

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

114

CWP-30598-2018 (O&M)
Date of Decision : 28.05.2024

PARMJIT KAUR ... PETITIONER

Versus

STATE OF PUNJAB & ORS. ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

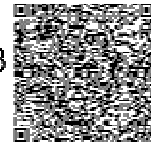
Present : Mr.Jasbir Singh Mohri, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

Mr.Sandeep Bansal, Advocate
for respondent No.7.

JAGMOHAN BANSAL, J. (Oral)

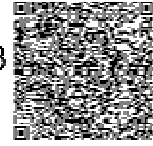
1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 26.10.2018 (Annexure P-6) whereby respondent has granted 50% of family pension to respondent No.7.
2. The respondent No.7 solemnised marriage with Gurjinder Singh on 06.12.1998. Gurjinder Singh was working with Punjab Police as Constable. The respondent No.7-Gurwinder Kaur filed a petition under Section 13 of Hindu Marriage Act, 1955 (for short '1955 Act') before Civil Court seeking divorce from Gurjinder Singh. The said petition came up for consideration before the Additional District Judge, Amritsar who vide judgment dated 26.05.2005 ordered to dissolve



marriage between Gurjinder Singh and Gurwinder Kaur. The respondent No.7 filed a petition under Section 25 of 1955 Act seeking maintenance from Gurjinder Singh. The matter came to be compromised between respondent No.7 and Gurjinder Singh. On the basis of said compromise, the respondent No.7 withdrew her petition and made a statement that she will not claim any maintenance in future.

3. Gurjinder Singh solemnized 2nd marriage with petitioner on 16.04.2006. From this wedlock, a daughter was born. Gurjinder Singh died in harness on 16.10.2012. The petitioner approached this Court seeking direction to respondents to grant her family pension. This Court vide order dated 17.04.2018 passed in CWP No.8134 of 2018 directed the Government to consider case of the petitioner for family pension. The respondent No.4 i.e. Accountant General (A & E), Punjab formed an opinion that in terms of Note-1 of Rule 6.17(4) of Punjab Civil Service Rules (Vol. II) (for short 'PCS Rules'), petitioner and respondent No.7 are entitled to family pension in equal share. Accordingly, the petitioner was granted 50% of family pension and remaining 50% was given to respondent No.7.

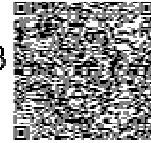
4. Mr.Jasbir Singh Mohri, Advocate submits that mandate of Rule 6.17 of PCS Rules is quite lucid. It categorically provides definition of "family". A judicially separated lady is entitled to family pension whereas respondent No.7 got divorce from her husband. The divorce was granted by Court of competent jurisdiction, thus, respondent No.7 is not entitled to family pension.



5. Per contra, Mr.Sandeep Bansal, Advocate submits that respondent No.7 is having two children from her husband Gurjinder Singh and both children are less than 25 years. They fall within definition of “family”, thus, they are entitled to family pension. The respondent No.7 at the time of adjudication of petition filed under Section 25 of 1955 Act was granted Rs.1 lakh for maintenance. The said amount was not just and reasonable, thus, despite decree of divorce, respondent No.7 is entitled to family pension. The Supreme Court in umpteen number of judgments has held that any agreement which is contrary to public policy cannot be relied upon. A divorced wife is entitled to maintenance under Section 125 of Cr.P.C. The respondent No.7 was paid Rs.1 lakh in 2009 and said amount cannot be considered as just and fair for maintenance. The respondent No.4 has rightly formed an opinion that in terms of Note-1 of Rule 6.17(4) of PCS Rules, a divorcee is also entitled to maintenance.

6. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

7. The petitioner and respondent No.7 are claiming family pension which is granted in terms of Rule 6.17 of PCS Rules. There is no dispute qua quantum of family pension and dispute is confined to distribution of said amount. The petitioner claims that respondent No.7 being divorcee is not entitled to family pension whereas respondent No.7 claims that despite divorce, she is entitled to family pension. She further claims that she may not be entitled to family pension but her children are entitled to family pension. There is no divorce of children and their right



cannot be given up.

8. Sub Rule 3 of rule 6.17 of PCS Rules defines expression “family”. It is an inclusive as well as exhaustive definition. The said Rule is reproduced as below :

(3) “Family” for purposes of this Scheme will include the following relatives of the Government employee:—

(a) wife in the case of a male Government employee and husband in the case of a female Government employee;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

(c) sons upto the age of twenty-five years;

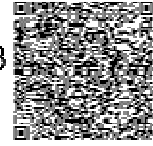
(d) daughters upto the age of twenty-five years irrespective of their marriage but unmarried daughters shall be included in the family irrespective of their age; and

(e) parents who were wholly dependent on the Government employee, when he/she was alive provided the deceased employee had left behind neither a widow nor a child.

Note 1.— (c) and (d) will include children adopted legally before retirement

Note 2.— Marriage after retirement shall be recognised for purposes of this Scheme.

9. From the perusal of above quoted rule, it is quite evident that wife is entitled to family pension and she stands at top of the list. A judicially separated wife, if the separation is not on the ground of adultery, is also entitled to family pension. Clause (b) is applicable if there is judicial separation and it is not because of adultery. It means if

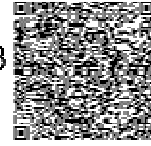


judicial separation is founded on adultery, a judicially separated wife is also not entitled to family pension.

10. The official respondents are relying upon Note-1 of Sub-rule 4 of Rule 6.17 of PCS Rules. The said Note provides that if a government employee is survived by more than one widow, the pension will be paid to them in equal shares. The said note is reproduced as below :

Note 1.—When a Government employee is survived by more than one widow, the pension will be paid to them in equal shares. On the death of a widow, her share of the pension will become payable to her eligible minor child, if at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.

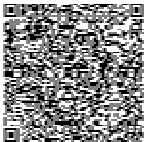
11. From the perusal of said Note, it is evident that if there are more than one widow of a government employee, they are entitled to family pension in equal share. It is apt to notice here that a Hindu or Sikh government employee cannot solemnize more than one marriage. As per the Government Employees (Conduct) Rules, 1966 if an employee solemnizes 2nd marriage during the existence of 1st marriage, it would be treated as misconduct. This Court has come across many cases where respondent has dismissed its employees on the ground of 2nd marriage. There may be two permissible widows if two marriages are permissible. That situation arises in case of Muslims because two marriages are permissible. A Government employee can solemnize 2nd marriage only if there is decree of divorce or his 1st wife has passed



away.

12. In the case in hand, the respondent No.7 filed a petition seeking divorce and her marriage was dissolved. The decree of divorce attained finality because none of the parties assailed the said decree. The respondent No.7 filed a petition under Section 25 of 1955 Act seeking maintenance. The said petition was withdrawn in view of compromise between the parties. The respondent No.7 claims that at the time of withdrawal of petition under Section 25 of 1955 Act, a meager sum of Rs.1 lakh was paid to her, thus, she is entitled to family pension in terms of different judgments of Supreme Court. All the judgments cited by respondent No.7 relate to maintenance under Section 125 of Cr.P.C. There is no judgment which deals with family pension especially specific Rule like Rule 6.17 of PCS Rules. In the case in hand, there is specific rule and expression “family” has been specifically defined, thus, this Court in the absence of challenge to validity of said rule cannot ignore the said rule. The respondent No.7 is concededly a divorcee. She had not sought judicial separation from her husband whereas she has got divorce. The divorce was not by way of mutual agreement outside the Court whereas the Court of competent jurisdiction has passed decree of divorce, thus, respondent No.7 cannot be considered as wife or judicially separated wife. She does not fall within definition of “family” as contemplated by Rule 6.17 of PCS Rules.

13. There is substance in the argument of respondent No.7 that her children are eligible to family pension. The petitioner has not made them party but it cannot detain this Court from adjudicating dispute



between the parties. Clause (c) and (d) of Sub-rule 3 of Rule 6.17 of PCS Rules provide that a son upto 25 years of age and a daughter upto age of 25 years irrespective of marriage and in case of unmarried irrespective of age shall be entitled to family pension. The respondent No.7 claims that she is having two children from her marriage with Gurjinder Singh. The petitioner does not dispute the said fact, thus, children of respondent No.7 are entitled to family pension. It is made clear that son is entitled to family pension till the age of 25 years and daughter is entitled till the age of 25 years or date of marriage whichever is later.

14. In the wake of above discussion and findings, this Court is of the considered opinion that the present petition deserves to be allowed to the extent that respondent No.7 is not entitled to family pension. The children of respondent No.7 are entitled to family pension. Accordingly, official respondents are directed to re-calculate/re-consider claim of the petitioner as well as children of respondent No.7.

(JAGMOHAN BANSAL)
JUDGE

28.05.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>