

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 3019 of 2013 (O&M)

Date of decision: 13.02.2015

Satvir Singh

----Petitioner

Versus

State of Punjab and others

----Respondents

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Ms. Geeta Sharma, Advocate
for the petitioner.

Mr. I.P. Goyat, Addl. A.G., Punjab.

HARINDER SINGH SIDHU, J. (ORAL)

The petitioner was married to one Bhupinder Kaur, who was appointed as Constable in the Punjab Police in 1992. Out of this wedlock, the petitioner was blessed with two sons, namely, Ramanpreet Singh and Gaganpreet Singh. Due to temperamental difference, the couple separated and a decree of divorce was passed on 06.05.1997.

Bhupinder Kaur, died on 19.11.2007 after serving the department for approximately more than 14 years. Family pension

was sanctioned in favour of her son Raman Preet Singh vide PPO NO.56363/S/PB case No.Pen-6/B-125/2007-08 (Annexure P-2). It is averred that at that stage, the petitioner never objected to the grant of family pension in the name of the son as he was not aware that a legally separated husband is also entitled to family. Subsequently, the petitioner served a legal notice on the respondents that family pension should be sanctioned in his favour. He states that the son of the petitioner has no objection to the transfer of family pension in his name.

Not receiving any favourable response, the petitioner has filed the instant Writ Petition seeking directions to the respondents to transfer the family pension of his late Ex-wife Bhupinder Kaur in his favour.

Reliance has been placed on Rule 6.17 of the Family Pension Scheme, relevant extract whereof is reproduced hereunder:-

“(3) 'Family for the purposes of this section will include the following relatives of the government employee:-

(a) Wife in the case of male govt. employee and husband in the case of female govt. employee;

(b) A judicially separated wife or husband, such

separation not being granted on the ground of adultery; provided the marriage took place before the retirement of the government employee and the person surviving was not held guilty of committing adultery;”

In the written statement filed on behalf of the respondents, it has been stated that in terms of above mentioned rule, only a judicially separated wife or husband is entitled to pension . It cannot be granted to a divorced husband or wife. As the marriage of the petitioner with Smt. Bhupinder Kaur has been dissolved by a decree of divorce, hence his case is not covered by the above provision. And family pension cannot be granted to the petitioner.

Learned counsel for the petitioner has not been able to dispute the aforesaid legal position which flows from a plain reading of the Family Pension Scheme relied upon by the petitioner.

The Family Pension Scheme which has been relied upon came to be introduced in 1964 by replacing the earlier Family Pension Scheme of 1951 by making modifications in the *Punjab Civil Services Rules*, Volume II .

Under the Hindu Marriage Act, 1955 'Judicial Separation' has a definite meaning. There is no severance of marriage during judicial separation, unlike in the case of a divorce and the judicially separated husband or wife continues to be a wife or husband. Hence the term 'judicially separated' husband or wife in the Family Pension Scheme has to be understood as per its meaning in the Hindu Marriage Act, 1955 and a divorced spouse

would not be included in it.

In **Jeet Singh v. State of U.P., (1993) 1 SCC 325**,
construing the term judicially separated husband or wife used in a
Land Ceiling Act, the Hon'ble Supreme Court held:

“6. By the time the Ceiling Act was enacted the words “judicial separation” had acquired a definite meaning. Section 10 of Hindu Marriage Act, 1955, provides for “judicial separation” among Hindus. Under this provision read with Section 19 only a District Court (civil court) has jurisdiction to grant a decree for judicial separation. Parties governed by the Indian Divorce Act, 1869 may file a petition under Section 23 thereof for judicial separation before a Distt. Court or the High Court. Mohammedan Law also recognises a right to live separately without an obligation to have cohabitation with her husband though such claim can be made only in rare circumstances like cruelty or that her life is unsafe or other strong grounds. This order could be obtained by the wife in a suit instituted by her or in a suit instituted by the husband for restitution of conjugal rights.

7. The judicial sanction of separation creates many rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.”

As the Pension Scheme only covers a judicially

separated husband or wife for the purpose of grant of family pension and not a divorced wife, the benefit thereof cannot be extended to a divorced husband or wife.

Pertinently, there is no challenge to this provision. Also if family pension is treated as the estate or property of the deceased, a divorced husband or wife has no claim thereon even as per the Hindu Succession Act.

Accordingly, there is no merit in the petition and the same is dismissed.

13.02.2015
Atul

(HARINDER SINGH SIDHU)
JUDGE