

CWP-16818-2018 and
CWP-29253-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 10.01.2023

1. CWP-16818-2018
SUKHWINDER SINGH

.. Petitioner

Vs.

DC-CUM-DM, HOSHIARPUR AND ORS

..Respondents

AND

2. CWP-29253-2018
KEWAL SINGH

.. Petitioner

Vs.

SUKHWINDER SINGH AND ANOTHER

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Munish Gupta, Advocate for the petitioner
in CWP-16818-2018 and
for respondent No.1 in CWP-29253-2018.

Mr. Gurpreet Singh, Addl. A.G., Punjab.

Mr. P.S. Paul, Legal Aid Counsel,
for the petitioner in CWP-29253-2018
for respondent No. 3 in CWP-16818-2018.

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Manoj Bajaj, J. (Oral)

The above writ petitions have been filed separately by son and father, respectively to challenge the order dated 22.03.2018 passed by Deputy Commissioner-cum-District Magistrate, Hoshiarpur, whereby the order dated 29.03.2016 passed by Sub-Divisional Magistrate-cum-Presiding Officer, Maintenance Tribunal, Dasuya granting maintenance of Rs.6,000/- per month to Kewal Singh (father) under Sections 4 and 23 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was modified by reducing it to Rs.2500/- per month and further directed the son to

provide one room to the parents.

Briefly, the facts leading to the writ petition are that Kewal Singh s/o Lashkar Singh brought an application under Sections 4 and 23 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 against his son, namely, Sukhwinder Singh on the ground that he constructed his residential house from his own earnings, without any contribution from respondent (son), where he along with his wife was residing, but after his son's marriage, he started giving abuses to them and turned them out of the house. The applicant's wife is suffering from a disc ailment and their son on number of occasions misbehaved with them, therefore, he prayed that the son be directed to provide him maintenance.

The petition was contested by Sukhwinder Singh, who appeared and stated that he is taking good care of his father-Kewal Singh in all respects and is providing food, clothing and other facilities. According to him, Kewal Singh being drunkard harassed him and his family. It was highlighted that his father is constructing a house upon the land of his brother, whereas the respondent is serving Indian Army and had built his house with his own income. According to Sukhwinder Singh, his father is unnecessarily causing harassment to him.

During the proceedings before the SDM-cum-Presiding Officer Maintenance Tribunal, Dasuya, Paramjit Singh and Sarpanch Baldev Singh residents of village Pandori, Tehsil Dasuya appeared and made a joint statement that the respondent Sukhwinder Singh is living in his ancestral house and his father is causing harassment to him.

After examining the parties and their statements, the SDM-cum-Presiding Officer Maintenance Tribunal, Dasuya vide order dated

29.03.2016 accepted the application of Kewal Singh and directed Sukhwinder Singh to pay a sum of Rs.6000/- p.m. to the parents.

Aggrieved against this decision, an appeal was preferred by Sukhwinder Singh and the same has been partly accepted by the Deputy Commissioner-cum-District Magistrate, Hoshiarpur vide impugned decision dated 22.03.2018. The appellate authority directed Sukhwinder Singh to spare one room for the parents in the house, where he is living and also directed him to pay a sum of Rs.2500/- p.m. towards expenses.

Aggrieved against the order passed by appellate authority, the above writ petitions have been filed by both the parties.

Mr. Munish Gupta, learned counsel for Sukhwinder Singh has argued that the application filed by father-Kewal Singh is not supported with any convincing material to establish that the son is neglecting the parents, who after serving the Army has retired. He further submits that the father being a man of bad habits had been causing harassment to the son, who did not disclose in his application that he himself is a retired Army personnel and is drawing a pension of Rs.30,000/- per month. Learned counsel has drawn the attention of the Court to the grounds of the appeal, wherein it is specifically pleaded that the respondent's father is having independent income, who is drawing two pensions from Indian Army as well as Defence Cores Services (DCS) total amounting to Rs.30,000/-. According to learned counsel, this important fact was not examined by the appellate authority though it partly accepted his appeal. Learned counsel has further pointed out that Kewal Singh had executed two sale deeds dated 02.07.2010 and 04.06.2013 and sold his immovable property against sale considerations of Rs.4,00,000/- and 11,55,000/-, respectively and this also

shows that he has sufficient means to maintain himself, whereas on the other hand, the petitioner is to take care of his two daughters and son, who are studying. According to him, the Maintenance Tribunal as well as appellate authority have not properly appreciated the material on record and erroneously proceeded to accept the claim, therefore, interference is warranted by this Court.

The prayer is opposed by learned counsel appearing on behalf of Kewal Singh, who submitted that acceptance of application moved by Kewal Singh is based upon proper appreciation of material on record, however, he is unable to rebut the stand of the learned counsel for Sukhwinder Singh that the father being a retired Army personnel is drawing pension of Rs.30,000/- per month. Mr. Paul, learned counsel has further argued that the order passed by SDM-cum-Presiding Officer, Maintenance Tribunal, Dasuya is founded upon justifiable reasons and appellate authority has without any valid reason interfered with the same and reduced the monthly maintenance from Rs.6,000/- to Rs.2,500/-. He prays that the impugned order passed by the appellate authority be set aside and the order passed by the Maintenance Tribunal, Dasuya be restored.

After hearing the learned counsel for the parties and considering their rival submissions, this Court finds that not only the father concealed the material fact of drawing pension from Army, while setting up his claim that he is unable to maintain himself, but when this fact was brought to the notice of the appellate authority by Sukhwinder Singh, the appellate authority failed to consider and address it in proper manner.

Beides, the notice of motion in writ petition No.16818 of 2018 was issued

on 19.11.2018, but no written statement has been filed by Kewal Singh,

much less to rebut the said stand taken by the son that monthly pension of Rs.30,000/- is being drawn by father. Apart from it, neither any medical record of any ailment or other evidence of any mal-treatment is produced by the father before the SDM, Dasuya and the entire claim is based upon the bald statement of Kewal Singh, whereas the Sarpanch of the village and other resident have supported the case of Sukhwinder Singh.

Moreover, when the claim was set up by Kewal Singh, the father and son were living in different houses, therefore, in this background, it is clear that the maintenance Tribunal has mechanically proceeded to accept the version of father without even referring to the other relevant material and attending circumstances. Thus, in view of above discussion, there are compelling reasons for this Court to exercise extra ordinary writ jurisdiction.

Resultantly, the impugned orders are set aside and the application filed by Kewal Singh under Sections 4 and 23 Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is dismissed. The CWP-16818-2018 filed by Sukhwinder Singh is allowed, whereas the other CWP-29253-2018 filed by Kewal Singh is dismissed.

10.01.2023
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No