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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4819/2023 & CM APPL.18607/2023

MRS. MAMTA

..... Petitioner

Through: Mr. Ravi Prakash, Mr. Varun
Aggarwal, Mr. Aman Rewaria,
Advocates

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Ms. Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Palak Rohmetra, Ms. Laavanya
Kaushik and Ms. Aliza Alam,
Advocates for R-1
Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Advocate for R-2

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Date of Decision: 18th April, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present writ petition has been filed challenging the letter dated 01st June, 2022, whereby the Respondent No.2 rejected the representation made by the Petitioner and communicated the decision of Respondent No.1 to deduct 50% of the family pension; the order dated 15th June, 2022 issued by Respondent No.1 to recover the alleged overpayment of family pension.

Petitioner also seeks a direction to the respondents to grant 100% family pension in favour of the Petitioner.

2. Learned counsel for the Petitioner states that the Petitioner has been given only 50% of the family pension and 50% of family pension has been transferred to the daughter of Late Mr. Harish Kumar from his first wife, namely, baby Yashika (Respondent No.3 herein), despite the fact that Late Mr. Harish Kumar got a divorce from his first wife, namely, Ms. Chitra in 2013 by way of mutual consent. He states that in terms of settlement for divorce by mutual consent, Late Mr. Harish Kumar made the arrangement for the welfare of their minor daughter (Respondent No.3) by remitting a sum of Rs. 9,00,000/- (Rupees nine lakhs only).

3. Learned counsel for the Petitioner states that the impugned orders are contrary to the provision of CCS (Pension) Rules, 2021 as the Respondent No.1 has overlooked the Rule 50 (9) (k) of CCS (Pension) Rules, 2021 and erroneously placed reliance upon the Rule 54 (7) (C) of the CCS (Pension) Rules, 1972 (presently Rule 50 (8) (f) of CCS (Pension) Rules, 2021, only).

4. Learned counsel for the Petitioner states that the Respondent No.1 has erred in not appreciating the fact that Rule 50 (8) (f) of CCS (Pension) Rules, 2021 is subject to the Rule 50 (9) (k) of CCS (Pension) Rules, 2021. He states that respondent No.1 has erred in not appreciating the fact, as per Rule 50 (9) (k) of CCS (Pension) Rules, 2021, child from first marriage will have the right over the pension only if the divorced wife has the right of pension at the time of death of the husband.

5. Per contra, learned counsel for the respondents who appears on advance notice submits that in the present case by way of the impugned orders the pension has been paid in accordance with Rule 50 (8) (f) and Rule

50 (9) (k) of the CCS (Pension) Rules, 2021 in particular its proviso. They submit that in view of the said rules, the child of the first wife is also entitled to a share of the family pension. The said Rules are reproduced hereinbelow:-

A. Rule 50 (8) (f)

“(f) Where the deceased Government servant or pensioner is survived by a widow without any child eligible for family pension but has left behind eligible child or children from a divorced wife or wives, the child or children who fulfil the eligibility conditions mentioned in sub-rule (9) shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced. On the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible in accordance with sub-rule (9), in equal shares, or if there is only one widow or child, in full, to such widow or child:

Provided that if the deceased Government servant or pensioner is survived by the widow with child or children eligible for family pension, on the share of family pension payable to the widow ceasing to be payable, such share shall be payable to her eligible child or children in accordance with clause (c) and sub-rule (9).”

B. Rule 50 (9) (k)

“(k) Where a deceased Government servant or pensioner leaves behind children from more than one widow or from a widow and a divorced wife or from a widow or a divorced wife and void or voidable marriage, the child or children who fulfil the eligibility conditions mentioned in this sub-rule shall be entitled to the share of family pension which their mother would have received at the time of the death of the Government servant or pensioner if she had been alive or if she had not been so divorced or if the marriage had not been void or voidable, as the case may be.”

6. In rejoinder, learned counsel for the petitioner states that there is a contradiction between Rule 50 (8) (f) and Rule 50 (9) (k) of the CCS (Pension) Rules, 2021.

7. Having heard learned counsel for the parties, this Court is of the view that pension has to be paid in accordance with extant law i.e. the CCS

(Pension) Rules as prevalent. By a private settlement agreement, including, a decree of divorce by mutual consent, the terms of payment of the pension cannot be altered or varied.

8. This Court is of the view that both Rule 50 (8) (f) and Rule 50 (9) (k) of the CCS (Pension) Rules, 2021 stipulate that where a deceased government servant leaves behind children from a widow and a divorced wife, the child from the divorced wife shall be entitled to a share of the family pension which his/her mother would have received at the time of death of the government servant, if she had not been so divorced. This Court also finds that there is no contradiction between the Rule 50 (8) (f) and Rule 50 (9) (k) of the CCS (Pension) Rules, 2021. Consequently, this Court finds that there is no infirmity in the impugned orders / letters.

9. Accordingly, the present writ petition along with pending application being bereft of merit is dismissed.

MANMOHAN, J

SAURABH BANERJEE, J

APRIL 18, 2023
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