



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

CWP No.7966 of 2021 (O&M)
Reserved on: 20.05.2024
Pronounced on : 30.05.2024

Lakhwinder Kaur

....Petitioner

Versus

Punjab State Power Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Ms. Ramandeep Kaur, Advocate
for Ms. Himani Kapila, Advocate for the petitioner.

Mr. Sukant Gutpa, Advocate
for respondents No.1 and 2.

Mr. Ranbir Singh Sekhon, Advocate
for respondents No.3 to 6.

NAMIT KUMAR J. (ORAL)

1. The petitioner has approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of mandamus, directing the respondents to consider the claim of the petitioner for release of family pension in favour of the petitioner alone as she is entitled to the same after the death of Nathwinder Singh, who died on 23.12.2011, after serving as Lineman in the office of respondent – Department and on the basis of affidavit dated 09.08.2010 (Annexure P-3), executed by deceased Nathwinder Singh and affidavits dated 17.02.2012, 15.07.2013 and 28.01.2014 (Annexures P-4 to P-6), executed by respondents No.3 to 6.



2. The brief facts of the case, as have been pleaded in the petition are that the present petitioner was married to one Sukhwinder Singh in the month of April, 1996 and out of this wedlock, she was blessed with 03 children, however, due to temperamental differences, she obtained a panchayati divorce in the month of June, 2004 in the presence of witnesses, which were duly signed/thumb-marked by the petitioner and Sukhwinder Singh and a copy of the said panchayati compromise has been annexed as Annexure P-1.

Sh. Nathwinder Singh son of Jaswant Singh, was working as a regular Lineman in the Punjab State Power Corporation Limited and was married with one Nasib Kaur and out of this wedlock, they were blessed with 04 children namely Ninder Singh, Lakhvir Singh, Sarabjit Kaur and Simarjit Kaur i.e. respondents No.3 to 6. Nasib Kaur had died on 09.11.1999 and after her death, on 22.08.2005, Nathwinder Singh solemnized second marriage with the petitioner i.e. Lakhwinder Kaur as per Sikh rites and ceremonies in the presence of common relatives as per Marriage Certificate issued by Gurudawara Dera Rishi Ashram (Annexure P-2). On the basis of the said marriage, the petitioner claims to be legally wedded wife of Nathwinder Singh. It has further been averred that Nathwinder Singh had also executed a document/affidavit dated 13.08.2005 and 09.08.2010 duly attested by Notary Public. Nathwinder Singh died on 23.12.2011, while he was in service and after his death, a dispute arose between the petitioner and respondents No.3 to 6, with regard to the service benefits of the



deceased Nathwinder Singh and with the intervention of the respectable persons of the locality, a compromise was effected between them, as a result of which, it was decided that the petitioner alone is entitled to the family pension and respondents No.3 to 6, have also furnished duly sworn affidavit of settlement/documents in favour of the petitioner and on the basis of the said documents, respondent No.4 has already joined the service on compassionate grounds on account of death of Sh. Nathwinder Singh. On the basis of the said settlement, the petitioner claimed family pension from respondents No.1 and 2 through various correspondence and personal meetings and thereafter, on 01.09.2015, respondents No.1 and 2, advised the petitioner to obtain a decree of declaration from the Civil Court regarding family pension of deceased Nathwinder Singh and consequently, the petitioner filed a civil suit for declaration before the learned Civil Judge (Jr. Division), Ferozepur, which was dismissed vide judgment and decree dated 27.02.2018 (Annexure P-8) and aggrieved against the said judgment and decree, the petitioner filed Civil Appeal No.385 of 2018, before the learned District Judge, Ferozepur, which has been withdrawn vide order dated 20.03.2019 (Annexure P-9) by the petitioner by filing an application under Order XXIII Rule 1 CPC. Thereafter, the present writ petition has been filed claiming the same relief as was claimed in the civil suit.

3. On issuance of notice of motion, respondents No.1 and 2, have appeared through Sh. Sukant Gupta, Advocate, and respondents No.3 to 6, through Sh. Ranbir Singh Sekhon, Advocate.



4. Learned counsel for the petitioner submits that the petitioner had already approached the Civil Court for claiming the same relief but however, she submits that since the said suit was dismissed and appeal preferred against the same was withdrawn as there was technical defect in the suit and appeal, therefore, there is no bar in filing the instant writ petition.

5. Per contra, Learned counsel for respondents No.1 and 2, has submitted that the present writ petition is not maintainable as for claiming the same relief, the petitioner had already approached the Civil Court by filing a civil suit, which stands dismissed vide judgment and decree dated 27.02.2018 and the appeal preferred by the petitioner against the said judgment has been withdrawn, therefore, the petitioner cannot be allowed to re-agitate the matter in present proceedings, which has already been settled by the learned Civil Court and therefore, the present writ petition suffers from the principle of res judicata.

6. I have heard learned counsel for the parties and perused the record.

7. Admittedly, the petitioner had earlier approached the Civil Court at Ferozepur, by filing a suit for declaration to the effect that she alone is entitled for family pension after the death of Nathwinder Singh, who died on 23.12.2011, with consequential relief of permanent injunction restraining defendants No.1 and 2, from releasing the family pension to proforma defendants. The said suit was adjudicated upon by the learned Civil Court and the following issues were framed:

“1) Whether the plaintiff is entitled for decree of



declaration as prayed for? OPP

2) Whether the plaintiff is entitled to the consequential relief of permanent injunction as prayed for? OPP

3) Whether the suit of the plaintiff is maintainable? OPD

4) Whether the plaintiff has got no cause of action to file the present suit? OPP

5) Whether the plaintiff has not come to court with clean hands and has concealed true, material and relevant facts from the court? OPD

6) Relief.”

8. The learned trial Court, after completion of pleadings and recording evidence decided issues No.1, 2 and 5, as follows:-

“ISSUE NO.1 & 2

XXXX XXXX XXXX XXXX XXXX

20. Admittedly, the death of Nathwinder Singh, who died in harness, is not in dispute. The bone of contention between the parties is regarding the status of plaintiff/Lakhwinder Kaur. The claim of plaintiff is that Nathwinder Singh performed second marriage with the plaintiff and therefore being legally wedded wife, she is entitled to family pension after his death from defendant/ department. On the other hand, the defendants refuted the claim of the plaintiff by taking the contention that the earlier marriage of plaintiff with one Sukhwinder Singh is still in existence, and therefore she is not legally wedded wife of Nathwinder Singh.

21. This court is of the view that the plaintiff has not been able to prove its case on the basis of the evidence so led by her. Firstly, in order to stand entitled to the benefits of Nathwinder Singh (since deceased), plaintiff was required to prove her status being a legally wedded wife of Nathwinder Singh. The plaintiff/ Lakhwinder Kaur



admitted during her cross examination as PW-1 that she was earlier married to Sukhmander Singh in the year 1996. The plaintiff strongly relied upon the alleged panchayati divorce Ex. P-2 in order to prove that the marriage between plaintiff/ Lakhwinder Kaur and Sukhmander Singh stood dissolved by way of the alleged panchayati divorce Ex. P2. However, this court is of the view that the plaintiff has not been able to prove any custom/s on the record, which acknowledged the dissolution of marriage between the parties by way of Panchayati divorce. Even otherwise, the reading of the alleged Panchayati divorce Ex. P-2, reveals that the said document pertains to one Jagdeep Kaur and Sukhmander Singh, whereas the name of the plaintiff is Lakhwinder Kaur and not Jagdeep Kaur. There is no evidence on the record to prove that Jagdeep Kaur is also known as Lakhwinder Kaur. Therefore, the said document Ex. P-5 does not relate to plaintiff Lakhwinder Kaur. Without the marriage between Plaintiff and Sukhmandar Singh stood dissolved by a decree of divorce passed by a competent court of jurisdiction, the marriage between the plaintiff Lakhwinder Kaur and Sukhmander Singh remained subsisting. As per Section 11 of Hindu Marriage Act, any such alleged second marriage of plaintiff with Nathwinder Singh is void in the eyes of law. In other words, plaintiff is not the legally wedded wife of Nathwinder Singh.

22. Further the plaintiff relied upon the document Ex. PW-6/1 executed by Nathwinder Singh in favour of Lakhwinder Kaur. The bare reading of the said affidavit reveals the fact that the entire property has been bequeathed in favour of plaintiff/Lakhwinder Kaur by Nathwinder Singh deceased by way of the alleged affidavit



Ex. PW6/1. The plaintiff also examined Satpal Goyal, Notary Public as PW-6 to prove the authenticity of alleged affidavit Ex. P-6/1. However, this court is of the view that by no stretch of construction, alleged affidavit be deemed as a will executed by Nathwinder Singh deceased in favour of Lakhwinder Kaur/plaintiff. The alleged affidavit Ex. P-6/1 is not attested by two or more attesting witnesses as required for a will as per section 63 (c) of Indian Succession Act, 1925. Moreover, the deceased Nathwinder Singh has not given any consent so far as family pension is concerned. The expression entire property can not be interpreted to mean and include pension benefits and family pension. Therefore, the reliance of plaintiff on alleged affidavit Ex. P-6/1 does not enure to benefit the case of plaintiff.

23. Further the plaintiff relied upon the affidavits Ex. PW-4/1 to Ex. PW-4/3 to prove that the legal heirs, defendants no. 3 to 6, consented in favour of plaintiff/Lakhwinder Kaur to stand entitled to family pension as per their compromise. However, this court is of the view that the defendant no. 3 to 6 can not be allowed to consent something which is not permitted under law. As per the Service law, only 'wife' is entitled to family pension as per definition of family provided under Rule 6.17 (2) Chapter 6 of Punjab Civil Services Rules (Vol. II). In the case of Raj Kumari and Another v Krishna and others; (2015) 14 SCC 511, the Hon'ble Apex Court has held that- "Normally pension is given to the legally wedded wife of a deceased employee." This court even if believed any such compromise having taken place between the parties, this court can not countenance something which is against the letter and spirit of law as plaintiff is not legally wedded



wife of Nathwinder Singh since deceased. Therefore, those affidavits Ex. PW4/1 to Ex. PW-4/3 too do not good to the case of plaintiff either.

24. Therefore, in view of the above said discussions, the plaintiff is not entitled to relief of declaration and permanent injunction as prayed for. Accordingly, issue no. 1 & 2 are decided against the plaintiff and in favour of defendants.

XXXX XXXX XXXX XXXX XXXX
ISSUE NO.5

27. The plaintiff concealed its previous marriage with Sukhmandar Singh which remained subsisting and never been dissolved. Thus the plaintiff is not legally wedded wife of Nathwinder Singh. Therefore the plaintiff came to the Court with unclean hands. The issue no.5 is accordingly decided against the plaintiff and in favour of the defendants.”

9. Thereafter, the petitioner preferred an appeal before the learned Additional District Judge, Ferozepur, which was withdrawn by the petitioner by filing an application under Order XXIII Rule 1 of CPC, vide order dated 20.03.2019, which reads thus:-

“Lakhwinder Kaur vs Punjab State
CA-385/2018
CNR No.PBFZ010046702015

Present: Sh. R.S. Sidhu, counsel for the appellant.
Pt. Ashwani Kumar, counsel for respondent.

Counsel for appellant has filed an application under order 23 Rule 1 CPC on behalf of appellant to withdraw the appeal on technical grounds to file the fresh on the same cause of action.

Counsel for appellant has also made a statement that he does not want to pursue the present



appeal since there was a technical defect in the suit and the appeal may be dismissed as withdrawn.

In view of the statement made by counsel for the appellant, the present appeal is dismissed as withdrawn. File be consigned to the record room.

Date of Order: 20-3-2019

*(Harinder K. Sidhu)
Additional District Judge,
Ferozepur.”*

10. While considering similar issue, a Division Bench of this Court in “**S.K. Mittal, Environmental Engineer vs State of Haryana**”, 1996(4) SCT 219, deprecated the practice of the litigants in first approaching the Civil Court and on denial of the claimed relief by the Civil Court, invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The relevant portion of the said judgment, reads as under:-

“In our opinion, this Court will not exercise its jurisdiction under Article 226 in a case where the petitioner had earlier approached the civil court for grant of relief on the same subject matter or any issue directly related with the subject matter of writ petition. We are also of the opinion that it would be a sound exercise of discretion not to entertain a petition filed by a person who had earlier approached the civil court by filing a civil suit and who withdrew the same at a subsequent point of time when it was felt that civil court will not grant relief by way of temporary injunction or that the injunction granted by the civil court may not subsist for long.

8. In this case, the petitioner had earlier approached the Court of Civil Judge (Senior Division), Faridabad and sought an injunction against his repatriation to the parent



department. He successfully persuaded the learned trial court to pass an order of injunction. Subsequently, he withdrew the suit on an apparent realisation that the injunction order dated 19.4.1996 may prove to be short-lived. Having availed the remedy in the civil court thinking that he could get relief from such court, the petitioner cannot now be permitted to challenge the order dated 15.3.1996 and subsequent orders issued by Government regarding his repatriation to the parent department.

9. We do not want to make any such observation which may prejudice the right of the petitioner to seek relief from the civil court against the orders Annexures P-7 and P-8 but at the same time we cannot refrain from observing that the learned Civil Judge (Senior Division), Faridabad did not at all apply his mind to the record of the case while passing order of injunction dated 19.4.1996. The grant of injunction by the learned Civil Judge (Senior Division), Faridabad ignoring the fundamental objection raised by the respondent-Board to the maintainability of the suit, namely, that the State of Haryana and PWD (Public Health Department) were necessary parties to the suit cast serious reflection on the propriety of the order of injunction passed by the learned Civil Judge.

For the reasons mentioned above, we decline to entertain the grievance of the petitioner against the orders Annexures P-7 and P-8 and dismiss the writ petition. This shall, however, not preclude the petitioner from availing the remedy before the appropriate civil court or any other forum. We also make it clear that if the petitioner makes an application for grant of temporary injunction, the competent court shall decide the same without being influenced by the observations made in this order.”



11. In the present case, admittedly the petitioner remained unsuccessful in the civil suit preferred by her for claiming the same relief and withdrew the appeal by filing an application under Order XXIII Rule 1 of CPC by stating that there was a technical defect in the suit and the appeal. Even no liberty was sought by the petitioner for filing afresh appeal before the learned Lower Appellate Court and she has filed the instant writ petition invoking the jurisdiction of this Court, seeking same relief which cannot be entertained and adjudicated upon in view of the conduct of the petitioner.

12. In view of the above and without going into the merits of the claim of the petitioner and considering the fact that the writ petition suffers from the principles of *res judicata*, no ground to entertain the present petition is made out and the same is dismissed, accordingly.

13. However, liberty is granted to the petitioner to avail the other legal remedy, if permissible under the law.

(NAMIT KUMAR)
JUDGE

30.05.2024
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No