

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

CR-1210-2023(O&M)

Date of decision:-23.2.2023

Bimla Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.S.R. Hooda, Advocate
for the petitioner.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that one Dinesh Kumar, who was serving as a Conductor in Haryana Roadways had unfortunately expired on 7.7.2019, leaving behind his mother Smt.Bimla Devi, widow-Seema as well as two minor daughters, namely, Lakshita and Bhavya. After his death, monetary benefits were to be paid to his family. The mother of the deceased, namely, Smt.Bimla Devi had filed a suit for declaration and permanent injunction against State of Haryana, General Manager, Haryana Roadways, Ballabgarh as well as widow and minor daughters of deceased Dinesh Kumar. In that suit, she had filed an application for grant of ad interim injunction for restraining defendants No.1 and 2 from disbursing the monetary benefits of Dinesh Kumar in favour of his widow and minor daughters. The application was resisted by defendants No.3 to 5.

2. Such application was dismissed by the trial Court vide the

impugned order dated 1.2.2021. For ready reference, the operative part of the order is being reproduced as under:

Plaintiff is claiming her right on the basis of the Succession Act making mother a Class-I heir. However, the Haryana Civil Services (Pension) Rules, 2016 and the Family Pension Scheme, 1964 excludes mother in the presence of widow and minor children from claiming any benefit. Mother is entitled only when the deceased employee has not left behind neither his widow nor his children. The definition of family as envisaged in Haryana Civil Services (Pension) Rule, 2016 in Section 8(10) excludes the mother in the presence of widow and minor children. Therefore, there is no right vested in plaintiff to seek the monetary benefits on account of death of her son. Also, the judgments relied by plaintiff are totally discernible from the facts of this case. Plaintiff has also not assisted the court with any other Rules in his favour. Accordingly, ad-interim injunction stands declined.

3. Feeling aggrieved, the plaintiff had preferred an appeal before District Judge, Rohtak, which was also dismissed vide order dated 17.10.2022.

4. Such orders left the plaintiff aggrieved and she has approached this Court by way of filing the present revision petition.

5. I have heard learned counsel for the petitioner besides going through the record.

6. The revision petitioner/plaintiff Smt.Bimla Devi is seeking stoppage of disbursement of monetary benefits to widow of the deceased

alleging that she has contracted a second marriage, as such she has no right to receive such benefits. The second ground taken by her is that since the plaintiff is one of the Class-1 legal heir of the deceased, she has got a right in such benefits but respondents No.1 and 2 are adamant to release such benefits to respondents No.3 to 5 only.

7. The trial Court has dealt with such contentions in a very proper and appropriate manner. Firstly, there is no cogent and convincing evidence available on the record at this stage to show that respondent No.3 has contracted a second marriage. The photographs placed on file by the revision petitioner in support of this contention merely show that respondent No.3 is wearing a garland along with a male person; similarly having a garland around his neck. That is not sufficient to reach the conclusion that respondent No.3 has contracted a marriage with the person seen standing with her in the picture with garland to be around his neck. The revision petitioner is also relying upon a certificate said to have been issued by Sh.Surender Singh, Sarpanch of Gram Panchayat village Rawalwas Kalan, District Hisat but such certificate is yet to be proved. Similarly photographs are required to be proved in accordance with law and only then some reliance can be placed on photographs as well as certificate. Even otherwise, this certificate by the Sarpanch of the Gram Panchayat is not enough to show that respondent No.3 Seema has got re-married with some other person. In the impugned order, the trial Court has considered all the aspects of the case observing that though under Hindu Succession Act, the plaintiff being mother of the deceased is his Class-I heir. However, the Haryana Civil Services(Pension) Rules, 2016 and the

Family Pension Scheme, 1964 does not provide any monetary benefit to the mother, when widow and children of the deceased are there and mother is entitled only when no widow or children of deceased are there.

8. Ad interim injunction dealt with by Order 39 Rules 1 & 2 CPC is a discretionary equitable relief, which is to be granted by the Court keeping in view all the facts and circumstances including the conduct of the parties, if the necessary ingredients for grant thereof are fulfilled, to say the plaintiff having a good prima facie case, balance of convenience being in favour of the plaintiff and plaintiff suffering irreparable loss and injury in case of denial of ad interim injunction with all those ingredients existing conjunctively. If one of such ingredients is missing then relief cannot be granted.

9. In this case, the plaintiff is not shown to have a good prima facie case, balance of convenience is also not in her favour because respondents No.3 to 5 are entitled to get benefits as per rules. The plaintiff shall certainly not suffer any irreparable loss or injury in case ad interim injunction is not granted to her since if she ultimately succeeds in the suit then some amount may be got paid to her from the defendants.

10. With regard to the judgment passed by a Co-ordinate Bench of this Court in CWP-20393-2016 titled '***Swaran Kaur Versus State of Punjab and others***', the same is not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

11. The impugned orders passed by the Courts below are quite detailed and well reasoned passed in light of the rules and regulations on

the subject and those do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

12. Finding no merit in the revision petition, the same stands dismissed.

However, nothing discussion above shall have any bearing on the final merits of the case.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

23.2.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No