

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

CWP 35974 of 2019 (O&M)

Date of Decision: August 18, 2021

Jasvir Kaur @ Jasbir Kaur and others	...Petitioners
Versus	
Union of India and others	... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Ms. Ekta Thakur, Advocate
for the petitioners.

Mr. Pankaj Gupta, Sr. Panel Counsel
for UOI.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through
video-conferencing on account of lockdown due to outbreak of
pandemic COVID-19.

CM 10919 of 2021

Since the application is filed in compliance of order
dated 04.08.2021, the same stands allowed. Documents
Annexures A-1 and A-2 are taken on record. Office to tag the
same as per Rules.

CWP 35974 of 2019

The present petition by way of writ in the nature of *certiorari* seeks quashment of the orders passed by the respondents in its letter dated 8th November 2019 (Annexure P-6) whereby the claim of the petitioner for family pension was stopped and they were asked to refund the amount so received. It is not displaced that the petitioner Jasvir Kaur @ Jasbir Kaur was earlier married to Joginder Singh son of late Piyara Singh out of which the petitioners No. 2 to 4 were born and as on date they are major. The husband of petitioner No. 1 and father of other petitioners was working with the Central Industrial Security Force, New Delhi, (in short '**the CISF**') and died on 06.12.1998. Respondents granted family pension vide pension payment order No. PAO/CISF/Pension/PAR/1058/98/26-28 dated 05.04.1999 (Annexure P-4). As a consequence of this, petitioner No. 1 has been receiving the family pension on behalf of other children as well. It is during the course of events on 11.04.2000 petitioner No. 1, the widow of the deceased married his younger brother Naginder Pal Singh who was serving as a head constable in the CISF and who unfortunately passed away on 20.06.2019. It was by virtue of this status petitioner No. 1

started receiving family pension being widow of deceased Naginder Pal Singh. It is consequent upon the issuance of the impugned letter dated 08.11.2019 (Annexure P-6), the petitioners have come up before this Court.

The consistent stand of the respondents is that the details of the petitioner No. 1 and the family given in Form No. 14 of deceased Joginder Singh and in Form No. 3 of deceased Naginder Pal Singh do not tally and claimed that petitioner No. 1 had in fact married Naginder Pal Singh much prior to the actual death of late Joginder Singh. It is further contended that earlier petitioner No. 1 had submitted non-remarriage certificate during the November 2018 and, therefore, claim of being widow of deceased Naginder Pal Singh does not crystallizes. The respondents have sought to rely on the query of claim that Jasvir Kaur @ Jasbir Kaur had been receiving family pension for herself and the children under suppression of facts and, therefore, were entitled to refund the amount which they have received wrongly as family pension and sought dismissal of the petition.

Heard Ms. Ekta Thakur, Advocate for the petitioners and Mr. Pankaj Gupta, Sr. Panel Counsel for UOI and perused the records.

It is well writ large on the records as to the first marriage of Jasbir Kaur @ Jasvir Kaur with Joginder Singh and even whose date of death is not displaced being 06.12.1998 on the basis of which the petitioners being legal heirs of the deceased were granted family pension. It is the own stand of the respondents as well from letter dated 08.11.2019 (Annexure P-6) that after ½ years of death of Joginder Singh petitioner Jasbir Kaur @ Jasvir Kaur married his younger brother Naginder Pal Singh (now deceased) and it is primary on the reasons that the family was not entitled to family pension twice that the present dispute had arisen. In the light of the submissions of the two sides both the deceased husband of Jasbir Kaur @ Jasvir Kaur were employees with CISF and were, thus, covered under the Central Civil Services (Pension) Rules as amended in 1972. Under Rule 54 sub-rule 6 the period for which the family pension is payable in the case of widow/widower up to the date of death, in the case of a son,

until he attains age of 25 years and in case of unmarried daughter until she attains age of 25 years (now raised to 30 years) or until she gets married whichever is earlier. However, a provision has been made to this Rule which is not applicable to the case of the present petitioner and under this Rule a provision has been laid that the family pension shall be paid to the children through the guardian. Furthermore, under Chapter 10 Rule 81(3)(i) where a widow or widower is in receipt of family pension remarries and has, at the time of re-marriage, child or children from the deceased Government servant or pensioner who is or are eligible for family pension, the re-married person now shall be eligible to draw the family pension on behalf of such child or children if such pension to be granted to such child or children and further has to apply to the head office by way of Form No. 14 under the sub-rule (3)(ii).

Even under the Pension Regulations for the Army 1961 Part 1 the Government has relaxed the condition as to grant of family pension in the case of a widow who has remarried his deceased husband's brother and continues to finer life and contributed to the support of other live heirs. In the

present case both the deceased husband of petitioner No. 1 Jasbir Kaur @ Jasvir Kaur have aged father and children and, therefore, their right to family pension under the Central Civil Services (Pension) Rules, 1972 cannot be stopped. The contentions of Mr. Gupta that the children were adopted by the second husband do not cuts much ice as there is no registered deed/proof of adoption of these children of the first marriage of Jasbir Kaur @ Jasvir Kaur by her second husband Naginder Pal Singh. Moreover, the children at the relevant time were living with the widow mother who is drawing family pension on their behalf and was contributing to the support of the family and other eligible heirs and, therefore, her right to get family pension cannot be obliterated on the score that she cannot draw two family pensions. It needs to be reiterated here that even the digest of customary law by Sir William Henry Rattigan acknowledges the legality and enforceability of a 'kreva' of remarriage by a widow lady with the brother of the deceased husband which does not calls for forfeiture of the widow's estate of the property of her first husband. The term 'kreva' does not require any religious ceremonies and confer all rights

to her valid marriage popularly, such remarriages are termed as '**Chadhar Andazi**' which is quite evident in the State of Punjab and is duly acknowledged under the law. The first pension granted to petitioner Jasbir Kaur @ Jasvir Kaur was on account of her marriage with deceased Joginder Pal Singh and upon whose death the estate having been devolved upon his legal heirs and having not been disowned from the estate at any point of time a right has definitely crystallized in Jasbir Kaur @ Jasvir Kaur and other legal heirs and are thus entitled to this family pension. The second marriage which is highlighted to be a '**kreva marriage**' does not forbid right of Jasbir Kaur @ Jasvir Kaur to inherit the estate of her deceased second husband under the regulations. She too being a widow of Naginder Pal Singh is entitled to family pension on account of death of her deceased second husband which is by virtue of her status and is acknowledged under Hindu Law. Both these pensions are separate and distinct from each other emancipating from different status of the lady.

To the specific query of the Court Mr. Gupta could not convince how there has been misstatement of Jasbir Kaur

@ Jasvir Kaur or fraud perpetuated by her. It is not out of place to refer her that Jasbir Kaur @ Jasvir Kaur appears to be a semi literate lady and cannot be expected to have finer nuances of law and such provisions when the death certificates and birth certificates placed on the record do not in any manner give any inkling as to any wrong doing of Jasbir Kaur @ Jasvir Kaur. It is not displaced that Jasbir Kaur @ Jasvir Kaur by any means happens to be a guardian of the children from her first marriage and whom she is maintaining as such out of this family pension and as at no point of time ceased to be guardian of the children. Certain remissions in Form 3 of in respect of deceased Nagender Pal Singh and Form 14 in respect of Joginder Singh do not carry much relevance. The Court in exercise of its extra ordinary jurisdiction under the Constitution of India while considering such sensitive cases of paramilitary establishments/forces needs to be sensitive magnanimous in dispensation of justice and, thus, ought to have a broader approach than of a constricted one. The grant of family pension in case of deceased employees is welfare step and measure to prevent vagrancy and destituteness and in a similar situation in **Kamaljit**

Kaur Vs. Union of India 1998(1) S.C.T. 312 cited on behalf of Ms. Ekta Thakur, learned counsel for the petitioner, this Court is convinced that there is no impediment for the grant of family pension on account of death of deceased Joginder Singh first husband and Naginder Pal Singh second husband of Jasbir Kaur @ Jasvir Kaur who clearly qualifies for grant of family pension on account of these two relationships which were there in different points of time. The children would be entitled of their respective shares as per Family Pension Rules till they attain their age of bar of entitlement to this pension.

The present petition is disposed off accordingly.

August 18, 2021

amit rana

**(FATEH DEEP SINGH)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No