

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6566/2015

Sunanda wd/o Mohan Kanchanwar and another
...Versus...
Chief Executive Officer, Zilla Parishad, Civil Lines, Nagpur and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.A. Sonwane, Advocate for petitioners
Mrs. T.D. Khade, Advocate for respondent nos.1 and 2
Shri R.J. Mirza, Advocate for respondent nos.3 to 5

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.

DATE : 20.08.2016

By this petition, the petitioners, seek a writ, order or direction restraining the respondent nos.1 and 2 from releasing 100% family pension in favour of the respondent nos.3 to 5. The petitioners seek a direction against the respondent nos.1 and 2 to release 50% of the family pension in favour of the petitioners.

The petitioner no.1 claims to be the wife of deceased Mohan Kanchanwar, who was serving as a Village Development Officer with the respondent no.2 – Block Development Officer, Panchayat Samiti, Saoner. It is the case of the petitioners that the petitioner no.1 had married Mohan Kanchanwar in the year 1997 and the petitioner no.2 was born from the wedlock on 11.7.2001. According to the petitioners, the respondent no.3 was married to Mohan Kanchanwar in the year 1999 and the respondent nos.4

and 5 were begotten to the respondent no.3 from the wedlock between Mohan Kanchanwar and the respondent no.3. It is stated that Mohan Kanchanwar, during his life time, used to visit the petitioners thrice in a month and used to take care of them and provide all basic amenities to them. It is stated that Mohan Kanchanwar expired on 9.6.2015 and the petitioner nos.1 and 2, being the wife and son of the deceased, are entitled to a part of the family pension along with the respondent nos.3 to 5. The petitioners have claimed family pension to the extent of 50%.

The respondent nos.3 to 5 have disputed that Mohan Kanchanwar had married the petitioner no.1 in the year 1997. It is stated that Mohan Kanchanwar was not married to the petitioner no.1 at all and the petitioner no.2 is not either the legitimate or the illegitimate son of Mohan Kanchanwar. It is stated that in the service record, the respondent no.3 is shown to be the wife – nominee of Mohan Kanchanwar. It is stated that the claim of the petitioners is false and baseless. The learned Counsel for the respondent nos.3 to 5 has relied on the averments in paragraph 5 of the writ petition, wherein it is clearly stated that the petitioner no.1 was married in the year 1994 with Shri Ganesh Lanjewar and the decree of divorce dissolving their marriage was passed in the year 2005. It is stated that the very averments in paragraph 5 of the writ petition falsify the claim of the petitioners that the petitioner no.1 is the legally wedded wife of Mohan Kanchanwar.

Mrs. Khade, the learned Counsel for the respondent nos.1 and 2 submits that in the official records Mohan Kanchanwar has nominated the respondent no.3. It is stated that

in view of the serious dispute between the parties, the respondent nos.1 and 2 are not in a position to release the family pension.

At this stage, Shri Sonwane, the learned Counsel for the petitioners states that the family pension to the extent of 75% could be released in favour of the respondent nos.3 to 5 and though the petitioner no.1 may not be entitled to family pension, as the marriage between her and her first husband was dissolved in the year 2005, the petitioner no.2, the son of Mohan Kanchanwar would be entitled to a share in the family pension. The learned Counsel has relied on the provisions of Section 16 of the Hindu Marriage Act to substantiate his submission that even a child born from a void marriage would be entitled to a share in the property of his father. The learned Counsel has relied on the judgment of the Hon'ble Supreme Court, reported in **(2003) 1 SCC 730** in this regard. It is stated that the petitioners would file appropriate proceedings in the civil court for a declaration that the petitioner no.2 is the son of Mohan Kanchanwar within six weeks and this Court may restrain the respondent nos.1 and 2 from disbursing more than 75% of the family pension in favour of the respondent nos.3 to 5.

On hearing the learned Counsel for the parties, it appears that there is a serious dispute whether the petitioner no.1 is the wife of Mohan Kanchanwar and the petitioner no.2 is the legitimate or illegitimate son of Mohan Kanchanwar. The said dispute cannot be decided in exercise of the writ jurisdiction under Article 226 of the Constitution of India. For proving the said fact, it would be necessary for the parties to lead evidence both oral and documentary. The petitioners are willing to file a

civil suit to seek an appropriate declaration. In the circumstances of the case and in view of the law laid down by the Hon'ble Supreme Court in the judgment, reported in **(2003) 1 SCC 730** and the provisions of Section 16 of the Hindu Marriage Act, it would be necessary to direct the respondent nos.1 and 2 not to release more than 75% of the family pension in favour of the respondent nos.3 to 5 till the proceedings filed by the petitioners for an appropriate declaration are decided by the civil court. The learned Counsel for the respondent nos.3 to 5 states that the respondent nos.3 to 5 have no objection if this arrangement is made till the suit filed by the petitioners is decided.

Since the family pension is not released in favour of anybody for a period of one year, at the request made by the learned Counsel for the respondent nos.3 to 5, we direct the respondent nos.1 and 2 to release the arrears of family pension to the extent of 75% of the family pension in favour of the respondent nos.3 to 5 within three months and pay the monthly family pension to the extent of 75%, to the respondent nos.3 to 5 regularly.

The aforesaid arrangement in respect of payment of family pension would be subject to the result in the civil suit.

With the aforesaid observations and directions, we dispose of the writ petition with liberty to the petitioners to file appropriate proceedings. No costs.

JUDGE

JUDGE

C E R T I F I C A T E

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