

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

(226)

RSA-1047-2016

Date of Decision : April 27, 2023

Santosh Kumari

.. Appellant

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ashok Arora, Advocate, for the appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

Present Regular Second Appeal has been filed against the judgment and decree of the Courts below dated 31.10.2015 and 05.12.2015 by which, the suit filed by the appellant-plaintiff seeking the family pension and other benefits from April 2013 onwards along with interest, has been dismissed.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The husband of the appellant-Santosh Kumari namely Om Parkash son of Lal Chand, who was working as Beldar in the office of Accountant General, Haryana, unfortunately died on 10.10.1990 leaving behind his wife i.e. appellant herein. After the death of her husband, all the

service benefits for which the appellant was entitled for, were released including the family pension starting from the date of the death of the husband of the appellant-plaintiff.

The appellant-plaintiff filed a civil suit raising a grievance that starting from April 2013 onwards, her pension has been stopped and that too without any valid reason, hence, the Department be directed to release the family pension along with arrears and interest starting from April 2013 onwards.

Upon notice, the Department appeared and filed a reply that the family pension has been stopped after the Department came to know that the appellant-plaintiff had remarried and had performed a Kareva marriage after the death of her husband with Hawa Singh, who is the brother of the deceased, hence, keeping in view the rules governing the service such as i.e. Rule 6.17 which deals with the family pension, no pension is admissible to a widow, who remarries.

Keeping in view the evidence which came on record, the trial Court appreciated the same and recorded a finding that in the present case, the plea being put forward by the appellant-plaintiff that there was no Kareva marriage performed with Hawa Singh i.e. the brother of deceased employee and in fact, she is a victim of rape, out of which a child was born, hence, the withdrawal of the family pension by the Department is bad, cannot be accepted for the reason that firstly, the said Hawa Singh on whom the allegation of rape is made, is 100% disable person and secondly, no record has been placed before the Court to show that any complaint was made qua the alleged rape incident.

Further, a finding of fact has been recorded that in the school record of the child born out of the loins of the appellant-plaintiff and Hawa Singh, the name of the father has been mentioned as Hawa Singh, hence, the appellant-plaintiff has re-married after the death of her first husband, which makes her dis-entitled from the family pension from the date of marriage and the suit was dismissed by the trial Court vide order dated 31.10.2015.

Feeling aggrieved against the decision of the trial Court, an appeal was preferred, which has also been dismissed by the lower Appellate Court vide order dated 05.12.2015, hence, the present Regular Second Appeal.

Learned counsel for the appellant-plaintiff argues that in the present case, the Kareva marriage with Hawa Singh has not been proved so as to make the appellant dis-entitled for the grant of family pension starting from April 2013 onwards, hence, in the absence of any finding recorded that on which date, the marriage took place, the findings recorded by the Courts below qua the Kareva marriage of the appellant-plaintiff with Hawa Singh, is a finding which is perverse and is liable to be set aside.

It may be noticed that the assertion of the appellant-plaintiff has to be considered on the basis of the relevant facts which have gone unrebutted. The plea has been put forward by the appellant-plaintiff that she was raped by the brother of her deceased husband i.e. Hawa Singh due to which, a child was born. Now, the first question which is to be analyzed is whether a 100% disable man can commit rape as being alleged against him. Nothing has come on record to prove the said assertion by the appellant-plaintiff that she was raped by Hawa Singh. No police complaint or any other record was placed before the Court to substantiate the said allegation.

In the absence of the any evidence to prove rape, once the appellant-plaintiff is living in the same house as Hawa Singh and a child was born out of the loins of appellant-plaintiff and Hawa Singh and the name of the father in the school record of the said child has been mentioned as Hawa Singh and both the parties are living peacefully, show that there is a Kareva marriage between the parties. Hence, the assertion that the findings recorded by the Courts below are perverse, cannot be accepted.

Further, the claim of the appellant-plaintiff to continue with the family pension is to be considered in view of the rules governing the grant of family pension. Rule 6.17 of the Punjab Civil Services Rules as applicable to Haryana, which were applicable at the time of the death of the husband of the appellant-plaintiff, clearly states that the family pension will be continued to the widow or widower till the death or the re-marriage, whichever occur earlier. The said Rule has not been rebutted by the learned counsel for the appellant to be applicable upon the appellant-plaintiff.

Once the rules governing the service clearly envisage the grant of family pension upto the date of re-marriage, the claim being raised by the appellant-plaintiff in the suit has rightly been declined by the Courts below.

Further, a Coordinate Bench of this Court while passing order in ***CWP No.28008 of 2017 titled as Suman Vs. The State of Haryana and others, decided on 13.03.2020***, held that Kareva marriage is a marriage and a widow woman solemnizing Kareva marriage is not entitled to family pension. The said judgment has not been rebutted by the learned counsel for the appellant.

Keeping in view the above, in view of the facts and circumstances of the present case coupled with the rules governing the

service and settled principle of law, the findings recorded by the Courts below cannot be treated as perverse so as to need any interference by this Court in the present Regular Second Appeal and the same is accordingly dismissed.

April 27, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No