

CWP No.519 of 2015

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

**CWP No.519 of 2015
Date of decision:30.10.2015**

Khajani Devi

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.A.Sheoran, Advocate,
for the petitioner.

Mr. Karminder Singh, Advocate,
for respondent No.1.

Mr. Rajesh Sheoran, Addl. A.G., Haryana.

None for respondent No.3.

Rakesh Kumar Jain, J.

During 25th Anniversary of the Independence, a Central Scheme for the grant of pension to freedom fighters and their families from Central Revenue was introduced by the Government of India. The Scheme commenced from 15.08.1972 and provided for the grant of pension to living freedom fighters and their families; if they are no more alive, to the families of martyrs. However, the benefit of pension scheme was extended w.e.f. 01.08.1980 to all the freedom fighters as a token of "Samman" to them.

In brief, Norang father of the petitioner was a freedom fighter

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and was getting freedom fighter pension. He expired on 08.02.1994 followed by his wife on 12.06.1995. The petitioner is the only daughter of her parents, Norang had adopted his brother's sons, namely, Prem, who has also expired. The petitioner got married to Ram Kishan S/o Maman, R/o village Dhani Dhirja on 30.04.1972 but has no issue from the said wedlock. She has been divorced by an *ex-parte* decree of divorce dated 07.10.1989. She has been living with her parents. After their death, she has been granted dependent family pension being an unemployed daughter. She was also getting ₹4,395/-, as some share of the pension from the Haryana Government in terms of the Haryana Swatantrata Sainik Samman Pension Scheme, which has now been stopped because one Rohtash has filed a civil suit against her alleging that she has been fraudulently claiming the pension being not an unmarried daughter of the freedom fighter.

The case set up by the petitioner is that the petitioner is also entitled to pension as a divorced/unemployed daughter of the deceased freedom fighter in the same manner in which the widow/unmarried/unemployed daughter of the deceased freedom fighter is being paid the pension.

In reply filed by respondent No.1, it is averred that the Swatantrata Sainik Samman Pension Scheme, 1980 has been modified and liberalised from time to time but as per the guidelines, only the unmarried and unemployed daughters are made eligible for grant of family pension. It has been averred that if a daughter is married or employed, there is no need to grant her pension as such person does not require any financial support.

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In the reply filed by respondent No.2, it is averred that the State of Haryana has amended the Haryana Swatantrata Sainik Samman Pension Scheme (01.01.1981) vide notification dated 12.06.2009 and it was decided that the State Samman Pension, after the death of Freedom Fighters and their spouse, be transferred to their unmarried, unemployed daughters and disabled, unmarried, unemployed sons with 75% disability with immediate effect and if there are more than one eligible children, they will get proportionate share in the pension. It is further averred that Norang, father of the petitioner, was a freedom fighter and he was getting the Swatantrata Sainik Samman Pension from the Government of Haryana. After his death, the petitioner applied for transfer of Haryana Swatantrata Sainik Samman Pension on 31.01.2011 through Deputy Commissioner, Bhiwani and submitted an affidavit that she is unmarried/unemployed daughter of late Norang concealing the fact that she had in fact been divorced/unemployed daughter. It is averred that the petitioner has made a false affidavit dated 11.10.2010 for the purpose of transfer of pension to her of her father and is, thus, not entitled to the pension which was issued to her on 19.05.2011. It is also averred that the claim of the petitioner is premature because already a civil suit is pending, having been filed by Rohtash for seeking declaration that the petitioner is not entitled to pension.

Learned counsel for the petitioner has argued that the freedom fighter pension has been allowed to the widow/unmarried/unemployed daughters of the deceased freedom fighters. According to him, the divorced/unemployed daughters are also entitled to the freedom fighters

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family pension because after the divorce, she would also stand in the line of the widow/unmarried daughters being not financially independent. It is also submitted that even otherwise the pension has been made admissible to three categories, namely, widows/unmarried/unemployed daughters and the petitioner being an unemployed daughter of the deceased freedom fighter is entitled to the said pension.

On the other hand, counsel for the respondents has submitted that the married and employed daughters have been debarred from being entitled to the benefits of the pension scheme after the death of freedom fighter because after the marriage the daughter does not remain dependent upon the family of the freedom fighter for her financial needs rather she becomes a dependent member of the family of her husband. In that situation, even if she is unemployed, she would be debarred as she is financially dependent upon her husband. Similarly, if a daughter of the freedom fighter becomes widow and is employed, even then she cannot claim the benefit of the pension scheme because she is financially independent. Similarly, if she is unmarried and employed, even then she would not be entitled to the pension. Thus, the *sine qua non* for consideration for the purpose of pension is the financial self-reliance of the daughter of the freedom fighter even if she is a widow or unmarried.

According to the instructions dated 14.08.1989, the benefit of pension has been extended to widows/unmarried/unemployed daughters. The word “unemployed” cannot be read in isolation as it has to be read with the words “widow/unmarried” daughters of the deceased freedom fighters.

As regards the arguments raised by learned counsel for the petitioner with reference to letter dated 14.12.2012 (P-8), issued by the Ministry of Defence, Government of India, Department of Ex.-Servicemen Welfare, vide which the Government had decided that the unmarried/divorced/widow are also entitled to the grant of pension, that cannot be applied to the Swatantrata Sainik Samman Pension Scheme as the word “divorced” is not included in this scheme.

In the present case, the petitioner, who is alleged to have been divorced by her husband by an *ex-parte* decree on 07.10.1989, did not make any effort for setting aside the *ex-parte* decree of divorce nor anything has been brought on record to show that she had actually made an application under Section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “Act”) for seeking permanent alimony and maintenance from her ex-husband.

In the case of an unmarried daughter who is unable to earn being unemployed and/or in the case of a widow daughter of the freedom fighter who has no earning to maintain herself, the pension has been granted and the divorced daughter of the freedom fighter has not been included in the policy because of the reason that she can claim maintenance from her ex-husband till her life in terms of Section 25 of the Act, even if she is not employed.

Thus, the main thrust is towards the monthly income of the daughter of the deceased freedom fighter who would not be entitled to pension even if she is unmarried and widowed in case she is employed. The

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petitioner could have explored the source of income by way of seeking maintenance under Section 25 of the Act even now as the law provides that she can move an application at any time subsequent to the passing of the decree of divorce to the Court exercising the jurisdiction for the purpose of her maintenance and support to claim such gross sum or such monthly or periodical sum for the term not exceeding her life.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the petitioner has an alternative means of sustenance for his life by way of claiming maintenance from her ex-husband and is, thus, not exclusively dependent upon the amount of pension of her father as a freedom fighter.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

October 30, 2015
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(Rakesh Kumar Jain)
Judge