

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

**RSA No. 3035 of 2013 (O&M)
DECIDED ON: SEPTEMBER 04, 2017**

SURINDER KAUR

.....APPELLANT

VERSUS

DALIP KAUR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Surinder Garg, Advocate
for the appellant.

Mr. Karanjit Singh, Advocate
for respondents No.1 to 4.

Ms. Akanksha, AAG, Punjab.

JASPAL SINGH, J (ORAL)

Appellant-Surinder Kaur has preferred the instant appeal against the judgment and decree dated March 07, 2013 passed by learned Additional District Judge, Faridkot whereby, an appeal preferred against the judgment and decree dated January 05, 2012 passed by learned Civil Judge (Jr. Division), Faridkot was dismissed, whereby, respondents/plaintiffs along-with appellant-defendant No.3-Surinder Kaur were held entitled to get equal share in the service benefits including family pension of Amarjit Singh except the amount of his GPF to which only appellant/defendant No.3 was held entitled on the basis

of nomination made in her favour by Amarjit Singh, whereas, the counter claim filed by the appellant/defendant No.3 was dismissed.

2. The brief facts giving rise to the instant appeal are that respondents No.1 to 4/plaintiffs filed a suit for declaration to the effect that the plaintiffs along-with the defendant No.3 are entitled to receive all the service benefits of Amarjit Singh including pension, gratuity, GIS, GPF, Leave encashment in equal shares including the rights of service on compassionate grounds as well as permanent injunction for restraining the defendant No.3 to recover all the benefits all alone.

3. Shortly, put the averments made in the suit are that Amarjit Singh since deceased was working in the office of Deputy Commissioner, Faridkot as Assistant/Clerk, who died in an accident on June 08, 2005. During his life time, Amarjit Singh solemnized marriage with appellant-Surinder Kaur and subsequent thereto, he also contracted marriage with Satinder Kaur. Out of his first marriage with Surinder Kaur one daughter namely Kirandeep Kaur was born whereas, from the second marriage with Satinder Kaur, Manseerat Gill and Shubhkarman Gill were born. After the demise of Amarjit Singh, appellant-Surinder Kaur intended to recover all the service benefits accrued to Amarjit Singh.

4. After hearing the arguments and appraisal of evidence, learned trial Court decreed the suit as has been reflected in para No.1 of the judgment and dismissed the counter claim preferred by Surinder Kaur, which necessitated the filing of instant appeal before lower Appellate Court. However, appeal filed by the appellant against the judgment and decree dated January 05, 2012 passed by

learned trial Court, was also dismissed by lower Appellate Court vide judgment and decree dated March 07, 2013. Feeling dissatisfied against the judgments and decrees passed by both the courts below, appellant-Surinder Kaur has preferred the instant appeal.

5. While assailing the impugned judgments and decrees passed by both the courts below, it has been argued with vehemence by learned counsel for the appellant that the same are absolutely against the evidence available on file and settled cannons of law. Mis-appretiation of evidence available on file has resulted into miscarriage of justice. In fact, both the courts below have failed to take into consideration that respondent No.1-Dalip Kaur is already receiving the pension of her late husband. Thus, she cannot be said to be dependant upon her son Amarjit Singh. In view of this score alone, she does not entitled for family pension on account of sad demise of her son. Moreover, Satinder Kaur, second wife of Amarjit Singh-deceased filed a suit seeking the service benefits accrued to Amarjit Singh but that suit was dismissed upto this Court. It was clearly observed that she is not entitled to the benefits accrued to late Amarjit Singh, as she is not the legally wedded wife of him. Subsequent thereto, the suit which has been decreed by learned trial Court was filed by her children, which is barred by the principle of res-judicata as well as under the provisions of Rule 2 Order II of the CPC. Thus, on this score alone, impugned judgments and decrees passed by both the courts below are liable to be set aside.

6. Learned counsel for the appellant has further contended that second marriage of Amarjit Singh with Satinder Kaur has already been declared void.

Even though under Section 16 of the Hindu Marriage Act, children of void

marriage are legitimate but they are entitled to get service benefits of Amarjit Singh. Thus, impugned judgments and decrees passed by both the courts below are sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant appeal. Consequently, the suit of the plaintiffs is liable to be dismissed.

7. On the other hand learned counsel for respondents No.1 to 4, while controverting the various submissions made by learned counsel for the appellant has argued that there is no infirmity, illegality in the impugned judgments and decrees passed by both the courts below. Rather the same are absolutely in consonance with the evidence available on file and legal proposition applicable to the facts and circumstances of the case in hand. Accordingly, instant appeal being devoid of merits is liable to be dismissed, that too with special costs.

8. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scanning the impugned judgments and decrees, this Court does not find any merit in the instant appeal so as to interfere with the judgments rendered by the courts below. The controversy in the instant appeal revolves around the service benefits accrued to Amarjit Singh, who was serving in the office of Deputy Commissioner, Faridkot immediately prior to vehicular accident occurred on June 08, 2005.

9. Undisputably, Amarjit Singh since deceased was married to Surinder Kaur-appellant and from their wedlock one daughter namely Kirandeep Kaur was born, who is living with her maternal grand mother. Whereas, Manseerat Gill and Shubhkaraman Gill were born from the second marriage of Amarjit Singh with Satinder Kaur. Though the marriage of Amarjit Singh with Satinder

Kaur during the subsistence of his first marriage with Surinder Kaur, was not legal and valid. Rather, it was void but children born out of the wedlock of Amarjit Singh and Satinder Kaur cannot be said to be illegitimate and as such are entitled to get share in the service benefits of their late father Amarjit Singh, as per the provisions contained in service rules. In this regard we can have the reference of pronouncement of Hon'ble Apex Court judgment rendered in the case of **Rameshwari Devi v. State of Bihar and others; AIR 2000, Supreme Court, 735.**

10. Admittedly, the controversy with regard to the status of Satinder Kaur with Amarjit Singh has already been adjudicated by learned trial Court in the civil suit preferred by her vide judgment and decree dated October 17, 2007 vide which their marriage has been declared void. The said judgment has been upheld by lower Appellate Court vide judgment and decree dated December 17, 2007. Not only this, appeal against the afore-said judgments and decrees passed by both the courts below, an appeal preferred before this Court also stood dismissed vide judgment/order dated April 24, 2008. Otherwise, also she has not claimed any share for herself out of the service benefits of Amarjit Singh through, the afore-said appeal.

11. Now the question which remains for determination is that whether Dalip Kaur-mother of deceased is entitled to any share and the answer to this question is in the affirmative. Admittedly, Dalip Kaur is the mother of the deceased and as per the new family pension parents of the deceased government employee are entitled to receive family pension. Otherwise also, such a question is came up for consideration before this Court in the case of **Malkiat**

Singh vs. State of Punjab; 2003 (2) RSJ, 515, wherein, it has been categorically observed that as per new Family Pension Scheme, parents of the deceased government employee are also entitled to receive family pension. Moreover, there is no evidence on record that Dalip Kaur mother of the deceased has any independent source of income or she is getting pension etc. from any other source. So far as the amount of GPF is concerned, it is proved on record that appellant Surinder Kaur is nominee as reflected in the service record nominated by the deceased during his life time and being nominee, she has been rightly held entitled to the amount of GPF but in no circumstance, she is sole entitled to the other benefits, over and above, her share as one of legal heirs of the deceased.

12. Thus, this Court is of the considered view that the judgments and decrees passed by both the courts below are absolutely in consonance with the evidence available on file as well as legal proposition of law. As such, no infirmity or illegality can be ascribed to the impugned judgments and decrees.

13. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, it stands dismissed with no order as to costs.

SEPTEMBER 04, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*