

2023:PHHC:078868

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-379-2021 (O&M)  
Date of Decision: May 30, 2023

Harveen Kaur @ Parveen Kaur

...Petitioner

Versus

Yadwinder Kaur and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr.Sushil Sheoran, Advocate  
for the petitioner.

Mr.Ishan Cooner, Advocate for  
Mr.J.S.Cooner, Advocate  
for respondent No.1.

Mr.S.K.Sharma, Senior Panel counsel  
for respondents No.2 to 4.

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**ARCHANA PURI, J.**

The present petition under Article 227 of the Constitution of India has been filed to assail the order dated 20.01.2020 (Annexure P-5) passed by learned Court below, whereby, an application filed by the petitioner to transfer Civil Suit No.1192-2017 titled as 'Yadwinder Kaur vs. Union of India and ors.' was dismissed.

The background facts, as culled out from the paperbook, are as follows:-

That, initially, Yadwinder Kaur-respondent No.1-plaintiff had filed a suit for declaration to the effect that she is legally wedded wife of

CR-379-2021

Sukhwinder Singh (Sepoy No.3391371P) and is eligible to receive all the pensionary benefits of late Sukhwinder Singh and further also, sought issuance of mandatory direction to respondents No.2 to 6, who were defendants No.1 to 5, to release all the pensionary benefits and pension payment order to respondent No.1-plaintiff. Furthermore, respondent No.1-plaintiff also sought restraint order qua respondents No.2 to 6 (defendants No.1 to 5), not to provide/release any benefit to the petitioner-defendant No.6 Harveen Kaur @ Parveen Kaur, relating to late Sukhwinder Singh.

During the pendency of the aforesaid suit, the petitioner-defendant No.6, filed application for transfer of the case, thereby, asserting that the matter involved is for grant of pensionary benefits, after the death of late Sukhwinder Singh (No.3391371P), who had earlier served in Indian Army. It is further stated in the application that this matter relates to grant of family pension and other benefits from Armed Forces and the Hon'ble Armed Forces Tribunal is having exclusive jurisdiction to try and decide the same, as per Section 14 of the Armed Forces Tribunal Act, 2007 and Armed Forces Tribunal Regional Bench Chandigarh at Chandimandir, is having territorial jurisdiction to try and adjudicate the present suit. As per Section 34 of the ibid Act, the present suit is required to be transferred to Armed Forces Tribunal Chandigarh Bench at Chandimandir, for adjudication and decision.

Reply to the said application was filed, whereby, preliminary objections were taken, thereby, disputing the maintainability of the application and also about having been filed, at belated stage and that the

question, relating to the eligibility of the plaintiff or defendant No.6, to receive the pensionary benefits of the deceased, is a complex question of adjudication between the private parties, which cannot be decided by the Armed Forces Tribunal and therefore, the Civil Court has territorial as well as competent jurisdiction to decide the complex question of law.

On merits, again it has been denied that the Tribunal has exclusive jurisdiction to try and decide the controversy, as per Section 14 of the *ibid* Act. In fact, it is averred that complex matter of civil nature is not adjudicated by the Armed Forces Tribunal, as the procedure followed by the Tribunal is generally of summary nature.

After hearing learned counsel for the parties, vide impugned order dated 20.01.2020, the aforesaid application for transfer of the case, was dismissed.

Feeling aggrieved by the aforesaid order, petitioner Harveen Kaur @ Parveen Kaur (defendant No.6) has filed the present revision petition.

Learned counsel for the parties heard.

The whole controversy between the petitioner herein and respondent No.1, relates to their entitlement to claim pension as widows of late Sukhwinder Singh (Sepoy No.3391371P), who passed away on 08.07.2016. Respondent No.1-Yadwinder Kaur had filed a suit for declaration, thereby, asserting herself to be married to Sukhwinder Singh and in the plaint, it is averred that earlier Sukhwinder Singh (since deceased) was married with Harveen Kaur @ Parveen Kaur and she left the company

CR-379-2021

of Sukhwinder Singh on 14.11.1995. Various litigation were pending between Sukhwinder Singh and defendant No.6 (present petitioner) and even, divorce petition was filed by defendant No.6 against Sukhwinder Singh. However, with the intervention of the respectables, the matter was settled between defendant No.6 and Sukhwinder Singh and thereupon, defendant No.6 i.e. present petitioner took divorce from Sukhwinder Singh, as per *biradari* customs and also executed a written affidavit on 06.09.2016, acknowledging the divorce between her and Sukhwinder Singh, to the plaintiff-respondent No.1, which is duly notarized and after taking divorce, defendant No.6, married with one Gurmeet Singh s/o Sh.Natha Singh, r/o village Shamdu, District Patiala.

After verifying about Sukhwinder Singh having obtained divorce from defendant No.6, the plaintiff-respondent No.1 got married with him on 06.07.1997 and two sons begotten from their wedlock. In the year 2011, husband of the plaintiff-respondent No.1 had filed a case regarding entitlement of the disability pension before the competent authority, which was pleased to direct defendants No.1 to 5 (Respondents No.2 to 6) to release the benefit as per policy and entitlement and as per that, Sukhwinder Singh got all the benefits. Unfortunately, Sukhwinder Singh had died on 08.07.2016. In pursuance of death of Sukhwinder Singh, respondent No.1-plaintiff, in the suit, asserts about herself to be eligible for receiving all the pensionary and other benefits of service of deceased Sukhwinder Singh.

Harveen Kaur @ Parveen Kaur was impleaded as defendant No.6 in the civil suit. After making appearance in the suit, she had filed the

application for transfer of the case, the detail whereof, has already been given aforesaid.

Thus, it is evident from the paperbook that with the demise of Sukhwinder Singh, rival claims for payment of family pension and other pensionary benefits has arisen between alleged two widows of Sukhwinder Singh.

‘Service matters’ has been defined by Section 3(o) of the ibid Act, which is herein given:-

*“(o) “service matters”, in relation to the persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950) mean all matters relating to the conditions of their service and shall include-*

*(i) remuneration (including allowances), pension and other retirement benefits;*

*(ii) tenure, including commission, appointment, enrolment, probation, confirmation, seniority, training, promotion, reversion, premature retirement, superannuation, termination of service and penal deductions;*

*(iii) summary disposal and trials where the punishment of dismissal is awarded;*

*(iv) any other matter, whatsoever,*

*but shall not include matters relating to—*

*(i) orders issued under section 18 of the Army Act, 1950 (46 of 1950) sub-section (1) of section 15 of the Navy Act, 1957 (62 of 1957) and section 18 of the Air Force Act, 1950; (45 of 1950); and*

*(ii) transfers and postings including the change of place or unit on posting whether individually or as a part of unit, formation or ship in relation to the persons subject to the Army Act, 1950 (46 of 1950) the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950);*

*(iii) leave of any kind;*

*(iv) summary court martial except where the punishment is of dismissal or imprisonment for more than three months;”*

It is evident from a plain reading of the aforesaid provision of law that all the matters relating to the conditions of service, including pension and other retiral benefits, are treated as service matters under the provisions of the Tribunal Act and the Tribunal constituted under Section 4 of the Tribunal Act, has jurisdiction to examine and adjudicate upon such matters under Section 14(1) thereof. It is true that the question whether the respondent No.1-plaintiff was a legally wedded wife and whether the present petitioner, who has been impleaded as defendant No.6 before the Court below, are entitled to family pension, would depend upon the circumstances spelt out, vis-a-vis, the validity of respective marriages contracted by the said two ladies with Sukhwinder Singh, but however, the question, as to whether such marriages, were in accordance with law, is an incidental question, which would require to be adjudicated upon, in terms of the provisions of the Act. At any rate, whether or not, a disputed question of fact agitated before the Tribunal could be resolved by the Tribunal, in the proceedings under the Act, is a matter to be considered. In this regard, suffice to make reference to the decision rendered by the Hon’ble Supreme Court in *Civil Appeal No.10834 of 2014, titled as ‘Chinta Devi vs. Union of India and ors., decided on 08.12.2014*, wherein, on identical facts, where, there was dispute between two widows, to lay hand on the pensionary benefits of one Ved Prakash, was considered and therein, it was held that the case ought to be examined by the Tribunal. The appeal was allowed,

affirming the order passed by learned Single Judge, *vis-a-vis*, transfer of the case to the Armed Forces Tribunal, for hearing and disposal. In these terms only, the appeal was allowed.

As already observed aforesaid, the controversy in the present case, relates to the status of respondent No.1-plaintiff Yadwinder Kaur and petitioner-defendant No.6 Harveen Kaur @ Parveen Kaur, who assert themselves to be the wives of Sukhwinder Singh (since deceased). This question, with regard to the marital status of two women, claiming themselves to be widows of Sukhwinder Singh, as such, can be resolved by the Tribunal, in the proceedings under the Act. Precisely, on this account, the revision petition is hereby accepted and the impugned order, *vis-a-vis*, dismissal of the application, for transfer of the case to the Armed Forces Tribunal, is set aside.

Resultantly, the application for transfer of the case is accepted and ‘*Civil Suit No.1192-2017 titled as ‘Yadwinder Kaur vs. Union of India and ors.’* stands transferred to Armed Forces Tribunal Chandigarh Bench at Chandimandir. The Registry is directed to keep a copy of the complete record and transmit the originals to the Tribunal, which shall proceed, in accordance with law, being uninfluenced by any observation made aforesaid.

May 30, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No