

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.1511 of 2019
Date of Decision: 06.08.2026.

Kanta Devi

...Petitioner

Versus

State of Himachal Pradesh & others

...Respondents

Coram

Hon'ble Mr .Justice Jiya Lal Bhardwaj, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Vijay Bir Singh, Advocate

For the respondents : Mr. Anup Rattan, Advocate General
with Mr. Amit Kumar Chaudhary,
Deputy Advocate General, for
respondents No.1,3 and 4-State.

Mr. Rangil Singh, Advocate vice, Mr.
Tara Chand Chauhan, Advocate, for
respondent No.2.

Jiya Lal Bhardwaj, Judge (oral)

By way of the present petition, the petitioner has prayed for quashing and setting aside of the communication dated 20.09.2010 (Annexure P-7), whereby her claim for family pension, has been rejected, on the ground that she being second wife, is not entitled for family pension. The petitioner further sought a direction to the respondents to allow her family pension from the date of death of her husband.

¹ Whether reporters of Local Papers may be allowed to see the judgment?

2. Shorn of unnecessary details, the key facts of the case are that husband of the petitioner, namely Sh. Karam Chand was employed as Cook with respondent No.1 i.e. in the Department of Health. He had retired from service in the year 1990. During the subsistence of first marriage with one Smt. Jayanti, he solemnized second marriage with the petitioner. Out of the wedlock from the first marriage, two daughters were born, however, they died in an accident. After solemnizing marriage with the petitioner, four children were born. During the lifetime, husband of the petitioner made an application dated 13.02.2004 (Annexure P-2) to respondent No.4, stating therein that he got retired from service as a Class-IV employee in the year 1990 and his first wife had died in the year 2003, and even two daughters born out of his first wedlock, were also died, and he has solemnized second marriage with the petitioner, and out of said wedlock, two sons and two daughters have been born. Their names have been recorded in the Gram Panchayat Reur and he is getting pension from the Health Department and as such after his death, the pension be given to his second wife, who is petitioner before this Court. Even an affidavit (Annexure P-3) executed by him was also appended with the application.

3. The husband of the petitioner died on 11.03.2010 and thereafter she made a representation on 02.07.2010 (Annexure P-1) to respondent No.2, requesting therein that after the death of her husband, she may be granted family pension. The petitioner has also placed on record the copy of Parivar Register (Annexure P-4) suggesting the fact that four children were born out of her wedlock with late Sh. Karam Chand and her name also figures in the record of the Gram Panchayat, Reur. The petitioner has also placed on record the legal heirs certificate (Annexure P-6). However, the claim made by the petitioner came to be rejected by respondent No.2 on the ground that she being second wife, is not entitled for family pension. Further, respondent No.4 was asked to send copy of order by the competent Court regarding her legally wedded wife and in case of family pension payable to the eligible children of the deceased may be sent in Form-21.

4. The petitioner, thereafter sent a legal notice dated 26.12.2012 (Annexure P-9) through her counsel to reconsider the decision and to grant her family pension, but nothing was done by the respondents and thus she has approached this Court.

5. The petitioner lays challenge to the impugned decision conveyed to her, vide letter dated 20.09.2010 (Annexure P-7), inter alia, on the ground that the rejection of her claim for pension is wrong inasmuch as she being a legal wedded wife of the deceased, is entitled to the family pension, as per Rules.

6. It has further been averred that since no action was taken by respondents No.1,3 & 4, the petitioner is entitled to get family pension and denying the same is illegal, arbitrary, unconstitutional and inviolative of the provisions of Central Civil Services (Pension) Rules, 1972 (in short "CCS (Pension) Rules). The petitioner being the legally wedded wife of the deceased is entitled to pension after death of her husband.

7. Respondents No.1, 3 & 4 filed reply to the petition and raised preliminary submissions that neither any legal, legitimate and enforceable right of the petitioner, has ever been infringed nor she is aggrieved of any action on their part. The petitioner has filed the inadmissible claim against them, without there being any legal cause of action.

8. It has further been admitted that late Sh. Karam Chand was an employee of the respondent, who retired from service on attaining the age of superannuation in the year

1990. Subsequently, he died on 11.03.2010 and after his death, the petitioner had filed an application before respondent No.3, for granting her family pension along with copy of Parivar Nakal as well as legal heirs certificate.

9. As per the own averments made by the petitioner, she had solemnized marriage with the deceased, during the subsistence of first marriage with Smt. Jayanti Devi. The plea raised by the petitioner that she is entitled to family pension as per the provisions of CCS (Pension) Rules is not tenable, for the reason that as per Sub Rule 7 (a)(i) of Rule 54 of the CCS (Pension) Rules, 1972 where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. However, it is not the case of the petitioner that the family pension was payable to more widows than one, as the first legally wedded wife of late Sh. Karam Chand had already been expired in the year 1982 before his retirement in the year 1990. Moreover, it stood specifically clarified by the Government of India's decision No.13 that second wife will not be entitled to family pension.

10. It has also been averred that as per Section 11 of the Hindu Marriage Act, 1955, any marriage solemnized after the commencement of the Act, shall be null and void and can

be annulled against the other party by a decree of nullity, if the same contravenes any of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Hindu Marriage Act, 1955 and thus, prayed for rejection of the petition.

11. Respondent No.2 filed separate reply and averred that the case of the petitioner for grant of family pension was received in its office vide letter dated 20.06.2010. On scrutiny of the pension case, it was found that PPO No.19828/HP/S mentioned in the pension paper did not tally with the record available with this office and accordingly, the case was returned vide office letter No.Pen-5/2010-11/824-25 dated 20.09.2010 with a request to re-examine the matter and the exact PPO Number be intimated with reference to the number already assigned. It was also mentioned that the grant of family pension to the family of deceased government servant is governed by Rule 54 of the CCS (Pension) Rule, 1972. Sub-Rule (7)(c) of Rule 54 of CCS (Pension) Rules specifically provides that where a government servant is survived by more than one widow, family pension is payable in equal shares only where the subsequent marriage is legally valid, that is, where it was solemnized after the lawful dissolution of the earlier marriage or after the death of first spouse. A marriage

solemnized during the subsistence of an earlier, undissolved marriage is void ab initio in law and the party to such a marriage does not acquire the status of a “legally wedded wife/widow” so as to become entitled, as of a right to claim family pension, unless the same is established through a declaration by a Court of competent jurisdiction.

12. It was specifically observed and communicated vide letter dated 20.09.2010 that the petitioner herein had admittedly been married to late Sh. Karam Chand in the year 1982 i.e. during the subsistence of his first marriage with Smt. Jayanti Devi, who survived till 28th February, 2003 and as such, the petitioner could not straightaway be treated as legally wedded widow entitled to family pension. The petitioner was required to produce an order/decreed of a Court of competent jurisdiction declaring her to be the legally wedded wife of late Sh. Karam Chand.

13. It was further intimated that in case family pension was payable to the eligible children of the deceased, the same be claimed in Form No.21, and as such, has prayed for dismissal of the petition.

14. I have heard the learned counsel for the parties and also perused the record carefully.

15. It is not in dispute that the petitioner is not the widow of the deceased late Sh. Karam Chand. The dispute is only with respect to the fact that the deceased had solemnized marriage with the petitioner, during the subsistence of his first marriage and as per the provision of the Hindu Marriage Act, 1955, the second marriage is not valid and further as per the provision of the CCS (Pension) Rules, 1972, more particularly, Rule 54, debars the second wife/widow to get the family pension, in a case, where during the subsistence of the first marriage, the second marriage was solemnized.

16. As per the documents placed on record, it is crystal clear that the petitioner was got married to late Sh. Karam Chand. It has also not been disputed by the respondents that during the lifetime of deceased, he had made an application to respondent No.4 on 13.02.2004 (Annexure P-2) along with an affidavit dated 13.02.2004 (Annexure P-3) clearly mentioning in unequivocal terms that after his death, the petitioner be paid the family pension, since she is his wife. The first wife had died on 28.02.2003 and only the petitioner has stacked the claim for family pension.

17. The Hon'ble Supreme Court in numerous decisions has held that a strong presumption arises in favour of wedlock, where the partners have lived together for a long spell as husband and wife. Reference in this regard is made to **Badri Prasad versus Dy. Director of Consolidation and others.**, (1978) 3 SCC 527.

18. Again in **S.P.S. Balasubramanyam vs. Suruttayan alias Andali Padayachi and Others**, (1994) 1 SCC 460, the Hon'ble Supreme Court has held that if a man and woman live together for long years as husband and wife, then a presumption arises in law of legality of marriage existing between the two, but the said presumption is rebuttable.

19. The aforesaid judgments have recently been followed in **Shiramabai vs. Captain, Record Officer for O.I.C Records, Sena Corps Abhilekh, Gaya, Bihar State and another** (2024) 16 SCC 773.

20. In the present case, even as per the husband of the petitioner, he had written before his death to respondent No.4 that the petitioner is his wife. The said fact is also corroborated by other material placed on record by the petitioner suggestive of the fact that after solemnizing the

marriage with late Sh. Karam Chand, the petitioner along with her children were got entered in the record of the Gram Panchayat, where she was residing. Therefore, it can safely be presumed that the petitioner was the wife of late Sh. Karam Chand.

21. Now second question which arises for consideration with respect to the grant of family pension is concerned as already noticed above, in case the first wife was staking the claim to get family pension, the position was somewhat different. However, in the present case, the first wife had died even before death of the husband of the petitioner, which fact has not been denied by the respondents by filing reply to the petition. As per the reply filed by the respondent No.2, the first wife namely Smt. Jayanti Devi had expired on 28.02.2003, whereas the husband of the petitioner died on 11.03.2010.

22. The similar preposition had come up before the Hon'ble Division Bench of this Court in **LPA No.545 of 2025**, titled, **Umawati versus HPSEB and others**, wherein the Division Bench after considering the law of the Hon'ble Apex Court has succinctly dealt with the issue and also considered the provision contained in the CCS (Pensions) Rules and held that the second wife is entitled for grant of family pension.

23. The Hon'ble Supreme Court in **Radha Devi vs Chief General Manager and others**, (Special Leave Petition (Civil) Diary No.2365 of 2022), while exercising power under Article 142 of the Constitution of India, directed respondents to pay the family pension to second wife, who admittedly had solemnized marriage with the employee concerned during subsistence of first marriage. No doubt, the Hon'ble Supreme Court had exercised the power under Article 142 of the Constitution of India, but this Court can also apply the principles especially when the husband of the petitioner before his death, had given in writing that after his death, the family pension be given to the petitioner. The purpose of granting pension is to ameliorate the grievances of the dependants of the deceased and once late Sh. Karam Chand had given in writing before his death that family pension be given to the petitioner, which fact has also not been denied by the respondents, the impugned decision conveyed to the petitioner, whereby her claim for pension is rejected, is not sustainable in the eyes of law.

24. Consequently, the present petition is allowed and the impugned communication dated 20.09.2010 is quashed and the respondents are directed to first enter the name of the

petitioner as wife in the service record of her husband late Sh. Karam Chand and thereafter grant her pension. Since the petitioner has approached this Court on 29.07.2013, she shall be paid the arrears of pension from three years prior to the institution of the present case. In case, the arrears of pension are not released in favour of the petitioner within three months from today, the respondents shall also pay interest thereon @ 6% per annum from today. The petition stands disposed of.

Pending miscellaneous application (s), if any, also stand disposed of.

(Jiya Lal Bhardwaj)
Judge

August, 06, 2026 (meera)