

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 10th November, 2020.**

+ **W.P.(C) 8889/2020**

SERGEANT AJIT KUMAR SHUKLA **Petitioner**
Through: Mr. Ajeet Yadav, Adv.

Versus

UNION OF INDIA & ORS **Respondents**
Through: Mr. Jayant Bhatt, Ms. Deepali Suri
and Mr. Umang Verma, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.28630/2020 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

W.P.(C) No.8889/2020 & CM No.28631/2020 (for directions)

3. The petitioner, a sergeant in the Indian Air Force (IAF), has filed this petition (i) impugning the Air Force Order (AFO) No.03/2013 dated 6th February, 2013 issued by the respondent No.2 Chief of Air Staff; (ii) impugning the administrative order dated 5th August, 2019 issued by the respondent No.2 Chief of Air Staff, sanctioning maintenance claim against the petitioner; and, (iii) seeking mandamus, directing the respondent No.2

Chief of Air Staff to refund the amount of maintenance granted under the administrative order aforesaid, to the son of the petitioner and payable to the respondent No.5 i.e. wife of the petitioner.

4. It is the case of the petitioner, (a) that the petitioner was enrolled in the IAF in Equipment Assistant Trade, on 27th December, 2006; (b) that the petitioner got married to the respondent No.5 Mrs. Gunjan Shukla on 29th November, 2012; (c) that on 19th March, 2014, a son named Avyukta Shukla was born to the petitioner and his wife; (d) that the wife of the petitioner, for reasons not attributable to the petitioner, left the matrimonial home along with her son and refused to join the petitioner inspite of repeated efforts of the petitioner; (e) that the petitioner, on 18th November, 2017 approached the Family Court, Kanpur, for dissolution of marriage; (f) that the petitioner, in February, 2018 initiated proceedings for custody of his minor son; (g) that as a counterblast thereto, the wife of the petitioner initiated proceedings under Section 125 of the Criminal Procedure Code, 1973 (CrPC) for maintenance and also approached the Court under Section 156(3) of the CrPC, for registration of a case under Sections 141, 149, 363, 504 & 506 of the Indian Penal Code, 1860 (IPC) against the petitioner and his parents; (h) that the wife of the petitioner also filed false and fabricated case under Section 498A of the IPC against the petitioner and his parents but the proceedings in the criminal complaint as well as the case under Section 498A of the IPC were stayed by the Allahabad High Court vide order dated 1st November 2019; (i) that the wife of the petitioner, vide an application dated 29th May, 2018 requested the Air Officer Commanding, 30 Wing, AF Station, Sarsawa, U.P., where the petitioner was posted, for grant of maintenance allowances, without disclosing the pendency of her petition

under Section 125 of the CrPC; (j) that vide notice dated 9th July, 2018, the petitioner was asked to show cause against the claim of his wife; (k) that though the petitioner filed a detailed reply but vide order dated 5th August, 2019, with effect from August, 2019, a sum of Rs.10,900/- per month was ordered to be deducted from the pay and allowances of the petitioner for payment to the wife of the petitioner for maintenance of minor son of the petitioner, though no maintenance was granted by the respondents IAF to the wife of the petitioner; (l) that though the petitioner, vide application dated 29th August, 2019 protested against the order dated 5th August, 2019 but no action has been taken thereon; (m) that the wife of the petitioner thereafter approached the Civil Court, Kanpur for her maintenance and maintenance of Rs.5,000/- per month has been granted to the wife of the petitioner by the Civil Court vide an interim order dated 24th December, 2019 ; (n) that the petitioner, on 10th January, 2020 informed the respondents IAF of the order for payment of maintenance of Rs.5,000/- per month to his wife and requested for cessation of maintenance of Rs.10,900/- per month awarded by the respondents IAF; (o) that however the respondents IAF vide order dated 3rd March, 2020 refused to cease deduction of Rs.10,900/- per month from the pay and allowances of the petitioner; (p) that the petitioner through his counsel forwarded a copy of the aforesaid interim order passed by the Civil Court, Kanpur to the respondent No.3 Director Personnel Services, Air Headquarters, requesting to stop the maintenance claim; and, (q) that the petitioner again by an application dated 7th April, 2020 requested for the cessation of the maintenance order but the same has not been replied to by the respondents IAF.

5. Contending that the Armed Forces Tribunal (AFT) does not have jurisdiction and relying on *Govind Kumar Srivastava Vs. Union of India* MANU/DE/0048/2019 [Special Leave Petition (SLP) (Civil) No. 8813/2019 whereagainst was dismissed on 26th April, 2019], this petition has been filed.

6. In the aforesaid facts, the counsel for the petitioner has drawn our attention to Sections 190, 191 and 191A of the Air Force Act, 1950 empowering the Central Government to make regulations for all or any of the purposes of the Act other than those specified in Section 189 and requiring the regulations so made to be published in the Gazette and to be laid before the Parliament. The counsel for the petitioner has next argued that in purported exercise of the powers under Section 190, the Air Force Regulations, 1964 were promulgated and in exercise of powers under Regulation 917 whereof, the impugned AFO No.03/2013 titled "Payment of maintenance allowances to wife/children of Air Force Personnel under Sections 91(i) and 92(i) of Air Force Act, 1950" was issued and in exercise of powers whereunder maintenance for the son of the petitioner has been ordered to be deducted from the salary of the petitioner. It is the contention of the counsel for the petitioner in the petition, (i) that AFO No.03/2013 is repugnant to and interferes with the legislative framework of the country in matters of maintenance; (ii) that Regulation 917 authorises the Chief of Air Staff to issue orders on matters of administrative nature affecting the Air Force Units and formations; (iii) the Air Force orders are not ratified by the Legislature as required by Sections 190 and 191A supra and are merely administrative and non-statutory in nature and cannot interfere with or amend the legislative framework of the country on the matters of maintenance ; (iv) that the Legislature had made provisions for maintenance

in the CrPC, Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956 as well as in the Protection of Women from Domestic Violence Act, 2005; (v) that AFO No.03/2013 if treated as delegated legislation, is excessive, as legislation upon personal laws is in exclusive domain of the Legislature and an administrative order cannot make or amend such laws; (vi) that AFO No.03/2013 is violative of Article 14 of the Constitution of India as it denies the personnel of the IAF the right of being treated alike their civilian counterparts, in matters of maintenance and Air Force personnel are being subjected to an additional law regulating maintenance; (vii) though Section 21 of the Air Force Act empowers the Central Government to make rules restricting/modifying certain fundamental rights in their application to persons subject to the Air Force Act but the powers thereunder do not extend to the matters of maintenance; (viii) that the application of the provisions of the Air Force Act and the Air Force Regulations and AFO No.03/2013 in issuance of the impugned order dated 5th August, 2019 assume vesting of adjudicative powers but which do not exist; (ix) that the AFT (Chandigarh) vide order dated 31st July, 2018 in ***Major Amit Kumar Mishra Vs. Union of India***, in the context of *pari-materia* provisions of the Army Act, 1950 has held that the Army Authorities cannot assume adjudicatory powers in cases of maintenance; (x) that Sections 91(i) and 92(i) supra, are merely instruments for execution of maintenance decrees against Air Force personnel and cannot be used as a means of assuming adjudicatory power of maintenance claims; (xi) that the Raksha Mantri's Committee of Experts in their report of the year 2015 also has opined that the provisions of Sections 91(i) and 92(i) contemplate an order of maintenance by a competent Court and refusal by a defence

personnel to comply therewith; (xii) that the provisions of AFO No.03/2013 are biased in favour of the wife and do not even provide for a mandatory hearing to be given to the Air Force personnel; (xiii) that the AFO No.03/2013 does not take into consideration the employment, income and earning capacity of the claiming wife; (xiv) though under the Civil law maintenance of children is corresponding to the right to visit, meet or to the custody of the children but AFO No.03/2013 does not comply therewith even; (xv) that the impugned order dated 5th August, 2019 is violative of the procedure prescribed in AFO No.03/2013; (xvi) that since the proceedings between the petitioner and his wife are pending before the Court, powers under AFO No.03/2013 ought not to have been exercised since the judicial order has precedence over administrative order; and, (xvii) that the High Court of Rajasthan in Civil Writ Petition No.5481/2020 titled ***Mahendra Singh Rathore Vs. Union of India*** has found the matter of grant of maintenance by Air Force Authorities to be *ultra vires*.

7. We have heard the counsel for the petitioner and being not satisfied with his arguments, on the same lines as the pleadings aforesaid, the need to call upon the counsel for the respondents who appears on advance notice, did not arise.

8. A perusal of Section 91(i), in exercise of powers whereunder the impugned AFO No.03/2013 has been issued, shows the same as authorising deduction from pay and allowances of an officer of any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child. Section 4(xxiii) defines an

'officer' as a person commissioned, gazetted or in pay as an officer of the Air Force but not including a junior commissioned officer, warrant officer, petty officer or non-commissioned officer. The petitioner, a sergeant, is a non-commissioned officer and Section 91(i) would not apply to him. However Section 92(i) authorises deduction from the pay and allowances of an airman, of any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child. Since the power under Section 92(i) has been given to the Central Government or any prescribed officer, Rule 162 of the Air Force Rules, 1969 provides that the prescribed officer for the purposes of Section 92(i) shall be the Chief of Air Staff. Section 95, to which Section 92 is subject, provides that the total deductions from the pay and allowances shall not exceed in any one month, one half of the pay and allowances of that month. Section 190, as aforesaid empowers the Central Government to make any regulations for all or any of the purposes of the Air Force Act other than those specified in Section 189. It is not in dispute that in exercise of powers thereunder and in accordance with the procedure prescribed in Sections 191 and 191A, the Air Force Regulations of the year 1964 have been made. Regulation 917 thereunder provides

"Air Force orders will be issued by the Chief of the Air Staff on the matter of an administrative nature affecting the Air Force formation and units as a whole."

It is again not in dispute that the AFO No.03/2013 has been issued by the Chief of Air Staff. The same, as per its 'Aim' lays down the detailed procedure for grant, modification or suggestion of maintenance allowance to

the wife and children of Air Force personnel and *inter alia* provides (i) that the grant of maintenance allowance thereunder is independent of any proceedings pending in a Civil or Criminal Court; (ii) that application for grant of maintenance allowance may be submitted by the wife/children of Air Force personnel and will be processed as provided therein; (iii) that each case will be processed on merits, ensuring (a) that the claimant is the legally wedded wife and/or the legitimate or illegitimate child; (b) that the Air Force personnel complained against is neglecting to maintain the claimant or without good reasons refuses to let the claimant stay with him; and, (c) that the claimant, for good reasons is not prepared to stay with the Air Force personnel and does not have independent and adequate source of income for sustenance of herself and her children; (iv) that on receipt of request for maintenance, the complained Air Force personnel is to be supplied copy of the same and is to be interviewed and informed of his social and legal obligation to maintain his wife and children till the marriage is dissolved and that the obligation in respect of children continues until they are in a position to support themselves; (v) that the wife will also be asked to intimate details of any independent source of income and movable or immovable property she may possess and income therefrom; (vi) that the complained against Air Force personnel will be served with a show cause notice; (vii) that a wife living in adultery will be advised to take recourse to a Court of law and should not normally be granted maintenance allowance; (viii) that if the wife is already in receipt of maintenance allowance, the Court order should be given consideration; (ix) that while fixing the quantum of maintenance allowance, legitimate financial commitments and the income of the personnel complained against shall be considered and the amount sanctioned

will not be more than $\frac{1}{3}^{\text{rd}}$ of the pay and allowances for the wife and children and not more than $\frac{1}{4}^{\text{th}}$ of the pay and allowances for either wife alone or the children alone; and, (x) that if an order of a Criminal Court granting maintenance allowance is received, the case is not to be processed further. Though AFO No.03/2013 has several other details but it is not deemed apposite to burden this judgment with what is not relevant for the purposes of the present case.

9. We have thus enquired from the counsel for the petitioner, that once (a) there is a specific provision in the Air Force Act i.e. in Sections 91(i) and 92(i) thereof and to which there is no challenge, qua deduction from the pay and allowances, for payment of maintenance; (b) Rule 162, to which also there is no challenge, defines the 'prescribed officer' within the meaning of Section 92(i); and, (c) the Air Force Regulations in Regulation 917, to which also there is no challenge, provides that Air Force orders will be issued by the Chief of Air Staff, whether not the impugned AFO No.03/2013 has been issued in compliance of all the said provisions and where was the need for AFO No.03/2013 to be laid before the Parliament or to be notified/ratified in accordance with Sections 190, 191 and 191A of the Act, for challenge thereto to be made on this ground. Rather, it is found that Sections 91(i) and 92(i) vest power in the Central Government and/or in the prescribed officer to order deduction thereunder from the pay and allowances for payment of maintenance, without any guidance and all that the impugned AFO No.03/2013 does is to lay down the manner in which the deductions are to be made and other guidelines therefor. In the absence of AFO No.03/2013, the discretion/power vested in the Central Government and/or the prescribed officer under Sections 91(i) and 92(i) would be absolute and without any

limitations. We also find that AFO No.03/2013, while laying down the considerations/criteria for fixing the quantum of maintenance allowance, broadly follows the same parameters/procedure/criteria/consideration as in other statutes cited for award of and determining the quantum of maintenance.

10. The counsel for the petitioner then refers to **Major Amit Kumar Mishra** supra and contends that the AFT therein, qua the *pari materia* provisions of the Army Act and the Army Rules, has held that the powers thereunder to deduct from the salary/emoluments, can be exercised only to give effect to a decree passed by a court of competent jurisdiction granting maintenance payable by a personnel to his wife or children. The counsel for the petitioner, being fully aware that we are not bound by the order of the AFT, contends that the reasoning given by the AFT may be considered as his arguments.

11. We have perused the aforesaid order of the AFT and find the same to be in the context of Section 90(i) of the Army Act and Rule 193 of the Army Rules read with Army Order No.02/2001, whereunder the Army Authorities have power to grant maintenance independently of Section 125 CrPC and Section 24 of the Hindu Marriage Act. The AFT in the said order has observed/reasoned, (i) that the order impugned before it made provision for payment of maintenance to the extent of 5.5% of the pay and allowances of the Applicant before it, for applicant's minor daughter but it was not permissible to pass an order adversely affecting her, at her back, as she was not a party; the challenge was thus restricted only to the grant of maintenance to the extent of 22% of the pay and allowances of the applicant

in favour of the applicant's wife; (ii) that under Section 125 of the CrPC, a wife became entitled to maintenance only on establishing that she was unable to maintain herself and that her husband, inspite of having sufficient means, had neglected or refused to maintain her and the wife loses her right to maintenance if she is living in adultery, or if, without any sufficient reason refuses to live with her husband; (iii) that thus under Section 125 CrPC, maintenance could not be granted in favour of the wife till she proved so by leading evidence; (iv) that however Section 90(i) of the Army Act read with Rule 193 of the Army Rules permit deductions from pay and allowances of an Army Officer, for maintenance of his wife or child, without the wife or child satisfying any of the said conditions; (v) that the Report of the year 2015 of the Raksha Mantri's Committee of Experts had taken a view that Section 28 of the Army Act provided that the pay and allowances of persons subject to the Army Act are immune from attachment on direction of any Civil or Revenue Court in satisfaction of any decree or enforceable order; it follows that if a Civil Court allows maintenance to the wife or child of a person subject to the Army Act and the person subject to the Army Act refuses to pay the amount of maintenance, his pay and allowances cannot be attached on the orders of the Civil Court but for Section 90(i) of the Army Act whereunder in such a situation, on an award of maintenance passed by a competent court and refusal of the person against whom such order has been passed, to comply therewith, the Army Authorities can order payment of such maintenance on being approached and pursuant to which order, the amount of the maintenance can be deducted from the pay and allowances of the army personnel for satisfaction of such order of maintenance; (vi) that the Army Authorities under the Army Act

have no jurisdiction to adjudicate a claim for maintenance; (vii) that the Army Act and the Army Rules do not provide any mechanism and procedure for adjudication of claims of maintenance; (viii) that Section 191 of the Army Act empowered the Central Government to make rules for carrying into effect the provisions of the Army Act and the subjects on which rules can be framed, do not mention award of maintenance; (ix) this also indicates that the Legislature did not intend to empower the Authorities under the Army Act to adjudicate claims for maintenance of wives/children of the personnel subject to the Army Act; (x) that Note 22 (a) to Section 90(i) of the Army Act as contained in the Manual of Military Law, Volume-II also expresses the view that deductions from pay and allowances of a person subject to the Army Act are permissible only to give effect to a decree for maintenance granted by a Civil Court; (xi) that the Raksha Mantri's Committee of Experts had also recommended that grant of maintenance under the provisions of the Army Act and the Rules must be an exception and not the rule and only when an individual is not complying with the orders of the Civil Court for paying maintenance to his family under the garb of protection of Section 28 of the Army Act prohibiting attachment of pay and allowances; (xii) that the Ministry of Defence, Government of India vide communication dated 8th August, 2016 had agreed with the recommendations of the Raksha Mantri's Committee of Experts and requested all the Joint Secretaries to take immediate action on the recommendations; (xiii) that notwithstanding the same, the Army Order No.02/2001 had not been amended; and, (xiv) that the Army Order No.02/2001 was not in the nature of the Rules framed under Section 191 of the Army Act and had not been laid before the Parliament and runs contrary

to the provisions of the Army Act in so far as it says that Authorities under the Army Act have concurrent jurisdiction alongwith the Civil Court to adjudicate claims for maintenance of the wives/children of the Army personnel. The AFT Chandigarh, while holding so, differed from the judgment of the Calcutta High Court in *Vivekananda Mondal Vs. Minati Mondal* MANU/WB/0504/1997 holding that an order of maintenance by the Army Authorities does not amount to usurpation of or interference with the jurisdiction of the Civil Court.

12. Though we are not judicially reviewing the order aforesaid of the AFT Chandigarh and do not have the Army Order and the Military Manual referred to therein before us but treating the reasoning therein as the argument of the counsel for the petitioner, reject the same. The entire order is based, rather than on the statutory provisions, on the reports and recommendations of the Raksha Mantri's Committee of Experts and Notes in the Military Manual and which reports / recommendations / manual, cannot override or amend or even modify the statute. Section 28 of the Air Force Act also confers immunity to personnel of the Air Force from attachment of his pay and allowances by direction of any Civil or Revenue Court in satisfaction of any decree or order enforceable against him. If the intent of the Legislature was to exempt from such attachment, decrees or orders of payment of maintenance to wife and children of the Air Force personnel, nothing prevented the Legislature from providing so. However, the Legislature chose to confer power on the Central Government and/or the prescribed officer, to make deductions from the pay and allowances of an Air Force personnel, of any sum towards maintenance of wife and children of the Air Force personnel and made Rules and Regulations guiding the

exercise of such power. The power so vested thereunder, cannot be negated and made otiose, as has been done by the AFT. As aforesaid, if the intent was to merely carve out an exception to the immunity conferred by Section 28 from attachment of pay and allowances, there was no need to, in Sections 91 and 92, empower the Central Government and/or the prescribed officer to make deductions from pay and allowances of an Air Force personnel and the purpose would have been served by either providing an exception/proviso to Section 28 or by paraphrasing Sections 91(i) and 92(i) by providing for deductions on account of enforceable orders or decrees for payment of maintenance to wife and children. We have already noted above that AFO No.03/2013 contains the same parameters/considerations/criteria for award of maintenance and for determining quantum thereof, as in other statutes relating thereto. Just like before the Courts, the claim for maintenance can be under several statutes and orders whereunder have to be harmoniously read, so is the order of maintenance under the Air Force Act to be harmoniously read along with the orders of maintenance under other statutes. We are also unable to find in the order of the AFT, any basis for holding that it is only the Court which can award and determine the quantum of maintenance. Just like the Courts draw their power to pass orders/decrees for payment of maintenance, from the statutes mentioned hereinabove, so does the Central Government and/or the prescribed officer draw power to award maintenance to wife and children of Air Force personnel from the provisions of the Air Force Act. The legislative framework pleaded by the counsel for the petitioner includes the Air Force Act and merely because there are other statutes also whereunder the wife and children can seek maintenance before the Courts against the husband/father, is no reason to

hold that the authorities under the Air Force Act are not so authorised. We may also mention that the order of the AFT Chandigarh is only in the context of maintenance to a wife; the order of maintenance in the present case is only for the minor son of the petitioner and not for the wife of the petitioner. For this reason also, the reasoning given therein, is not applicable. The minor son of the petitioner, in whose favour the impugned order of deduction of maintenance from the pay and allowances of the petitioner has been made, is not a party to the present petition also and if the petitioner were to rely thereon, the petition is liable to be dismissed on this ground alone.

13. We next take up the plea in the petition, of the Air Force personnel being discriminated against vis-a-vis civilians, orders for payment of maintenance to wife and children whereagainst can be passed only by the Courts and not by the Central Government or the prescribed officer, though the counsel for the petitioner has in his verbal address before us not canvassed the same. However it is obvious that the said plea also flows from the order of AFT Chandigarh.

14. While taking the said plea, certain other privileges conferred on the Air Force personnel, as under Section 28 providing immunity from attachment of pay and allowances or as under Section 32 providing priority in respect of litigation or as under Section 29 providing immunity from arrest for debt, are ignored. Certainly it is not open to Air Force personnel, to have the privileges not available to civilians and reject the obligations, also not imposed on the civilians. The counsel for the petitioner also forgets that while the civilians can be punished only by the Courts of the land, the

Air Force personnel can be tried and punished also by the Authorities under the Air Force Act. What is evident therefrom is, that personnel of the Air Force, form a class by themselves, distinct from the civilians. In this context, we need not go further from Sections 16 and 17 of the Air Force Act providing for all persons, enrolled as combatants, selected to hold a non-commissioned rank and subject to the Air Force Act, to be attested and which attestation is in the form of administration of oath containing a promise *inter alia* to obey all commands of any officer set over him, even to the peril of his life; Rule 9 provides the form of oath as under:

"I.....do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established and that I will as in duty bound honestly and faithfully serve in the Air Force of the Union of India, and go wherever ordered by air, land or sea and that I will observe and obey all commands of the President of the Union of India and the commands of any officer set over me even to the peril of my life".

Similar oath is required by the provisions of the Army Act and the Army Rules and of the Navy Act, 1957, to be taken by the personnel of the said Forces. The said oath taken by the defence personnel, to the said extent is different from the oath required to be taken vide Articles 60, 69, 124 and 219 of the Constitution of India by the President, Vice-President, Judges of the Supreme Court and the Judges of the High Courts respectively, none of whom swear to place their life at peril for the service of the country.

15. Certainly the defence personnel, who have sworn to place their life in peril in the service of the country, are a class apart from the civilians with whom the counsel for the petitioner wants to compare them.

16. The need for the Air Force Act to make provisions for maintenance of wife and children of the Air Force personnel, has to be seen in this light. The wife and children of a personnel of the Air Force who has sworn to put his life in peril deserve a treatment different from that of a civilian who has no obligation to sacrifice his life for the country. It cannot also be lost sight of that the Air Force personnel are mostly posted far away from civilian population and generally confined to their own camps / cantonments. All this also results in the demands and tolls of the Air Force service percolating down even to the wife and children of the Air Force personnel. The wives and children of the Air Force personnel are also associated and involved in several activities, particularly social activities of the Air Force, unlike in most of the other services.

17. Moreover, the discipline imbibed as an Air Force personnel is not only in matters pertaining to discharge of duties in the service of the country but also in making the Air Force personnel/officer, a gentleman. We are reminded of the iconic film "An Officer and a Gentleman" depicting, how the civilians view an Air Force personnel/officer and expect him to be a gentleman. Certainly, as a gentleman, the Air Force personnel is required to provide for his wife and children and the Authorities under the Air Force Act ensure so by inculcating good manners, etiquettes, moral values and habits in the Air Force personnel and for enforcement thereof.

18. We are thus unable to find any merit in the challenge by the petitioner to the AFO No.03/2013. The said AFO, by itself does not make any legislative change and only guides the exercise of discretion and power vested by Sections 91(i) and 92(i) in the Central Government and the

prescribed officer to make deductions from the salary and allowances for payment of maintenance to wife and children. The said AFO was thus not required to be notified/ratified in accordance with Sections 190, 191 and 191A of the Air Force Act.

19. Once the challenge to AFO No.03/2013 fails, the challenge if any on the merits of the impugned order dated 5th August, 2019, would lie before the AFT and not under Article 226 of the Constitution of India.

20. We may mention that the petitioner had in fact approached the Principal Bench of the AFT but subsequently withdrew the OA filed before the AFT. All that we can say is that the challenge before this Court is totally misconceived and liable to be rejected immediately.

21. While correcting this order, we also find the question to be no longer *res integra*. As far back as in **Major Jaideep Singh Sandhu Vs. Union of India** 1995 SCC OnLine Del 357, the Division Bench of this Court, concerned with a challenge to the order of maintenance against the petitioner therein on the ground of Note 22 of the Military Manual (relied upon also by AFT Chandigarh) to the effect that the power under Section 90(i) of the Army Act cannot be exercised unless the wife and son obtains a decree of maintenance, held (a) that Section 90(i) of the Army Act is independent of Section 28, merely conferring immunity from attachment orders of Civil or Revenue Court; (b) that the Legislature meant that the Central Government should have power of deduction even in cases where the wife and children have not been able to approach a Court; (c) that there was no justification for the restrictions imposed by Note 22 of the Military Manual on the powers under Section 90(i); (d) that in Section 90(i), there is

no such pre-condition of obtaining a decree/order of the Civil Court; (e) that this is clearly because of the legislative policy behind Section 90; (f) that the maintenance of wife and children of an Army Officer cannot be postponed till determination by the Court; (g) that to give any other interpretation would lead to untold hardship to the wife and children, if they are deserted by the officer without sufficient cause; (h) that the Courts must interpret these beneficent provisions with a view to carry out the purposes of Section 90(i); (i) that the Notes are not part of the statute or the Rules and cannot be followed if are in conflict with the statute or the statutory rule; and, (j) that Section 90 is in addition to resorting to a Civil Court.

22. We also find the question to have again arisen in ***Suneel Vs. Union of India*** AIR 2004 Delhi 95, again in the context of Army Act. Again, it was held that in view of the statutory provisions, the Authorities under the Army Act could not be debarred from making an order of maintenance in favour of wife and children of an Army personnel.

23. As far as ***Mahendra Singh Rathore*** supra cited by the counsel for the petitioner is concerned, the said order merely issues notice of the petition impugning the order of deduction from the salary of the petitioner therein under Section 92(i) of the Air Force Act read with Rule 162 of the Air Force Rules and till the next date of hearing stays the operation and effect of the said order. The said order, not recording any reasons and merely admitting the petition and granting the interim stay, only recording the contentions of the counsel for the petitioner, is on a *prima facie* view of the matter and does not constitute a precedent.

24. There is no merit in the petition.

25. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

NOVEMBER 10, 2020

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