

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

229

CWP No.2973 of 2015 (O&M)
DATE OF DECISION: 23rd AUGUST, 2022

Nirdesh Devi

.... Petitioner

Versus

Union of India and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Chirag Kundu, Advocate,
for the petitioner.

Ms. Anita Balyan, Advocate
Senior Panel Counsel,
for the respondents-UOI.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of orders dated 06.02.2014 (Annexure P-4), 02.07.2014 (Annexure P-5) and 28.08.2002 (Annexure P-6), passed by the respondents-authorities, with certain another prayer made in the present petition.

The brief facts, as involved in the present case, are that Sepoy Ramesh Kumar of Jat Regiment suffered battle causality on 25.02.2000. About one year earlier to that, the present petitioner was married to said Ramesh Kumar. Since, there was no issue with the petitioner from the loins of her deceased-husband Ramesh Kumar,

therefore, she had adopted two children of the elder brother of her husband, namely, Nikhil studying in Class IIIrd and Nancy studying in Class IVth; in the year 2013. Even, a registered adoption deed was executed vide deed No.62 dated 05.10.2013. Thereafter both the children have been living with the petitioner as her son and daughter. The petitioner is bearing all expenses of the education of the children. The respondent-authorities had promulgated a scholar scheme dated 28.08.2002; providing scholarship for education of the children of Personnel Below Officers Rank (for short, PBOR) serving in Army. The petitioner applied for the benefit of said scholarship scheme, being widow of Sepoy Ramesh Kumar. However, the respondents had declined the claim of the petitioner. Hence, the present petition.

Arguing the case, learned counsel for the petitioner has submitted that since the children were adopted by the petitioner through a registered adoption deed, therefore, they have to be treated at par with the natural children of the petitioner and her deceased husband. Hence, being children of an PBOR ex-serviceman, they are entitled to all the benefits which are extended to the children of an ex-serviceman under the scheme promulgated by the Ministry of Defence. The respondents have wrongly discarded the claim of the children of the petitioner by relying upon the policy dated 28.08.2002 which prescribed that adopted children of such PBOR/ex-serviceman would be entitled to the benefit only in case the said children were adopted by the ex-serviceman either during the service or during his life time after his retirement. The counsel has further submitted that this policy itself is irrational and arbitrary. The exclusionary provision created by the policy is discriminatory *vis.-a-vis*.

the natural children of the ex-serviceman, as well as, the children adopted by the ex-servicemen during this life time. Hence, the policy creates an artificial difference between the two categories of children of ex-serviceman. Hence, even this clause of the policy is liable to be struck down. Learned counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Sawan Ram Versus Mst. Kalawanti and others, Civil Appeal No.728 of 1964, decided on 19.04.1967***, to submit that the adopted children have to be treated at par with the natural children of the ex-serviceman. Accordingly it is submitted that the denial of the benefit to the children of petitioner, as well as, the clause of the policy issued by the Ministry of Defence, upon which the denial is based, both are liable to be set aside.

On the other hand, learned counsel for the respondents has submitted that the benefits under the scholarship scheme are in the nature of concession over and above the rights to which the petitioner is entitled being widow of serviceman. The appropriate authority has prescribed the conditions for grant of said concession. The petitioner has to claim the concession only as per the terms of the policy; or not to claim the said concession at all. The petitioner cannot choose the provision of the policy and discard the conditions prescribed for the same. Hence, the respondents have rightly not recognized the children adopted by the petitioner after the death of ex-serviceman for the purpose of scholarship scheme. The entitlement policy issued by the Ministry of Defence specifically provides for restricting the benefits available to the children of the PBOR serviceman only to such children who were adopted by the PBOR serviceman either while he was in service or during his life time

even after his retirement. So far as the validity of the clause of the policy is concerned, learned counsel has submitted that the said clause of the policy has a reasonable nexus with the object to be achieved through the policy. The benefit is relatable to the sacrifice made or the arduous life lived by the PBOR serviceman, therefore, this benefit is supposed to be granted to all the natural or adoptive children of the ex-serviceman only. After the ex-serviceman has expired, no adoption can be made on behalf of the ex-serviceman. Therefore, this clause is fully justified and valid in the eyes of law. The counsel has further submitted that since the record of the PBOR serviceman is required to be maintained for extending benefits on account of his service and there were delays in submissions of the record or there was deluge of requests for inclusion of names in his record even after his death on the basis of marriage or adoption, therefore, to streamline the process, the said policy was issued by the Ministry of Defence in terms of limiting the time for getting the entries made in the records, as well as, for specifying the categories of persons who would be entitled to the benefits. The policy, as well as, the action of the respondents is legal and valid. Hence, the present petition deserves to be dismissed.

Before proceedings, it deserves to be noted that the scholarship scheme is one of the benefits envisaged under the policy dated 06.08.2003 which is to be extended to the children of the PBOR serviceman mentioned in Part II Orders of the Military Records. These benefits include grant of scholarship, fees, as well as, the other benefits during his life time or on account of death or permanent disability during service. However, as mentioned above, this policy restricted the benefits

to the children who were mentioned in Part II Orders of the Military Records. Therefore, it is apposite to have a reference to the clause of the policy specifying the categories of the beneficiaries meant for entry into Part II Order of the Records, which is, as given below:-

“XXXX XXXX XXXX

10. The following occurrences will be accepted and published in the NE Series of Part II Orders provided the requests are supported by the requisite documents as mentioned against each:-

<u>Ser No.</u>	<u>Occurrence</u>	<u>Supporting documents</u>
(a)	Marriage	- (i) Marriage certificate from the Registrar of Marriages, Pradhan Gram Panchayat or any other Competent Authority under the relevant law, or (ii) An Affidavit from the Ex-Serviceman sworn before a First Class Magistrate or Public Notary.
(b)	Birth of Child	- Birth certificate issued by the Registrar of Births & Deaths Municipal Corporation/Committee, Military Hospital, recognized Hospitals, Pradhan Gram Panchayat.

- (c) Death of Spouse/ Child - Death certificate issued by the Registrar of Births & Deaths Municipal Coporation/Committee or Pradhan Gram Panchyat.
- (d) Divorce - Decree of divorce from the Court of Law.
- (e) Elopement of Wife - Certificate of elopement issued by Pradhan Gram Panchayat or Municipal Corporation/Committee
- (f) Adoption of Child (only from the serving PBOR or living Ex-servicemen. Also, a person having a son or a daughter of his own cannot adopt the child of same sex as per Hindu Adoption and Maintenance Act, 1956) - Deed of Adoption from the Court of Law or such Competent Authority who is empowered to issue certificate of adoption.

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Having heard learned counsel for the parties and having perused the record, this Court does not find any substance in the arguments raised by the counsel for the petitioner. A bare perusal of the claim of the petitioner shows that the petitioner has raised a claim qua the

benefits available to her children as widow of the ex-serviceman Sepoy Ramesh Kumar. However, that benefit is available to the adopted children as mentioned in the Part II Orders of the Military Records which relates to personal occurrences in the life of military personnel. The clause 'f' of this policy shows that only the children which were adopted by the serving PBOR or a living ex-serviceman are to be recognized for the purpose of conferring benefits as children of the PBOR or the ex-servicemen; subject to the condition that the deed of adoption from the Court of Law or such Competent Authority who is empowered to issue a certificate of adoption; is placed on record. It is not even in dispute in the present case that the children of the petitioner were not adopted by Sepoy Ramesh Kumar during his life time. He had died in active service in the year 2002. The children have, undisputedly, been adopted by the petitioner herself in the year 2013. Therefore, the children of the petitioner are not covered by the policy; as such. Hence, no fault can be found with the action of the respondents in declining the claim of the petitioner. This Court also finds substance in the arguments of the counsel for the respondents that the benefits being extended to the children under the policy is in the nature of concession to the children of serving PBOR and ex-servicemen and therefore, it can be claimed and can be granted only as per the terms of the eligibility and entitlement. The petitioner has to raise a claim only on the basis of the entitlement clause of the policy. Any claim raised beyond the entitling clause of the policy would be without the sanction of law and is liable to be rejected. Accordingly, the same has rightly been rejected the respondents.

Although the counsel for the petitioner has also raised argument challenging the validity of the clause 'f' of the policy and submitted that the adopted children have to be treated at par with the natural children of the ex-serviceman in the present case, however, even this argument is liable to be noted only to be rejected. No doubt, the adoption is naturalization of the relation between the adopted child and the adoptive parent, however, that has to be restricted to the person adopting such a child. There is no provision under any law under which a dead person can adopt the child. It is equally true that adoption by single parent is not alien to law. Therefore, if after the death of husband, the widow of such a person adopts a child, then such a child has to be taken to be child of widow only; as an adoptive mother. No doubt, the child adopted by the widow would be at par with the natural child of such a widow, however, such an adoption by the widow would not relate the adopted child to the deceased husband of the widow. Hence, the adopted children of the petitioner cannot be put, at par with the natural children of the deceased Sepoy Ramesh Kumar; for the purpose of the scheme of grant of scholarship and for any other benefits. So far as the validity of the clause is concerned, it is the case of the respondents that repeated requests were being made by the serving and ex-serviceman qua updating of their records, which included the record relating to Marriage, Birth of children, Death of Spouse/Child, Divorce, Elopement of wife or Adoption of children. There were suspicious claims qua adopted children. Therefore, to streamline the grant of benefits, this clause has been adopted by the respondents. Obviously, the object of grant of benefits upon the children of serving or retired military person is to

ameliorate the conditions of the children of the serving or the retired military personnel which were occasioned due to service exigencies of Military person. For that purpose, the policy has put the adopted children of the ex-serviceman; at par with the natural children of such personnel. However, the respondents-authorities are under no obligation to extend the benefits to the children which are not directly relatable to the deceased military person. Hence, the object behind the policy is having direct and intelligible relation with the object of the policy; to be achieved by it. Therefore, no fault can be found with the clause which restrict the benefits to either the natural children or the children adopted by the ex-serviceman himself whether during service or after his retirement. Hence, the policy issued by the respondents is perfectly in tune with law.

Although the counsel for the petitioner has relied upon the judgment rendered in the case of *Sawan Ram (supra)*, this Court finds that the said judgment is of no help to the case of the petitioner. In the said case, the adoption, although was after the death of the person, however, the issue related to the succession of the properties which had come to the share of the widow on account of death of her husband. Therefore, in that judgment, it was rightly held that the adopted children will have the right to succeed the properties of the deceased through their adoptive mother. However, in the present case, the issue does not relate to the succession to the properties of the deceased person, nor is he the adoptive father of the children of the petitioner, therefore, the petitioner cannot raise a claim qua the benefits made available to the restricted category of the natural or adopted children of the Army Personnel.

In view of the above, finding no merit in the present petition,
the same is dismissed.

The pending miscellaneous applications, if any, are also
disposed of as such.

23rd AUGUST, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes