

**Court No. - 42**

**Case :-** WRIT - A No. - 9354 of 2021

**Petitioner :-** Anita Singh

**Respondent :-** Union Of India Through General Manager,  
Northern Railway

**Counsel for Petitioner :-** Jagriti Singh, Ekta Kaur

**Counsel for Respondent :-** Rajnish Kumar Rai, Rajesh Tripathi

**Hon'ble Suneet Kumar, J.**

**Hon'ble Rajendra Kumar-IV, J.**

1. Heard Shri Jagriti Singh assisted by Ms. Ekta Kaur, learned counsel for the appellant and Shri Rajesh Tripathi, learned counsel for respondent Nos. 1 to 4.

2. As per office report, notice has been duly served upon the fifth respondent, however, counsel for the fifth respondent has not put in appearance.

3. The fifth respondent filed an Original Application (for short 'O.A.') challenging the communication dated 22 November 2014, issued by Chief Workshop Manager, Jagadhri, Workshop, noting therein that the fifth respondent/original applicant being a divorced wife of the deceased employee (Rajpal Singh), is not eligible to receive the settlements and payments of the late employee as she lacks the status of a wife, whereas, Smt. Anita Singh (petitioner herein) is eligible to receive the settlements and payments of her late husband under the Rules. The tribunal noted the facts, inter se, parties which is not in dispute.

4. Paragraph No. 3 and 4 is extracted:

*"3. Per applicant, brief facts of the case are that the alleged husband of the applicant entered into service of the Northern Railways in 1992. That the applicant was married with him on 26.04.1999, but, that after the marriage there was marital discord and the employee Shri Rajpal was directed vide court order dated 16.04.2009 to pay Rs. 1 Lac as compensation and Rs. 3000 per month as maintenance under the order of the competent court in a suit filed under domestic Violence and Women Protection Act, 2005 (Annexure A2) (hereinafter referred to as 'Violence Act'). That thereafter, the two were divorced through a Divorce suit filed by the husband of the applicant under Section-13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Marriage Act') vide order dated 25.05.2011 (Annexure A-3). That meanwhile an execution application was also got decreed vide order dated 16.04.2009 qua the compensation ordered under the Violence Act. That the husband of the applicant demised later on 15.05.2014 following which the applicant filed representations claiming payment of terminal benefits on the basis of nomination made by the demised husband of the applicant prior to his death*

wherein the nominations were in favour of the applicant and have remained unchanged in official records till the death of the applicant's divorced husband. The respondents rejected the claim vide the impugned order dated 22.11.2014 stating that as she is no longer the wedded wife of the demised employee having obtained divorce from him before his death. Being aggrieved with the order the instant O.A. has been filed.

4. *Per Contra* the respondents have filed a detailed counter in which the claim is denied on grounds of:

i. applicant no longer being the wife as required under rules as she got divorced from the demised employee

ii. that the rightful claimant of the retiral benefits is now respondent No. 5 (R-5), viz Anita Singh, following the marriage of R-5 with the demised employee as per Marriage Certificated dated 15.09.2013 issued by Vedic Dainik Arya Satsang, Saharanpur as also a Ration Card and LIC Policy in her favour as proof of being wife of the demised employee.

iii. that as per Railway Pension Rules, 1993, the nomination in favour of the applicant cannot be sustained as her being part of family following the divorce terminating the marriage as per Section-13 of the Marriage Act which is different legally from 'judicial separation' under Section-10 of the Marriage Act and so the retiral benefits rights made at the time of nomination under the Railway Pension Rules (hereinafter referred to as 'Pension Rules') cannot be given to the applicant as she is a divorcee and not a mere judicially separated wife as provided for in the Pension Rules.

iv. that as regards rights of maintenance under Section-125 of the CrPC the same is payable by the husband only till he is alive and no rights accrue under this section of the CrPC qua the retiral benefits.

Therefore, the applicant has no rights left for claiming the retiral benefits and so the original application should be dismissed."

5. The learned Tribunal upon examining Rule 74, Rule 941 and 943 of the Railway Services (Pension) Rules-1993; Family Pension Scheme for Railway Servants, 1964, and the other relevant circulars pertaining to the definition of 'Family' and the right and status of a divorced wife declined to enter into the dispute as to whether the fifth respondent was divorced or judicially separated, consequently, directed the petitioner herein to approach the competent court and obtain appropriate orders.

6. Paragraph 12 of the impugned order is extracted:

"12. It is therefore accordingly directed as follows:-

i. the dispute as regards to the legal status of the Respondent -5 being a legal wife as admissible under law including under Hindu Marriage Act, 1955 or otherwise shall have to be settled for which the respondent -5 will have to file

*an appropriate suit in an appropriate court/forum;*

*ii. the dispute regarding the claim of the applicant that the 'divorced wife' is same as 'judicially separated wife' has to be decided, for which the applicant will have to file a suit in a competent civil court under appropriate law; and*

*iii. Once the above disputes are settled in the competent court, then the respondents shall render the retiral benefits to the rightful legally undisputed claimant or claimants or otherwise as prescribed in Rules 70 to 74 of the Railway Pension Rules, 1993.*

*iv. Till such time steps (i) to (iii) above are completed, no pension or retiral benefits shall be paid to any of the parties in this O.A."*

7. In this backdrop, the family pension and other terminal benefits being received by the petitioner from the respondent department came to be stopped. Accordingly, the order of Tribunal is under challenge.

8. The facts, *inter se*, parties are not in dispute.

9. In the original application, it was categorically pleaded by the fifth respondent/original applicant that she is a divorcee and after divorce, her ex-husband had expired. The judgment and decree of the competent court in case No. 967/2008 (Rajpal Singh Vs. Smt. Preeti Singh), has been placed on record which was also part of the record before the Tribunal. In the judgment and decree dated 25 May 2011, the divorce suit came to be decreed under Sections 13(1)(1-Ka) of Hindu Marriage Act, 1955 (for short 'Act').

10. In other words, it was not a case of judicial separation under Section 10 of the Act. Insofar as, the rights of the petitioner having married the employee after divorce decree, is not being disputed by the respondent department, consequently, the post retiral dues admissible to her was released as per the Rules. After the impugned judgment of the Tribunal, the same has been stopped.

11. In our opinion, the learned Tribunal committed an error in relegating the petitioner to the competent civil court to obtain an appropriate order/declaration. It is the fifth respondent/original applicant who had approached the Tribunal seeking family pension and terminal benefits of her ex-husband on the strength of her being a nominee in the service record of the ex-employee. The Tribunal committed a jurisdictional error in entertaining the application of the fifth respondent. The fifth respondent categorically setup a case that she is a divorcee. In other words, she lacked the status of being the wife of her ex-husband. The divorce is duly backed by decree of the competent court which has

attained finality. The fifth respondent did not setup a case that she is judicially separated from her husband, neither, any order of the court to that effect was filed. Further, fifth respondent did not raise challenge to the status of the petitioner, the duly wedded wife of the ex-employee after obtaining divorce. In the circumstances, the fifth respondent/original applicant did not have locus to maintain the O.A. claiming family pension. The Tribunal after noticing the rules/circulars was convinced that fifth respondent is not entitled to family pension, but committed a mistake in entering into disputed facts with regard to the status of the fifth respondent/original applicant as to whether the status of 'divorced wife' would be same as a 'judicially separated wife', when that was not the case of the original applicant. She claimed that she was a divorcee duly separated by the decree of divorce. In other words, she ceased to be the wife of the ex-employee. It was not the case of the original applicant that she being judicially separated from her husband continued to be the legally wedded wife.

12. In the circumstances, there was no occasion to obtain further declaration from the civil court with regard to the status of either parties.

13. The fifth respondent, however, continued to be recorded nominee in the service record of the deceased employee is also of no assistance. In service jurisprudence, nominee, *per se*, is not entitled to family pension/ terminal benefits unless the nominee falls within the definition of family/dependents of the deceased employee. Family pension is governed as per the Rules. The persons entitled to family pension can alone be nominated and such person should be eligible to receive family pension on the date of death of the employee. Fifth respondent being the ex-wife, duly divorced, is not entitled to family pension. The status of the petitioner being the duly wedded wife of the employee is not under challenge by the respondent department or for that matter by the fifth respondent. The petitioner, accordingly, would be entitled to the family pension as against the fifth respondent being not eligible under the Rules to receive family pension. Her nomination in the service record would not have any bearing upon the entitlement of the petitioner under the Rules.

14. In the circumstances, the writ petition succeeds, accordingly, **allowed.**

15. The Original Application instituted by the fifth respondent being not maintainable for want of locus, as well as, on merit is, accordingly, **dismissed.**

16. The respondent-Union of India shall restore and release the family pension of the petitioner, forthwith. The arrears of pension admissible to the petitioner shall also be released within eight weeks from the date of supply of certified copy of this order, failing which, petitioner shall be entitled to simple interest at the rate of 7% per annum from the due date to the date of payment.

**Order Date :- 23.2.2023**

Mukesh Pal