

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

(224)

RSA-2015-2014 (O&M)

Date of Decision : March 22, 2023

Savitri Devi

.. Appellant

Versus

Accountant General (A&E) Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vikas Chaudhary, Advocate, for the appellant.

Mr. Gurvinder Singh, Assistant Advocate General, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4892-C-2014

Present application has been filed for condonation of delay of 272 days in filing the appeal.

Notice of the application was given to the respondents on 26.05.2015.

Though reply to the said application has been filed but no objection qua the condonation of delay has been raised as only the facts of the present case has been mentioned qua the entitlement of the appellant for the family pension.

Keeping in view the facts and circumstances that the present Regular Second Appeal is pending for the last nine years and keeping in

view the fact that the appellant is a senior citizen seeking claim of family pension, the application for condonation of delay is allowed and delay of 272 days in filing the appeal is condoned.

CM-4893-C-2014

As prayed for, the application is allowed.

RSA-2015-2014

Present Regular Second Appeal has been filed challenging the judgment and decrees of the Court below dated 11.08.2011 and 21.01.2013 passed by the Civil Judge (Sr. Division) Fatehabad and District Judge, Fatehabad respectively by which, the claim of the appellant to be treated as legally wedded wife of Mollu Ram @ Dhan Singh son of Shri Jeewan Ram has been denied.

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

Mollu Ram was working as Assistant Sub Inspector with the Punjab Armed Police and ultimately retired from service on attaining the age of superannuation on 21.06.1969 after seeking voluntary retirement. After the retirement, he was drawing his pension and unfortunately died on 21.04.2005. After the death of Mollu Ram, the claim of the appellant-plaintiff for the grant of family pension was not accepted on the ground that at the time when Mollu Ram retired from service on 21.06.1969, in the pension papers, the name of the wife was mentioned as Nanhi Devi and not that of Savitri Devi i.e. the appellant.

As the benefit of family pension was not being allowed in the favour of the appellant, the appellant filed a civil suit claiming the benefit

that she be treated as the legally wedded wife of Mollu Ram. In the civil suit, she averred that first wife of Mollu Ram namely Nanhi Devi died on 21.05.1967 i.e. prior to the date when Mollu Ram sought voluntary retirement on 21.06.1969 and thereafter, Mollu Ram married the appellant out of which relationship, five children were born. She placed on record the ration card and other certificates wherein, Mollu Ram was described as husband of the appellant.

The civil suit filed by the appellant was dismissed by the trial Court on the ground that though certain documents have been brought on record such as ration card etc. to claim that Mollu Ram contracted the second marriage with the appellant but as the marriage between the appellant-plaintiff and Mollu Ram has not brought to the notice of the Department concerned, no relief can be given for the grant of benefit of family pension in favour of the plaintiff after the death of Mollu Ram especially when there is no record with the Department concerned, presented by Mollu Ram, that he had married the appellant-plaintiff after his retirement.

Being aggrieved against the judgment and decree of the trial Court, the appellant preferred an appeal before the lower Appellate Court, which also came to be dismissed on the same grounds. Hence, the present Regular Second Appeal.

It may be noticed that during the pendency of the present Regular Second Appeal, an application was moved by the appellant to bring on record the additional evidence. By the said evidence, the judgment and decree of the Civil Judge (Jr. Division), Fatehabad dated 25.10.2016 was

sought to be brought on record according to which, the appellant was treated as legal heir of Mollu Ram being his legally wedded wife. The said application to bring on record additional evidence was allowed by the Coordinate Bench of this Court on 13.12.2018 and the said judgment was taken on record.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the appellant submits that as of now, there is a ample evidence on record to prove that after the retirement, Mollu Ram contracted marriage with the appellant. Learned counsel for the appellant further submits that on the basis of the evidence, the competent Court of law allowed the suit filed by the appellant to be declared as a legal heir of Mollu Ram, copy of which has already been placed on record as Annexure A-2.

Learned counsel for the appellant argues that once the Competent Court of law has declared the appellant as legally wedded wife of Mollu Ram, the findings recorded by the Courts below in the present case that the appellant cannot be treated as legally wedded wife of Mollu Ram in the absence of any record with the Department, is liable to be set aside.

Learned counsel for the respondent-Department submits that though the judgment of the trial Court dated 25.10.2016 allowing the suit filed by the appellant to be treated as a legal heir of Mollu Ram being his wife, is conceded but once there was no information given by Mollu Ram to the Department concerned about his marriage with the appellant, the findings recorded by the Courts below cannot be treated to be perverse as the Department is to give family pension on the basis of the record

available, hence, the Regular Second Appeal filed by the appellant may kindly be dismissed.

The question as to whether or not the appellant is legally wedded wife of Mollu Ram so as to be entitled for the family pension after the death of Mollu Ram, needs to be decided on the basis of evidence, which has already come on record.

The judgment of the trial Court in the civil suit filed by the appellant claiming to be treated as legal heir being legally wedded wife of Mollu Ram dated 25.10.2016 is conceded fact. Once, a competent Court of law by appreciating the evidence has recorded a finding that the appellant is legally wedded wife of Mollu Ram, no further objection needs to be taken by the Department so as to consider the claim of the appellant for disbursing the family pension in her favour after the death of Mollu Ram.

The additional evidence which has been brought on record and allowed by the Coordinate Bench, makes it clear that the appellant is the legally wedded wife of Mollu Ram. Once the appellant is the legally wedded wife of Mollu Ram, she becomes entitled for the benefit of family pension after the death of Mollu Ram on 21.04.2005.

The argument which has been raised by the learned counsel for the respondents that there is no document with the Department which shows that the appellant is the legally wedded wife of Mollu Ram, hence, the Department is not obliged to consider the claim of the appellant for the grant of family pension and the same cannot be accepted. In the present case, pensioner concerned got married after retirement. Merely because, the pensioner has not submitted any document of the marriage contracted

after retirement, the claim of the spouse for family pension, cannot be rejected. Once the spouse established the right to claim family pension on the basis of the documents, the Department is under an obligation to consider the same and then pass an appropriate orders.

In the present case, once the Competent Court of law declared the appellant as legally wedded wife of Mollu Ram, the said findings makes the Department also liable to extend the benefit in favour of the appellant qua the family pension for which she becomes entitled for after the death of Mollu Ram.

Keeping in view the above, the judgments and decrees of the Courts below are set aside. The suit filed by the appellant seeking the family pension after the death of Mollu Ram is allowed. The respondents are directed to release the family pension in favour of the appellant along with the arrears from the date she became entitled for the same after the death of Mollu Ram.

Let the said consideration take place at the hands of the respondent-Department and the family pension be released to the appellant along with arrears within a period of three months from the receipt of copy of this order.

It is made clear that the appellant will continue to get the family pension during her life time.

The present Regular Second Appeal is allowed in above terms.

March 22, 2023

harsha

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes