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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1596/2017**

Date of decision: 6th September, 2017

OM BATI Petitioner
Through Mr. Randhir Singh Kalkal, Adv.
versus

UNION OF INDIA & ORS. Respondents
Through Mr. Anurag Ahluwalia, CGSC along
with Mr. Swaran Singh Chib, AC-
CISF.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner, Om Bati, claims to be legally wedded wife of Constable Inderjit Singh. She has filed the present writ petition for release of family pension to her.

2. Constable Inderjit Singh is missing since 23.06.2011 and FIR No.180/2012, P.S. Nagar, District Bharatpur, Rajasthan, under Section 365 of Indian Penal Code, 1860 was registered on 10.05.2012.

3. Learned counsel for the respondents has submitted that as per the documents/form filled up by Constable Inderjit Singh on 28.10.2010, he was unmarried. Constable Inderjit Singh had declared and nominated his mother Atra Devi as his next kin and the person entitled to family pension. Constable Inderjit Singh had given the details of his father, mother and brother. Details of the petitioner as his wife were not indicated or stated in these documents dated 28.10.2010. The petitioner, as alleged, had got married to Constable Inderjit Singh on 09.05.2009. Date of birth of Constable Inderjit Singh as per records is 14.05.1991, whereas the petitioner is presently 30 years of age as per affidavit and therefore her year of birth would be 1987.

4. Constable Inderjit Singh, it is urged by the petitioner, had not given particulars of the petitioner or marriage at the time of joining on 28.10.2010 as he was about 18 years of age at that time.

5. The respondents have stated that in order to consider the petitioner's case for grant of family pension, they require a Succession Certificate as per Rules.

6. The petitioner had applied for Succession Certificate but the same was not granted vide order dated 28.03.2014 as Constable

Inderjit Singh is missing from 23.06.2011 and since 7 years had not lapsed to invoke the presumption under Section 108 of Evidence Act. The petitioner can therefore, apply for Succession Certificate after 7 years with effect from 23.06.2011.

7. On being asked whether Atra Devi being mother can apply for the family pension in terms of Office Memorandum dated 02.07.2010, it is submitted by the respondents that the mother has not applied for family pension and in case she applies, the matter would be examined. Learned counsel for the respondents has stated that there is a stipulation that family pension would be payable after 10 years of qualifying service.

8. Learned counsel for the petitioner, in aforesaid circumstances, has stated that Atra Devi would apply for family pension.

9. In case any such application is made, the same can be considered by the respondents in accordance with the law, but without insisting on Atra Devi obtaining Succession Certificate.

10. We also clarify that it is open to the petitioner to apply for Succession Certificate in accordance with the law and in case Succession Certificate is granted to her, she can approach the authority/respondents for grant of family pension. If any such application is made, the same would be considered in accordance with the law. In case such request is rejected by the respondents, the petitioner would be at liberty to question the order before appropriate Court/Forum.

11. We would also clarify that this order does not decide whether or not family pension under the Rules would be payable to Atra Devi or the petitioner, or both for want of qualifying service etc.

12. Recording the aforesaid, the writ petition is disposed of. No order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 06, 2017/vp