

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20101-2014

Date of Decision: - 21.01.2019

Satinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Ms. G.K. Mann, Advocate, for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Mr. Anil Chawla, Advocate, for respondent No.4.

HARSIMRAN SINGH SETHI, J. (ORAL)

The present writ petition has been filed by the petitioner for the release of the family pension, which was stopped by the respondents on the ground that the petitioner had again married one Sh. Harpreet Singh son of Nirmal Singh on 04.07.2010.

The facts which have been pleaded are that initially the petitioner was married to one Sh. Pardeep Singh, who was serving as a Constable in the Punjab Police. After the marriage, both started living together, but unfortunately the said Sh. Pardeep Singh died due to heart attack while in service on 12.01.2005. After the death of husband of the petitioner, namely, Sh. Pardeep Singh, petitioner was granted family pension and all other benefits were also extended to her.

It is an admitted case that the petitioner, after the death of her

husband, got married with one Sh. Harpreet Singh son of Sh. Nirmal Singh on 04.07.2010. Petitioner was living as wife of said Sh. Harpreet Singh, when, an FIR No.25 dated 23.02.2010 was registered against Sh.Harpreet Singh on the ground that he was already married to one Smt.Gurmeet Kaur and without divorcing her, he got married to the petitioner on 04.07.2010. On coming to know the said fact, keeping in view the provisions of the Hindu Marriage Act, the petitioner filed a petition under Section 12 of the Hindu Marriage Act, for declaring the marriage as null and void, being contrary to the provisions of the Hindu Marriage Act. The said petition was filed on 24.04.2012 and the same was allowed on 04.10.2013. Copy of the said order has been appended by the petitioner as Annexure P-3 with the present writ petition.

A bare perusal of the order would show that an ex-parte decree was allowed in favour of the petitioner, wherein, it has been recorded that Sh. Harpreet Singh, got married to petitioner by obtaining her consent by way of fraud and concealing the true facts. Further, the assertion of the petitioner that the marriage was void as per Section 11 of the HMA was noticed by the Court in the order dated 04.10.2013. The relevant part of the said order is as under: -

“In view of my above discussion, this petition under Section 12 of the Hindu Marriage Act, 1955 is allowed exparte, with costs, and marriage between the parties is hereby annulled by passing a decree of nullity. Decree-Sheet be prepared. File be consigned to Record Room.”

After obtaining the decree of annulment of marriage, the

petitioner filed a representation with the respondents to grant her the family pension by treating her the widow of Sh. Pardeep Singh, who had unfortunately died on 12.01.2005.

Even though, the representation was not decided, but a communication was addressed to the State Bank of Patiala by the respondents for stopping the pension. The said letter is of 19.04.2011. There is no order which has been passed by the respondents rejecting or accepting the claim of the petitioner for restoring the family pension after her second marriage was annulled by the competent Court of Law, vide order dated 04.10.2013.

As the family pension was not being released to the petitioner, the present writ petition has been filed by her.

Notice of motion was issued on 26.09.2014.

In the reply, which has been filed on behalf of respondents No.1 to 3, it has been only submitted that the petitioner was paid the family pension as per the Rule 6.17(3)(a) of the Punjab Civil Service Rules Volume-II. The family pension is only admissible to the widow or widower upto their death or their remarriage, whichever is earlier. It has been mentioned that as the petitioner got remarried to Sh.Harpreet Singh on 04.07.2010, she became ineligible for continuation of the family pension, which was granted to her on the death of her first husband, namely, Sh.Pardeep Singh.

Counsel for respondent No.4 i.e. mother of the petitioner has also filed reply to the effect that it is the mother-in-law, who had become entitled for the family pension after the death of her son Sh.Pardeep Singh

and after the remarriage of the petitioner on 04.07.2010 with Sh. Harpreet Singh.

Counsel for the petitioner contends that after the death of her husband Sh. Pardeep Singh, she was granted the family pension and other pensionary benefits for which she was entitled for and she continued getting the same till she got remarried with Sh. Harpreet Singh on 04.07.2010.

Counsel for the petitioner further states that as the consent of the petitioner for marriage with Sh. Harpreet Singh was obtained by fraud, the said marriage has already been annulled and therefore, the petitioner is entitled for the status as she was having prior to the date of her marriage with Sh. Harpreet Singh i.e. to be treated as widow of Sh. Pardeep Singh and therefore, she is entitled for the benefits for family pension after the annulment of her second marriage on 04.10.2013.

Counsel for the respondents states that the annulment of the marriage is inconsequential for the reason that the family pension is to be stopped immediately on the date of remarriage and whether the second marriage subsists or not, is immaterial. Once the pension is stopped, the same cannot be restored even after the annulment of the second marriage.

I have heard the counsel for the parties and gone through the record.

To appreciate the controversy, Rules 6.17(3)(a) of the Punjab Civil Services Rules is very material and the said relevant same is as under: -

“(2) “Family” for purpose of this Scheme will include the following relatives of the Government employee:—

- a. Wife in the case of a male Government employee and husband in the case of a female Government employee.
- b. A judicially separated wife or husband, such separation not being granted on the ground of adultery, provided the marriage took place before the retirement of the Government employee and the person surviving was not held guilty of committing adultery, and
- c. Sons up-to the age of Twenty-five years.
- d. Un-married daughters upto the age of twenty-five years.

Author's note : - The bar on the age of un-married daughters have been removed, vide letter No. Dated

Note-1, (c) and (d) will include children adopted legally before retirement.

2 Note-2 Marriage after retirement will be recognized for the purpose of this scheme.

(3) The pension will be admissible: -

(a) In the case of widow or widower up-to the date of death or re-marriage whichever is earlier.

(b) [In the case of son and un-married daughter until he or she attains age of twenty-five years or till he or she starts earning his/her livelihood, whichever is earlier].”

A bare perusal of the above rules shows that where a widow or widower remarriages, the pension will stop as the entitlement of family pension is only upto the date a person is to be treated as widow or widower. The meaning to the word “remarriage” is to be assigned as to whether, a void marriage will also take away a right of a person, on whom a fraud has been played so as to enter the marriage. Once, a competent Court of Law comes to the conclusion that the consent of marriage was obtained by fraud and the second marriage was declared annulled by a

decree of nullity, whether the said marriage will come within the definition of “remarriage”. Re-marriage is the marriage, which is valid marriage under the provisions of HMA and whether it subsists or not, is not material, but a valid marriage is a requirement for stopping the pension. In the present case, a finding has been recorded by a competent Court of Law that second marriage of the petitioner with Sh. Harpreet Singh on 04.07.2010 was a fraud committed upon the petitioner therefore the same was declared void and annulled. Therefore, the said marriage cannot be treated as a valid marriage in order to deny the benefit of restoration family pension to the petitioner. Rather, it is a case of where a widow has been made to enter into a second marriage by playing fraud upon her. The petitioner cannot be made to pay for the fraud, which has been played upon her, by not restoring the family pension, which she was getting prior to the date when the fraud was played upon her. Therefore, the second marriage, which has been already annulled, cannot be treated as a remarriage for any purpose, much less stopping of the family pension of the petitioner.

Under these circumstances, the present writ petition is allowed. The respondents are directed to grant the petitioner the benefit of family pension from the day the same as stopped. Let the arrears be calculated and pay to the petitioner within a period of two months from the date of receipt of certified copy of this order.

January 21, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes