under Central Civil Services (Pension) Rules, 2021. Such cases must be brought to the notice of the officer dealing with the pensioners' benefits in the respective Ministry/Department by the*

attached/subordinate offices.

18. Rule 50(8) of the CCS (Pension Rules), 2021 provides for family pension to two wives. Moreover in terms of GID 22 second wife would not be entitled to family pension when the first wife is alive . The wife of Jai Ram had died prior to his marriage with the appellant, as is evident from Annexure P-1 (page 32 of the paper book). The marriage inter se late Sh. Jai Ram and the appellant is illegal in terms of Section 5(i) of the Hindu Marriage Act; however, in terms of the law laid down by the Apex Court in **Ram Chandra's case** (supra), the same is not immoral. In Ram Chandra's case despite holding the marriage to be illegal, the right to claim maintenance was up-held. The object of providing family pension cannot be different from the object of providing maintenance.

19. In the case at hand, late Sh. Jai Ram and the appellant cohabited from 6.5.1994 till immediately prior to the filing of the petition seeking restitution of conjugal rights by the present appellant in August 2006. The long cohabitation inter se the parties, the entry of the name of the appellant in the service book/pension record of the deceased Sh. Jai Ram (though subsequently withdrawn), the fact that late Sh. Jai Ram had two sons and two daughters from his previous marriage, all of whom have attained majority and none of whom is claiming any right over the family pension due to the family of late Sh. Jai Ram, when considered with relevant factors like economic empowerment, social justice, dignity of the individual requires this Court to be sensitive to and positively inclined towards the weaker party. Thereby, in our considered view, the appellant, who is financially weak and economically dependent, would be entitled to pension.

20. In taking the aforesaid view, we are also encouraged by the following observations of the Apex Court in Capt. Ramesh Chander Kaushal vs. Veena Kaushal, (1978) 4 SCC 70:

*“The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause- the cause of the derelicts.”*

21. *In view of the aforesaid discussion, the present appeal is allowed. The impugned judgment dated 03.04.2025 passed in CWP No. 7584 of 2023 is hereby set aside. The appellant is held entitled to the grant of family pension in respect of late Shri Jai Ram.*

*The appeal stands disposed of in the aforesaid terms, so also, the pending miscellaneous applications, if any.”*

6. Keeping in view the above-said facts, the present appeal is dismissed. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

**(G.S. Sandhawalia)**  
**Chief Justice**

**(Bipin C. Negi)**  
**Judge**

September 17, 2026  
(Shivank Thakur)