

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16821 of 2021**

Smriti Verma, W/o Lt. Col. Sandeep Kumar, D/o Tarkeshwar Prasad, resident of Village- Alisarai, Post Office - Machhahi, P.S.- Sakra, Distt.- Muzaffarpur.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. The Additional Directorate-General, Discipline and Vigilance DV- 4 (A), Adjutant General's Branch, Integrated Head-Quarters, Ministry of Defence (Army), DHQPO, New Delhi- 110105.
3. The General Officer Commanding-in-Chief, Western Command, Chandimandir, PIN - 908543, C/o 56 A.P.O.
4. The Brigadier, Staff Officer (Discipline and Vigilance) For General Officer Commanding-in-Chief, Western Command, PIN- 908543, C/o 56 APO.
5. The Colonel, Staff Officer/Officiating Colonel A (Human Rights) For General Officer Commanding-in-Chief, Western Command, PIN- 908543, C/o 56 APO.
6. Lt. Col. Sandeep Kumar (IC- 61794M), S/o Late Ramchandra Prasad, resident of House No.- 455, Ward No.- 03, New Colony, Deoria, P.S.- Deoria, Distt.- Deoria (U.P.) At present posted at H.Q. 26, Artillery Brigade (A), PIN- 908026, C/o 56 APO.

... .. Respondents

**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Suman Kumar Verma, Advocate |
| For the UOI          | : | Ms. Kanak verma, CGC            |
| For the Resp. No. 6  | : | Mr. Mohit Agarwal, Advocate     |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**Date : 08-05-2023**

Heard learned counsel for the petitioner, learned counsel representing the Union of India and learned counsel for the respondent no. 6.

2. The petitioner in the present case is seeking the following reliefs:-

“(i) For issuance of a writ in the nature of certiorari quashing thereunder the letter being no. 0420/477/Stop/DV-3



dated 24.06.21 issued by the Colonel, officiating Colonel A (Human Rights) For General Officer Commanding-in-Chief, Western Command (Respondent No. 5) seeking to discontinue the Maintenance Allowance of the Petitioner by virtue of being the wife of IC-61794M Lt. Col. Sandeep Kumar (Respondent No. 6), with effect from 10<sup>th</sup> November, 2021 as a consequence of letter no. 0420/01/DV-3 dated 10.11.2020 and further letter no. 0420/stop/01/DV-3 dated 28.04.2021.

(ii) For further issuance of a writ in the nature of Certiorari quashing thereunder the letter being no. 0420/01/DV-3 dated 10.11.2020 issued by the Colonel, Staff Officer (Human Rights) for General Officer Commanding-in Chief, Western Command (Respondent No. 5) directing thereunder the petitioner to submit an affidavit in Original duly attested by Notary Public/Judicial Magistrate, 1<sup>st</sup> Class pertaining to case/cases filed by the Petitioner for maintenance allowance under any act or Code of Criminal Procedure before Civil/Criminal code in view of fresh policy/guideline/advisory notified vide the letter being no. 71902 dated 29.11.2018 issued by the Integrated Headquarters of Ministry of Defence (Army).

(iii) For further issuance of a writ quashing the letter being no. 0420/Stop/01/DV-3 dated 28.04.2021 issued by the Colonel, Colonel A (Human Rights) for General Officer Commanding-in-Chief, Western Command (Respondent No. 5) seeking thereunder discontinuation of Maintenance Allowance sanctioned earlier in favour of the Petitioner dated 20.11.2015 by virtue of being the wife of IC-61794 M Lt. Col. Sandeep Kumar (Respondent No. 6) with effect from 10.11.2021 placing reliance upon Head Quarters Western Command Letter No. 0420/01/DV-3 dated 10.11.2020.

(iv) For further issuance of an appropriate writ quashing thereunder letter no. 0420/477/Stop/DV-3 dated 26.07.2021 issued by the Colonel, Colonel A (Human Rights) for General Officer Commanding-in-Chief, Western Command (Respondent No. 5) directing the Petitioner to file a petition for grant of permanent Maintenance Allowance in Civil Court, if aggrieved, as there is no provision for grant of Maintenance Allowance after completion of finite duration of three years extendable by two years.

(v) For issuance of a writ in the nature of Mandamus or any appropriate order/direction instructing and asking thereunder the concerned Respondent/Respondents to bring on record a



copy of the Advisory on Maintenance Allowance issued vide letter no. 71902/MT/MISC/AG/DV-4A by the Integrated Head Quarters, Ministry of Defence (Army) (Respondent No. 2) as the same has not been made available to the petitioner.

(vi) To any other relief/reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”

### **Brief Facts of the Case**

3. The petitioner was married to respondent no. 6 on 19.11.2013 in accordance with the Hindu Rights and Customs. It is the case of the petitioner that soon after her arrival in the matrimonial house, demands for post-marriage dowry were made by respondent no. 6 who is serving as Major in Indian Army. This led to a matrimonial dispute between the parties. The petitioner claims that she has been ousted from the matrimonial house on 19.06.2014 and has been denied her legitimate rights to live a dignified life being wife of an Army Officer. She claims that having no source of income on her own, she chose to approach the Commanding Officer, 196 Field Regiment, C/o 56 APO by way of a letter which was handed over to Major K. K. Charan (IC 65581W) at Gurgaon which was the place of posting of respondent no. 6 at the relevant time.

4. Considering the grievance of the petitioner and the issue of financial insecurity and crisis raised by the petitioner, the Brigadier, Staff Officer (Discipline & Vigilance) issued a show



cause notice dated 13.07.2015 to respondent no. 6 in connection with grant of maintenance allowance to the petitioner.

5. It is stated that the General Officer, Commanding-in-Chief, Western Command exercised his power conferred under Sections 90(i) of the Army Act 1950 (hereinafter referred to as the 'Act of 1950') read with Rule 193 of the Rules framed thereunder and accorded a sanction for deduction of 22% per month from the salary of respondent no. 6 towards payment of maintenance to the petitioner. The copy of letter by which the maintenance has been sanctioned has been brought on records as Annexure '3' to the writ application. Learned counsel for the petitioner points out paragraph '2' of Annexure '3' which reads as under:-

“2.The deduction of maintenance allowance in respect of the wife will continue till the marriage of the lady with the officer subsists or till her death whichever is earlier.”

6. Learned counsel further submits that the petitioner lodged a first information report against her husband and in-laws giving rise to Sakra P.S. Case No. 25 of 2015 dated 20.11.2015 under Sections 341, 323, 379, 504, 498A 34 of the *Indian Penal Code and 34* of the Dowry Prohibition Act. The criminal case is still pending at the stage of trial.

7. It is stated that the respondent no. 6 has preferred a Matrimonial Case (Divorce) under Section 13(1-a) of the Hindu Marriage Act 1955 in the court of learned Principal Judge, Family



Court Deoria (U.P.) registered as Divorce Suit No. 402 of 2016 in which the petitioner has been noticed. She has appeared in the said case.

8. Learned counsel for the petitioner submits that the petitioner is a single lady having no brother and both the parents of the petitioner being a contractual teacher in the primary school in the State of Bihar are living in extremely difficult situations. Since the petitioner found it difficult to defend herself in the divorce case, she filed a transfer petition in the Hon'ble Supreme Court and her application has been allowed. The Divorce Case No. 402 of 2016 which was filed before the learned Principal Judge, Family Court, Deoria (U.P.) has been transferred to the court of learned Principal Judge, Family Court, Muzaffarpur in the State of Bihar.

9. It is stated that the respondent no. 6 moved this Court for grant of anticipatory bail in Cr. Misc. No. 29722 of 2016 and impressed upon this Court that 22% of his salary is being deducted and paid to the petitioner as maintenance with effect from 08.10.2014. He further gave an impression to this Court that the matrimonial dispute is likely to be reconciled. Taking note of these submissions, this Court granted privilege of pre-arrest bail to the respondent no. 6 vide order dated 15.05.2017 passed in Cr.



Misc. No. 29722 of 2016 (Annexure '6' to the writ application). It is further submitted that at one stage the petitioner had cleared written examination of the Bihar Judicial Service Civil Judge (Junior Division) and appeared in interview but she could not come in final select list. She was waiting her result of the Jharkhand A.P.O. Examination. It is stated that she has not yet taken up the practice of law in any court.

**Notice of Discontinuance of Maintenance**

10. It is pointed out vide letter dated 24<sup>th</sup> June, 2021 (Annexure '7' to the writ application), the Army Headquarter, Western Command informed the petitioner that the maintenance allowance granted to her shall be discontinued with effect from 10 November 10, 2021. In Annexure '7' reference has been made to the HQ Western Command letters No. 0420/01/DV-3 dt. 10 November, 2020 and 0420/Stop/01/DV-3 dt 28 April 2021 which were sent to the petitioner but it is the specific case of the petitioner that she had not received the earlier two letters. On receipt of the letter as contained in Annexure '7', the petitioner wrote to the Army Headquarter vide Annexure '8' to the writ application in which she has stated that she had not received any letters earlier.



**11.** The petitioner was later on made available the copies of the two letters but the copy of Advisory/Guidelines/Norms said to have been issued by the Additional Directorate General, (Discipline & Vigilance, DV-4(A), Adjutant General's Branch Integrated Head Quarters, Ministry of Defence (Army) letter no. 71902/MT/MISC/AG/DV-4 A dated 29.11.2018 was not served upon the petitioner.

**12.** It is stated that the petitioner was served with a letter dated 26.07.2021 by which she was intimated that there is no provision for grant of maintenance allowance after completion of finite duration of three years extendable by two years. The petitioner was given liberty to file petition for grant of permanent maintenance allowance in civil court as she had already received maintenance at the rate of 22% of the salary of her husband for a period of five years. The letter dated 26.07.2021 refers a letter dated 10.11.2020 issued by the Colonel, Staff Officer (Human Rights) For General Officer Commanding-in-Chief, Western Command whereunder the finite duration clause and its purpose has been discussed. Learned counsel for the petitioner has placed before this Court the copy of letter dated 26.07.2021 and another letter dated 20.11.2015 which are part of Annexure '10' series. It is pointed out from the letter dated 26.07.2015 that there was a



change in the policy of the respondents in the matter of grant of maintenance to the spouse of an Army Officer. Paragraph '2' and '3' of the letter dated 26<sup>th</sup> July, 2021 is quoted hereunder for a ready reference:-

“2. It is intimated that there is no provision for grant of maintenance allowance after competition of finite duration of three years extendable by two years. In your case, you have already completed period of five years from 08 October 2014 till 08 October 2019.”

“3. You may file petition for grant of permanent maintenance in civil court, if aggrieved please.”

**13.** It is submitted that what has been stated in the letter dated 26<sup>th</sup> July, 2021 is in complete conflict with the earlier letter dated 20.11.2015 wherein it is stated that the deduction of maintenance allowance shall continue till the marriage of the lady with the officer subsists or till her death whichever is earlier. Learned counsel submits that the Advisory for grant of maintenance allowance issued vide letter no. 71902 dated 29 November, 2018 has been circulated in July, 2020. Paragraph '2', '3' and '4' are as under:-

“2. Advisory on 'Grant of Maint Allce', approved by Hon'ble RM, was disseminated to all Comd Hqs for implementation. The advisory stipulates grant of maint allce for a finite duration of three yrs extendable to five yrs in case of non-finality of the judicial process. Post the dissemination of Advisory, all Comd. HQs are in receipt of numerous representations for stoppage of maint allce, wherein the payee has already been paying the same for more the five yrs.”

“3. Comments were asked from Comd. HQ's for application of finite duration clause for grant of maint allce



for cases sanctioned prior to issue of Advisory on grant of maint allce approved by Hon'ble RM fwd vide DV dte letter No 71902/MT/Expert Committee dt 29 Nov 18.

“4. Based on suggestion recd from environment following procedure is suggested to be followed for maint cases decided prior to 29 Nov 18:-

(a) Notice be issued to all affected pers highlighting approval of fresh policy by GOI wherein sanction for maint allce needs to be accorded for a duration of 3 yrs extendable to max 5 yrs. Importance of approaching Civ Court of law for final settlement of the case be emphasized.

b) The affected pers be asked to submit fresh affidavit with regard to dt of filing of Court case and present posn of the same within three months of issue of the Notice. In case of no reply is recd within stipulated time, a reminder be issued for reply within a fresh time period of two months.

(c) It is recom that after the issue of the letter to the spouse who have been getting maint allce for prior to 29 Nov 18 a pd of one yr be granted to settle the case through civ court.

(d) However, if relief is provided by the Court earlier than that, then the grant of maint allce by the Army autho, will cease immediately on occurrence of such an Order.”

**14.** Learned counsel for the petitioner submits that the petitioner has been served with a letter dated 10 November 2020 (Part of Annexure ‘10’ series) which is a notice for discontinuation of maintenance allowance and according to this notice the petitioner was called upon to file an affidavit pertaining to case(s) filed by her for maintenance under any Act or Code of Criminal Procedure before a Civil or Criminal Court. It is stated that if the affidavit is not received within three months from the date of receipt of the notice, it will be assumed that she has no inputs to forward. The maintenance allowance in such case shall be



discontinued automatically on 10<sup>th</sup> January, 2021. The copy of format of the affidavit is enclosed with this letter. Later on she was informed vide letter dated 20.04.2021 about the amendments made in paragraph 4 of the letter dated 10<sup>th</sup> November, 2020 and it was informed that in case the affidavit is not received within three months from the date of receipt of the notice, it will be assumed that she had no inputs to forward and her maintenance allowance shall automatically discontinued from 10<sup>th</sup> November, 2021.

**Challenge to the Order of discontinuance**

15. Learned counsel for the petitioner has brought to the notice of this Court the Additional relief prayed in the Interlocutory Application seeking quashing of the letter being no. 0420/477/DV-3 dated 25.08.2021 issued under the signature of Colonel a (Human Rights) for General Officer Commanding-in-Chief, Western Command (Respondent no. 5) disclosing thereunder supersession of the Head Quarters Western Command Letter No. 0420/477/DV-3 dated 20.11.2015 granting maintenance allowance in favour of the petitioner. It is submitted that on perusal of the letter dated 25<sup>th</sup> August, 2021 (Annexure '11') it would appear that the same has been issued in exercise of power under Section 90(i) of the Act of 1950 read with Rule 193 of the Rules and the earlier sanction has been discontinued with effect from 10<sup>th</sup> November, 2021 which states



that the amount already deducted but not paid to the lady will be refunded to the officer.

**16.** Learned counsel for the petitioner submits that the Army Adjutant General's Branch has issued Army Order No. 06/2020/AG/DV whereunder the matters relating to payment of maintenance allowance to wives and children of Army personnel under the Army Act has been dealt with. According to Army Order, Section 90(i) and 90(ii) read with Rule 193 of the Army Rules, empowers the competent authorities to order deduction from the pay and allowances of an officer, JCO or an OR for the maintenance of his wife and children including legitimate children. It further says that all cases for grant of maintenance allowance will be decided at the level of GOC-in-C, Command Headquarters, after due investigation and as per the channel of processing laid down in paragraph 7 of the Army Order.

**17.** It is submitted that the Army Order itself provides that powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure, 1973 or for that even under Section 24 of the Hindu Marriage Act, 1955. It states that a case of maintenance will be processed simultaneously while court proceedings are in progress and such court proceedings do not debar the Army authorities to process and



grant maintenance allowance to a petitioner subject to the conditions explained in the Army Order.

**18.** Learned counsel submits that in such circumstance, the orders sanctioning the maintenance allowance at the rate of 22% per month of the salary of the respondent no. 6 has been wrongly withdrawn on the ground that the petitioner has received the amount for a period of five years. It is submitted that the only reason for such withdrawal is that the petitioner has not filed any maintenance application before the Family Court and five years have gone. It is submitted that the Army Order itself provides that 22% of the pay allowances will be payable as maintenance of the wife.

**19.** Learned counsel submits that a copy of the Army Order has been enclosed with the counter affidavit filed on behalf of the respondent no. '6' and the same would amply demonstrate that in the case of the petitioner the sanction for payment of maintenance allowance has been withdrawn on irrelevant considerations.

**Reply on behalf of the Union of India**

**20.** A counter affidavit has been filed on behalf of Union of India (Respondent Nos. 1 to 5). It is stated that Section 90 and 91 of the Act of 1950 are reflective of Section 145 of the



Army Act 1881 of the British Times, these are the enabling provisions that were to be used to give effect to maintenance decree of a competent civil court. However, it was discovered over the years that the said enabling provisions were being started to be used as a routine and regular recourse rather than what it was meant for, i.e. exceptional provisions for exigent circulates.

**21.** According to respondent nos. 1 to 5, this routine manner of exercise of power under Section 90 and 91 of the Act of 1950 resulted in grave civil consequences since merely based upon administrative orders, without ascertaining the veracity of statements of the spouse or the financial implications on the parties, maintenance used to be ordered by the military authorities. In such circumstances the matter was flagged before a Committee of Experts constituted by the then Defence Minister which went through the issue in detail and noted that issues pertaining to grant of maintenance in marital and family disputes are essentially civil and private in nature and should be ordinarily dealt with by civil courts and statutory authorities under specific laws meant for the said purpose. The defence services do not have the wherewithal, capacity or ability to check the veracity of allegations and counter allegations in such disputes which are essentially based upon appreciation of evidence, a role that cannot



be performed by the defence services but only by a competent civil court.

**22.** Paragraph 3.2.2. by which the present issue has been flagged have been brought to the notice of this Court vide Annexure 'B' to the counter affidavit.

**23.** Learned counsel for the Union of India has relied upon the judgment of the Hon'ble Supreme Court in the case of **Belsund Sugar Co. Ltd. Vs. State of Bihar & Others** reported in **(1999) 9 SCC 620** by which a Constitution Bench of the Hon'ble Apex Court held that in cases where there are two different legislations dealing with the same subject matter and providing for two different authorities acting statutorily which are also likely to arrive at independent diverse conclusions, then in order to avoid such conflict, the general legislation must take way for specific legislation qua the overlapping subject matter.

**24.** Learned counsel has also placed a judgment in the case of **Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd.** reported in **(2008) 4 SCC 755** wherein the Hon'ble Supreme Court observed that it is a well settled law that specific law overrides general law. It is therefore, submitted that the Hindu Marriage Act 1955 provides special provision for grant of maintenance and



therefore, the same ought to have been resorted to by the petitioner in place of invoking the writ jurisdiction of this Court.

**25.** Opportunity was, though granted to the Union of India twice to file additional counter affidavit but it has not been filed. In any case, the contention of the Union of India remains the same to defend the impugned order dated 25.08.2021 (Annexure- '11').

**Stand of the Respondent No. 6.**

**26.** By filing a counter affidavit, respondent no. 6 has contested the writ application. It is submitted that the petitioner has an equally efficacious remedy under the Hindu Marriage Act, 1955, therefore, the present writ application is fit to be dismissed on the ground of alternative remedy. Learned counsel for the respondent no. 6 raised an issue of territorial jurisdiction on the ground that in this case the impugned orders have been passed by the authorities who are not sitting within the territorial jurisdiction of this Court.

**27.** At the bar, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Lt. Col. Khajoor Singh v. Union of India**, reported in **AIR (1961) SC 532**, **Alchemist Ltd. v. State Bank of Sikkim** reported in **(2007) 11 SCC 335** and **Shanti Devi v. Union of India** reported in



**(2020) 10 SCC 766 and Nawal Kishore Sharma Vs. Union of India and Others** reported in **(2014) 9 SCC 329** have been placed.

**28.** Learned counsel for respondent no. 6 submits that Sections 90 and 91 and the Act of 1950 are in the nature of a summary provisions pertaining to deduction of pay and allowances of military personnel for maintenance of their spouse. These provisions cannot be used as a routine recourse remedy under law.

**29.** This Court has noticed from the tone and tenor of the counter affidavit of the respondent no. 6 that the same is on same line and some of the paragraphs contents are verbatimly the same and advancing a similar argument and relying upon the same judgment of the Hon'ble Supreme Court on which reliance has been placed by and on behalf of the respondents Union of India. The counter affidavit of respondent no. 6 has though been sworn on 4<sup>th</sup> February, 2022 and the counter affidavit of the Union of India has been sworn on 24<sup>th</sup> February, 2022, it would appear on comparing of both the counter affidavits that they are in the same language. To this Court, therefore, it appears that either the stand of the Union of India was already leaked to respondent no. 6 or the respondent Union of India copied the submissions made by respondent no. 6 in his counter affidavit. It is for the competent



officer of respondent no. 1 to 5 to find out the truth behind it and satisfy themselves.

**Consideration**

**30.** Having heard learned counsel for the parties and on perusal of the records, this Court finds that admittedly, vide Annexure 3 to the writ application, the competent authority sanctioned grant of maintenance at the rate of 22 % per month to the petitioner from the pay and allowances of respondent no. 6. Paragraph 2 of Annexure '3' clearly states that the deduction of maintenance allowance in respect of the wife will continue till the marriage of the lady with the officer subsists or till her death whichever is earlier.

**Army Order- Procedure Prescribed**

**31.** The Army Order which has been brought on record by respondent no. 6 issued on 17<sup>th</sup> July, 2020 vide 06/2020/AG/DV clearly states the legal position whereunder it is stated that the powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure 1973 (Section 125 of the Cr.P.C.) for that matter even under Section 24 of the Hindu Marriage Act, 1954. It states that a case of maintenance will be process simultaneously while court proceeding are progressing and such court proceeding do not bar the Army



Authority to process and grant maintenance allowance to a petitioner subject to conditions explained in the said order.

**32.** This Court further finds that the procedure for allowing maintenance allowance are admittedly provided in the Army Order. It requires an affidavit from the wife about her employment, her salary and emoluments and any other independent source of income. She is also required to disclose her movable and immovable properties and any income therefrom. It is only after considering the said affidavit and on being satisfied, the officer /other than officer from whom salary deduction is to be made will be issued a show cause notice and a formal approval shall be obtained from the competent authority under Section 90(i) or 91(i) of the Act of 1950. While passing such order the reply of the officer from whose salary the deduction is to be made is to be considered.

**33.** This Court finds from one of the clauses i.e. Clause (m) that it talks of encouraging the wife to seek simultaneous redress through a court of law. It further says that the maintenance allowance will be initially granted for a finite duration, of a period of three years, while duly advising her to get the matter adjudicated through a civil court. This period may be further extended by two years in case of non finality of the judicial process for which the



applicant will be asked to submit proof at the end of three years. The practice of ensuring maintenance allowance through a court of law should be encouraged and the rational of a wife being rendered helpless in case an individual proceeds on premature retirement be advised to the lady.

**34.** It appears on a bare reading of Clause (m) of the Army Order that even as it talks of encouraging the wife to seek simultaneous redress through a court of law, it nowhere says that in case of non-filing of a maintenance case in a court of law, the maintenance allowance already granted by the competent authority in exercise of power under the Act of 1950 shall be liable to be withdrawn. So far as the case of the present petitioner is concerned, she was granted maintenance allowance vide Annexure '3' dated 2 November, 2016 with a specific stipulation that it will continue till the marriage of the lady with the officer subsists or till her death. It is not the case of the respondent no. 6 that this petitioner has got any independent source of income or has got movable or immovable properties which she had concealed at the time of making her request for grant of maintenance to the competent authority. While granting the maintenance allowance vide Annexure '3', the petitioner was never asked to seek redressal of her grievance through a court of law. She had no reason to



believe that her maintenance allowance shall be discontinued on expiry of five years period.

**35.** It appears from the records that later on an Advisory was issued in July, 2020 to all the Command Headquarters wherein it is stated that in the maintenance cases decided prior to 29<sup>th</sup> November, 2018, notice be issued to all affected persons highlighting of approval of fresh policy by GOI wherein sanction for maintenance allowance needs to be accorded for a duration of three years extendable to maximum five years and importance of approaching civil court for final settlement of the cases be emphasized. It was further directed that the affected persons be asked to submit a fresh affidavit with regard to date of filing of court cases and present position of the same within three months of issue of notice. In case of no reply is received within stipulated time, a reminder be issued for reply within a fresh time period of two months. What is finally stated in this letter no. 71902/Gtd MA 3/5yrs/AG/DV-4 (A) July 2020 is that “However, if relief is provided by the Court earlier than that, then the grant of maintenance allowance by the Army authority, will cease immediately on occurrence of such an Order.”

**36.** Again this Court finds that the communication nowhere states that where the wife has not approached the court of



law within the given period and /or where the court has not decided the application for grant of maintenance within the given period, the maintenance allowance which is being paid to a wife is to be stopped.

**A glance over the relevant provision of the Army Act 1950**

37. In the aforementioned background, when this Court examines Section 90 and 91 of the Act of 1950, it is noticed that both the sections fall under Chapter VIII with the heading ‘PENAL DEDUCTIONS’. Section 90 (i) specifically states that 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. Thus, under clause (i) there is a statutory mandate that a sum required by order of the prescribed officer to be paid for the maintenance of the wife or legitimate or illegitimate child are liable to be deducted. Similarly under Section 91 (i) applies to the person other than an officer. It is worth mentioning that the penal deductions made under Section 91 is subject to Section 94 which limits the deductions from the pay and allowance of a person made under clauses (e), (g) to (i) of Section 91. Section 94 reads as under:-

“94. Limit of certain deductions.- The total deductions from the pay and allowances of a person made under



clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.”

**38.** Since in this case the sanction has been granted by competent authority in exercise of power under Section 90(i) and 91(i) read with Rule 193 of the Rules of 1954, it would be important to note that Rule 193 provides that the prescribed officer for the purpose of Clause (i) of Section 90 and clause (i) of Section 91 shall be the Chief of Army Staff or the officer commanding the Army.

**39.** It is an admitted position in the present case that the sanction vide Annexure ‘3’ has been granted by a prescribed officer as per Rule. A bare reading of the two provisions i.e. Sections 90(i) and 91(i) of the Act of 1950 would show that these provisions have been incorporated to ensure that a wife or legitimate or illegitimate child of an officer or a person other than an officer should get minimum relief by way of maintenance. For this purpose a Prescribed Officer has been provided. The statement of objects and reasons of the Act of 1950 would reveal that the legislatures decided to revisit the the three Acts, namely, the Indian Army Act, 1911, the Indian Navy Discipline Act, 1934 and the Indian Air Force Act, 1932 with a view to make them self sufficient and complete codes in themselves. The object was to



make them as closely similar in form and arrangement of matter as the special requirements of each service might demand. One of the main objects of the revision of the Army Act is to make itself sufficient by incorporating the relevant provisions from certain other related enactments.

**40.** This Court therefore, finds that there is a purpose behind incorporating Clause (i) under Section 90 as well 91 of the Act of 1950. It provides a mechanism to the wife, legitimate and illegitimate child of an officer and a person other than an officer serving in the Army in the matter of getting relief by way of maintenance. There is no provision under the Act of 1950 providing for grant of maintenance to a wife in terms of Clause (i) of Section 90 of the Act of 1950 for a limited period of five years. Under these circumstances, the contention of the respondents that the powers conferred under Section 90 and 91 of the Act of 1950 can be invoked only in extra ordinary circumstance and when an individual is not complying with the orders of a civil court for paying maintenance to his family, is not only against the law as also against the very spirit behind grant of maintenance to a wife, legitimate or illegitimate child. Such contention if accepted by this Court would result in creating a clog over the provisions of Section 90(i) and 91(i) of the Act of 1950.



**41.** The Act of 1950 is a complete code in itself, therefore, the contention of respondents that the issue of maintenance is in the nature of a civil and a private dispute, therefore, it should be ordinarily dealt with by a civil court cannot be accepted in the present case. The procedures for grant of maintenance to a wife are duly prescribed in the Army Order, those are the same and one which are followed by a court of law. The Prescribed Officer under the Rule 193 of the Rules is well-educated having skill and ability and he is a competent officer occupying the most responsible position in the defence services, therefore, it would not be correct to take a plea that the defence services do not have the wherewithal, capacity or ability to check the veracity of allegations and counter allegations in such disputes.

**42.** In the case of **Capt. Suneel v. Union of India and others** reported in **AIR 2004 Delhi 95** the Hon'ble Division Bench of Delhi High Court held inter alia that the powers to grant maintenance under the Army Act are independent of the provisions of the Code of Criminal Procedure 1973 (Section 125 Cr.P.C.) or for that matter even under Section 24 of the Hindu Marriage Act, 1954. The Hon'ble Delhi High Court held that for this reason the respondent no. 3 in the said case instead of seeking grant of maintenance by filing an application under Section 125 Cr.P.C. or



under Section 24 of the Hindu Marriage Act, preferred to approach the Army authorities for the same. She was not debarred from claiming maintenance for herself by making an application through the Army authorities. In fact, this Court finds that what has been held by the Hon'ble Delhi High Court is duly acknowledged in the Army Order which has been brought on the record.

43. This Court therefore, finds that the impugned orders as contained in Annexure '7' and '10' series to the writ application by which a decision has been taken to discontinue the maintenance allowance of the petitioner are liable to be set-aside and those are accordingly, set-aside.

#### **Issue of Territorial Jurisdiction**

44. Learned counsel for the respondent no. 6 has raised an issue of territorial jurisdiction, however, the same is liable to be rejected at the threshold. Admittedly, the petitioner after having been allegedly ousted from matrimonial house is living with her parents at Muzaffarpur in the State of Bihar. Considering her hardship in defending herself in the Divorce Case in the Family Court of Deoria (U.P.) the Hon'ble Apex Court decided to transfer the Divorce case to the court of learned Principal Judge, Family Court, Muzaffarpur. She was getting her maintenance at Muzaffarpur which has been stopped by the impugned orders.



45. The judgments of the Hon'ble Supreme Court in the case of **Shanti Devi (Supra)** and **Nawal Kishore Sharma (Supra)** would help the contentions of the petitioner that this Court has territorial jurisdiction to entertain this case. In the case of **Shanti Devi (supra)** the Hon'ble Apex Court has been pleased to set-aside the order of this Court when the writ application filed by the petitioner who was affected by the impugned orders was not maintained. The relevant part of the judgment of the Hon'ble Apex Court in paragraph '15' is being reproduced hereunder:-

“15. The second reason given by the learned Single Judge that the petitioner ought to have filed the writ petition before the Jharkhand High Court also does not commend us. For a retiree, who is settled in Darbhanga and receiving pension at District Darbhanga, it cannot be said that it was necessary for him to file his petition in the Jharkhand High Court where his earlier writ petition was pending. The subject-matter of the earlier writ petition was entirely different and the dismissal of the writ petition does not preclude the petitioner to file subsequent writ petition in the same High Court”

46. Similarly, in case of **Nawal Kishore Sharma (Supra)**, in Paragraph '17', the Hon'ble Apex Court held as under:-

“17. We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he



was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the district of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in his native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation”

**47.** These two judgments would squarely cover the case of the petitioner. She was getting her maintenance at Muzaffarpur in the State of Bihar which has been stopped by the impugned order.

**48.** In result, this writ application is allowed. The impugned orders are quashed. The respondents are directed to pay the entire arrears as well as the current maintenance allowance subject to adjustment of amount, if any, paid by the respondent no. 6 during the intervening period to the petitioner. Subject to such order/orders as may be passed by a competent court of law, the



Respondent Nos. 1 to 5 shall act in terms of the Sanction Order as contained in Annexure ‘3’ to the writ application keeping in mind the limits within which the over all deductions are to be made from the salary and allowances of the respondent no. 6. The competent authority shall fix installment in which the arrears of maintenance shall be deducted from the salary of Respondent No. 6.

49. This Court has already held that the Act of 1950 is a complete code in itself, still the petitioner, if so advised, will be at liberty to file an application in court of law.

50. So far as the respondents are concerned, they are liable to continue with the maintenance as per Annexure ‘3’ to the writ application.

51. This writ application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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