

226 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
CWP-20321-2020 (O&M)
Date of Decision:26.02.2024

Sama Kaur

.....Petitioner

versus

Dakshin Haryana Bijli Vitaran Nigam Limited and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D.R. Bansal, Advocate with
Mr. Rahul Bansal, Advocate for the petitioner.

Ms. Sehaj Sandhawalia, Advocate for respondents.

JASGURPREET SINGH PURI J.(Oral)

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of certiorari for setting aside letter dated 10.02.2020 (P-12) and letter dated 18.05.2020 (Annexure P-13) asking the petitioner to obtain legal heir/succession certificate from the Civil Court for getting family pension with a further prayer for issuance of directions to respondents to pay family pension along-with interest.

2. The brief facts of the present case are that the petitioner is stated to be wife of one Satyavir who was working as Sub Station Attendant in the office of respondent-Dakshin Haryana Bijli Vitran Nigam Limited (hereinafter to be referred to as "Nigam") and he was stated to be married to the present petitioner on 10.06.1979. Thereafter a daughter was born in the year 1985. A matrimonial dispute arose between them and they started living separately. Thereafter, a petition under Section 125 of the Code of Criminal Procedure was filed by the petitioner in the Court of learned Judicial Magistrate Ist Class, Charkhi Dadri in the year 1999 and maintenance was

granted to the petitioner from time to time. At the time of retirement of husband of the petitioner, he had filled a performa in the service record and in the column of details of family member vide Annexure P-9 he had only mentioned the name of his daughter i.e. Babli whereas he did not mention the name of his wife because of the dispute between them. The husband of the petitioner retired from service on 30.06.2015 and thereafter he died on 10.11.2017. At the time of retirement of husband of the petitioner their daughter was of the age of 30 years and at the time of his death, she was 32 years of age. The petitioner has filed the present petition seeking not only quashing of the impugned letters/orders but also for release the family pension and all the dues along-with the interest.

2. Learned counsel for the petitioner submitted that the petitioner was married to the aforesaid Late Sh.Satyavir and due to the matrimonial dispute, at the time when he filled up the performa in service record, he did not mention the name of his wife and instead he mentioned the name of his daughter only in the column of details of family members which is so depicted in the information sought by the petitioner vide Annexure P-9. He further submitted that in the petition vide Annexure P-1 filed under Section 125 Cr.P.C. before the learned JMIC, Charkhi Dadri, the aforesaid late Sh. Satyavir had admitted the fact that petitioner is his legally wedded spouse and had rather contested the petition on merits on the ground that the petitioner was also earning some amount. Para No.2 of the aforesaid judgment is reproduced as under:-

“Notice of the petition was given to the respondent, who filed his reply admitted the fact that petitioner and respondent are legally wedded spouses. It is stated that respondent is still ready to

keep the petitioner but petitioner herself left her matrimonial home without any reasonable ground. It is alleged that petitioner is also doing stitching work and earning Rs.3,000/- per month through the said work and she can maintain herself and alleged that respondent is a petty government employee. Remaining averments of the petitioner have also been denied.”

3. Learned counsel further submitted that the aforesaid judgment passed by learned JMIC, Charkhi Dadri, has also been relied upon by the respondent-Nigam by filing the aforesaid documents alongwith their reply. He further submitted that not only the aforesaid document is enough to substantiate his case but it is also clear from the subsequent documents placed on record by respondent-Nigam as Annexures R-2 to R-5 wherein the maintenance amount which was so granted by the learned Magistrate under Section 125 Cr.P.C. was paid by the husband of the petitioner to the petitioner and rather repeatedly the amount was deducted from the salary of the husband of the petitioner which shows that the petitioner is the legally wedded wife of the aforesaid late Sh. Satyavir. He further submitted that mere fact that they were separated would not mean that the petitioner would not be entitled to the grant of pensionary benefits. He further submitted that after the death of the husband of the petitioner in the year 2017 more than 06 years have elapsed but the family pension has not been given to the petitioner and the same may be released to her forthwith.

4. On the other hand, Ms. Sehaj Sandhawalia, Advocate, appearing on behalf of the respondents-Nigam, while referring to the reply filed by respondent-Nigam, submitted that it is not in dispute that there was a matrimonial dispute between the petitioner and her husband and it is also not

disputed that the amount of maintenance which was fixed by learned Magistrate under Section 125 Cr.P.C. was deducted from the salary of the husband of the petitioner. She has also referred to various documents which have been attached along-with the reply which show that repeatedly the amount was deducted from the salary of the husband of the petitioner. She also referred to Annexure R-8 to state that even a certificate was issued by the department in which it has been so certified that husband of the petitioner was residing separately from his wife who is the present petitioner due to dispute which arose in the year 1999. She further submitted that the reasons for withholding the pension from the rightful recipient was to avoid legal complications, the Nigam had only asked the petitioner to submit a succession certificate or any order of the Civil Court that the petitioner was entitled to the grant of Family Pension which the petitioner did not submit and therefore the family pension has not been released to her.

5. I have heard learned counsel for the parties.

6. The prayer in the present petition is for quashing of the letters dated 10.02.2020 and 18.05.2020 (Annexures P-12 and P-13) whereby the petitioner has been asked to submit succession certificate or a decree passed by Civil Court for establishing her rights besides a further prayer for issuance of directions to the respondent-Nigam to fix the family pension and thereafter to release the same. So far as the status of the petitioner being wife of the aforesaid late Sh. Satyavir is concerned, a perusal of the judgment at Annexure P-1 which has also been attached as Annexure R-1 alongwith the reply, would show that when the petition filed under Section 125 Cr.P.C. was pending before the learned JMJC concerned, the husband of the petitioner had admitted that the petitioner was his legally wedded spouse and a perusal of

the para 2 of the aforesaid judgment would also show that rather the husband of the petitioner had contested the petition filed on the ground that the petitioner was doing some stitching work and earning some amount. Apart from the above, remaining documents at Annexures R-2 to R-5 would show that even the maintenance amount was recovered from the salary of the husband of the petitioner and paid to the petitioner. Even otherwise also there is nothing on record to show that marriage of the petitioner and her husband had been culminated by passing of any decree by any Court. This Court is of the view that mere fact that the petitioner was living separately would not mean that the petitioner will be dis-entitled for the grant of Family Pension. Since the Family Pension is arising out of statutory rules and is also a part of Right to Property under Article 300-A of the Constitution of India.

7. The learned counsel for the petitioner during the course of arguments also referred to the relevant rules of the Haryana Civil Services (Pensions) Rules Part-II, 2009 (hereinafter to be referred to as "Rule") which has been so reproduced in para 9 of the writ petition to show that in the definition of Family, the petitioner being widow is fully eligible/covered for grant of Family Pension and so far as the right of daughter is concerned, it is so incorporated in the aforesaid Rule that the daughter would be entitled only upto the date of her marriage/re-marriage or till the date she starts earning or till the date she attains the age of 25 years, whichever is the earliest. The aforesaid Rule is reproduced as under:-

"Definition of Family for entitlement of Family Pension

14(i) For the purpose of grant of Family Pension the family shall be categorized as under:-

Category I

(a) Widow or widower, upto re-marriage, OR, as the case may be, death if the recipient remains unmarried till death.

(b) Son/ daughter (including widowed daughter) upto the date of her/her marriage/re-marriage or till the date he/she starts earning or till the date he/she attains an age of 25 years, whichever is the earliest.”

8. During the course of arguments, learned counsel for the petitioner has submitted that at the time of the retirement of the husband of the petitioner, the daughter had already attained the age of 30 years and as such she is not entitled to the Family Pension and therefore it is only the petitioner who is entitled to the grant of Family Pension.

9. A perusal of the impugned letters dated 10.02.2020 and 18.05.2020 (Annexure P-12 and P-13) would show that the petitioner has been advised repeatedly to get the succession certificate or any decree or order of the Civil Court and the same stand has already been taken by the respondent-Nigam in their reply. However, there is no rule or any law has been so stated in the written statement or by learned counsel for the respondent-Nigam to show that the requirement of producing any succession certificate or any order of Civil Court in this regard. The statutory rules provided for grant of Family Pension to the widow is sufficient to grant the benefit and specifically in view of the fact that the relationship of the petitioner with her husband being wife is not in dispute in view of the aforesaid documents which have been attached along-with the petition. Moreover the relationship between the petitioner and her husband being husband and wife is also not disputed by the respondent-Nigam. The only reason for denial was that the petitioner must produce the

succession certificate or any order of Civil Court. This Court is of the view that the aforesaid reason is not sustainable in the eyes of law.

10. In view of the aforesaid facts and circumstances the present petition is hereby allowed. The impugned letters/orders dated 10.02.2020 and 18.05.2020 as Annexures P-12 and P-13 are hereby set aside. The respondent-Nigam is hereby directed to fix the Family Pension/retiral benefits of the petitioner and to pay the same to her within a period of three months from today alongwith interest @6% per annum.

(JASGURPREET SINGH PURI)
JUDGE

26.02.2024

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No