

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14923 of 2011 (O&M)
Decided on : 13.05.2016

Surjit Kaur & others

... Petitioners

Versus

State of Punjab & others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.M.S.Cheema, Advocate, for the petitioners.

Mr.L.S.Virk, Addl.A.G., Punjab.

Mr.Ankit Rana, Advocate, for
Mr.R.S.Rana, Advocate, for respondent No.4.

Mr.G.L.Bajaj, Advocate, for the applicant
(in CM-4123-CWP-2016).

G.S. Sandhawalia , J. (Oral)

CM-4123-CWP-2016

The present application has been filed by the applicant- Harbans Singh, to be arrayed as respondent No.5, as necessary and affected party. His grouse is that he had stood as surety to the extent of Rs.1,20,000/-, for the deceased-employee, Dalip Singh during his service. The said amount has been deduced from his retiral benefits. It is not disputed that the said applicant filed a Civil Suit on 01.07.2013 (Annexure A1), for declaration and claimed interest regarding the delayed payment and for release of the amount. The suit was, admittedly, dismissed on 26.02.2015, by the Civil Judge (Jr.Divn.) Faridkkot. Even a perusal of the memo of parties does not show that petitioners No.1, 3 & 4 and respondent No.4 were party.

It is also not disputed that he has already filed an appeal against the said judgment, which is pending. In such circumstances, this Court is of the opinion that the said applicant has already resorted to his remedies and therefore, is not a necessary party in the present set of proceedings. Therefore, the application for impleadment is dismissed, with liberty to the said applicant to avail his remedies, in accordance with law.

Accordingly, the present application is, hereby, dismissed.

Main case

Petitioners in the present writ petition, seeks quashing of the order dated 08.06.2011 (Annexure P19), passed by the Deputy Commissioner, Patiala, whereby the legal heirs of Dalip Singh, who died on 26.12.2010, were specified. Further direction has been sought not to release any pension/monetary benefits in favour of anyone till the decision of the Civil Court, in the 2 suits filed by petitioner No.2, namely, Jaswinder Kaur. The first suit is for declaration regarding the marital status of the petitioner with the deceased. The second petition under Section 7 of the Guardians and Wards Act, is for declaring the said petitioner as legal guardian of person and property of Shivamdeep Singh, petitioner No.4. Petitioners No.3 & 4 are the children of the deceased-employee from the first marriage with Rupinder Kaur, who was granted divorce on 28.08.2005 under Section 13-B of the Hindu Marriage

Act, 1956.

Petitioner No.3 has, now, attained the age of majority and petitioner No.4 is a physically handicapped and mentally retarded person, who is being looked after by petitioner No.2, Jaswinder Kaur. The said petitioner's case is that she was married with the deceased-employee on 11.09.2005, which was found not to be proved by the Civil Judge (Jr.Divn.) Chandigarh, vide judgment and decree dated 23.02.2015. However, her application for being appointed as a guardian for the person and property of the said petitioner-Shivamdeep was allowed on 01.05.2013 by the Guardian Judge, Chandigarh. Respondent No.4, Rajwinder Kaur is stated to be the legally wedded wife with whom the marriage was performed on 23.09.2006 whereas petitioner No.1 is the mother of the deceased-employee.

Vide order dated 16.03.2016, the matter was referred to the Mediation & Conciliation Centre of this Court, after taking consent of the parties. The Mediator has been able to resolve the claim *inter se* the parties, as per the report dated 06.04.2016, which has been signed by petitioner No.1 & 2 in her own capacity and on behalf of petitioner No.4 along with Rajwinder Kaur, respondent No.4 and by the counsels. The report reads as under:

"Sh. Swaran Sandhir, Mediator

This mediation case No. 464/2016, arising out of CWP No.14923/2011 titled as "Surjit Kaur and others Vs. State of Punjab & ors." was taken up by Hon'ble Mr. Justice

G.S. Sandhawalia on 16.03.2016 and was referred for mediation. The parties who were present in the Court were directed to appear for mediation on that day itself i.e. On 16.03.2016.

The parties as named above came present and the process of mediation was duly explained to the parties and after obtaining their consent mediation process taken up.

Facts :-

Briefly considering the facts of the matter necessary to be mentioned are that the petitioners and respondent No.4 are in the Court praying for the release of dues after the death of one Dalip Singh (deceased) who was working in the Department of Cooperation , Government of Punjab and breathed his last on 26.12.2010.

(ii) The controversy arose because Dalip Singh was married to one Rupinder Kaur and the couple was blessed with two children namely daughter Aakriti @ Namrata Nahar @ Namrata Dhir and son Shivamdeep Singh (petitioners No.3 & 4) The marriage of Rupinder Kaur and Dalip Singh was dissolved by a decree of divorce in the year 2005. Daughter Aakriti @ Namrata Nahar @ Namrata Dhir was given in adoption by Rupinder Kaur to her parents namely Sh. Randhir Singh Dhir father and mother Smt. Narinder Dhir.

(iii) After this, another marriage was contracted by Dalip Singh with respondent No.4-Rajwinder Kaur. Just a passing reference that Rajwinder Kaur was herself a divorcee and having one son from her first marriage living with her who in no manner was dependent on Dalip Singh.

(iv) Jaswinder Kaur-petitioner No.2 is also stated to have contracted marriage with Dalip Singh and she had filed a civil suit at Civil Court, Chandigarh for a decree of declaration to this effect. The suit having been dismissed, an appeal filed by Jaswinder Kaur petitioner No.2 is pending in First Appellate Court at Chandigarh.

(v) As the destiny of Shivamdeep Singh, he is suffering from mental disorder and presently is unable even to walk and is dependent even for his day to day routines for an attendant. Since the life time of Dalip Singh, Shivamdeep Singh is being looked after by petitioner No.2 Jaswinder Kaur. A decree appointing Jaswinder Kaur as legal guardian of Shivamdeep Singh has also been passed by competent Court granting of rights to lookafter and to care Shivamdeep Singh in favour of Jaswinder Kaur.

(vi) Surjit Kaur-petitioner No.1 is mother of deceased Dalip Singh is claiming the release of retrial benefits/dues including the family pension relating to Dalip Singh, her son.

(vii) With the above background, petitioners namely Surjit Kaur , Jaswinder Kaur, Aakriti @ Namrata Nahar @ Namrata Dhir and Shivamdeep Singh are praying for release of the retrial benefits/dues and similar is the case of respondent No.4 claiming the benefits as legally wedded wife of Dalip Singh.

(viii) During the course of mediation it has come to the notice that Dalip Singh was owning a plot measuring 10 Marlas in "Shere Punjab Co-operative Housing Society, Mohali (SAS Nagar)" in respect of which he has executed a registered Will in favour of Jaswinder Kaur.

(ix) Above facts has lead to the filing of present CWP and further reference of the matter for mediation.

(x) The parties have come present and several joint as well as separate sittings were held on different dates which has resulted into execution of the present settlement between the parties.

(xi) Jaswinder Kaur is signing the present settlement on behalf of herself as well as being Legal Guardian of Shivamdeep Singh. Aakriti @ Namrata Nahar @ Namrata Dhir had authorized her maternal-grand mother Smt. Narinder Dhir who is her adoptive mother also, who participated in mediation during the course of proceedings and had discussed the matter in detail.

(xii) After discussing the matter, the parties have decided

to amicably settle the dispute and the terms and conditions for the same are being reduced in writing as under:-

TERMS OF SETTLEMENT

1. The parties have agreed and accepted that:
 - (a) Surjit Kaur-petitioner No.1 who is mother of deceased;
 - (b) Aakriti @ Namrata Nahar @ Namrata Dhir who is daughter of deceased and who was given in adoption to her maternal grand-parents; and,
 - (c) Jaswinder Kaur-petitioner No.2;shall not claim anything from the family pension or other dues in respect of or arising in respect of service of Dalip Singh-deceased.
2. Family pension shall be entitlement of Rajwinder Kaur-widow and Shivamdeep Singh-disable son in equal share i.e. 50% each as payable as per rules. No party shall object for the release of the family pension or issuance of PPO in favour of Rajwinder Kaur and Shivamdeep Singh by the competent authority. In case Rajwinder Kaur applies for grant of appointment on compassionate basis, then none of the other party shall object for the same.
3. The other dues including:
 - i) DCRG (Death-cum-retirement Gratuity)
 - ii) Provident Fund
 - iii) Leave Encashment
 - iv) Group Insurance
 - v) Ex-gratia
 - vi) Unpaid Salary of Dalip Singhshall be entitled to be released to Shivamdeep Singh and Rajwinder Kaur in equal shares.
4. Parties have further agreed that prior to his death, Dalip Singh remained ill for quite long time and was staying with Jaswinder Kaur who had spent money on treatment of Dalip Singh and has submitted Medical Bills in respect of that payments claiming the refund and the refund has not yet been released by that department. The parties have

accepted that if by tendering a copy of the present settlement, the amount of refund of medical treatment is released by the department in favour of Jaswinder Kaur, Rajwinder Kaur shall have no objection of the same. Rajwinder Kaur has further agreed that in case as per rules the department releases above amount in favour of the Rajwinder Kaur in that event Rajwinder Kaur shall pay the same amount to Jaswinder Kaur. Some amount in respect of the medical reimbursement of medical bills submitted by Dalip Singh himself during his life time has also not been released. The said amount shall also entitled to be released as agreed above.

5. The parties have further agreed and accepted that as Jaswinder Kaur has been appointed as Legal Guradian by the competent Court, as such she shall be entitled to receive the amount of arrears etc. as agreed above on behalf of Shivamdeep Singh. Jaswinder Kaur shall be entitled to withdraw Family Pension on behalf of and payable to Shivamdeep Singh and to incur expenses on Shivamdeep Singh. Jaswinder Kaur shall be entitled to do all such acts which are required for the benefit and welfare of the disabled Shivamdeep Singh.

6. The parties have further agreed and accepted that as per Court decree, Jaswinder Kaur being legal guardian of Shivamdeep Singh, Jaswinder Kaur shall be entitled to claim any medical reimbursment in respect of Shivamdeep Singh who is under her care and guardianship.

7. The parties have further agreed and accepted that in case any amount is left by Dalip Singh in any bank account and as per Will if Jaswinder Kaur is entitled to receive the same, she shall utilize the same for the benefit of Shivamdeep Singh.

8. Parties have further agreed and accepted that the plot booked by Dalip Singh in "Shere Punjab Co-Operative Housing Society, Mohali (SAS Nagar)" and in respect of which Dalip Singh has executed a registered Will in favour of Jaswinder Kaur, one half of that plot shall be transferred

by Jaswinder Kaur in the name of Rajwinder Kaur and the other half shall be utilized by Jaswinder Kaur for the welfare of mentally retarded son Shivamdeep Singh by transferring the same in the name of Shivamdeep Singh or in any manner which she considers is in the best interest of Shivamdeep Singh as Legal Guardian of Shivamdeep Singh. Jaswinder Kaur shall apply to above society for transfer of above plot as agreed above.

9. Parties have further agreed and accepted that Jaswinder Kaur shall not pursue the appeal filed by her against the judgment and decree of the trial Court and shall withdraw the same. Similarly, Rajwinder Kaur has also agreed and accepted to withdraw the case filed by her all cases shall be withdrawn by both sides by mutually accepting the dates.

10. The parties have further agreed that Rajwinder Kaur being Wife of Dalip Singh (deceased) and Shivamdeep Singh-through his legally appointed guardian as brother of Aakriti @ Namrata Nahar @ Namrata Dhir has agreed that amount of Rs.1,11,000/- from Shivamdeep and Rs.1,11,000/- from Rajwinder Kaur as Shagun shall be deposited by Shivamdeep and Rajwinder Kaur in fixed deposit in the name of Aakriti @ Namrata Nahar @ Namrata Dhir and shall be payable to Aakriti @ Namrata Nahar @ Namrata Dhir at the time of her marriage. The amount of Shagun shall be put in fixed deposit by Rajwinder Kaur and Shivamdeep Singh on receipt of arrears of dues as per settlement/agreement above.

11. With the execution of the present compromise, entire dispute between the parties shall stand settled. None of the parties shall file any unwanted litigation against the other party.

12. This compromise has been reached between the parties without any pressure and both the parties have very happily agreed to abide by the terms and conditions of the agreement. Both the parties shall be bound with the terms and conditions of this compromise.

13. It has been further decided between the parties that in case of necessity, both the parties shall be free to present the copy of the above compromise before any authority or court if the same is required to witness the execution of the compromise or to settle any pending controversy between the parties.

14. The parties have gone through the contents and the same have been explained to the parties and after admitting the same as correct, have put their respective signatures.

15. That the parties undertake to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.”

Accordingly, keeping in view the above terms of the compromise, the same is being made part of the final order. Respondent-State shall, accordingly, disburse the retiral dues to the parties concerned, as per the terms of settlement, which have been recorded above. Needful be done within a period of 2 months from the receipt of a certified copy of this order.

Writ petition stands disposed of.

MAY 13, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE