

CWP-207-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-207-2024

Decided on : 13.03.2024

Umda alias Umada

. . . Petitioner(s)

Versus

Union of India and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. PKS Phoolka, Advocate
for the petitioner(s).

Mr. Gaurav Goel, Advocate and
Mr. Rakesh Sobti, Advocate
for respondents No.2 to 5 – Chandigarh Administration.

SANJAY VASHISTH, J. (Oral)

1. Since, respondents No.2 to 5 are already appearing before this Court, notice of motion is issued hereby, and same is accepted by the learned counsel already appearing for respondents No.2 to 5.

2. Through present civil writ petition, petitioner – Umda @ Umada, aged about 53 years, has prayed for issuance of direction to the respondents for granting family pension and other consequential benefits to her, being the wife/now widow of deceased employee – Devinder Singh (retired Section Holder).

3. Learned counsel for the petitioner submits that her husband late Sh. Devinder Singh, served with respondent No.2 i.e. Printing and Stationary Department, Chandigarh, and retired on 31.01.1986, on the post of Section Holder.

However, prior to his retirement, his first wife namely; Harbhajan Kaur, had expired on 15.11.1983. Further pleads that said Devinder Singh

married the petitioner somewhere in the year 1993. After the retirement, said Devinder Singh was receiving all his retiral benefits up till the time of his death i.e. 04.09.2019.

4. Learned counsel further submits that before his death, said Devinder Singh had submitted an affidavit dated 17.10.2016, which was executed before the Executing Magistrate, Bathinda, wherein, he declared that after the death of his first wife namely; Harbhajan Singh, he remarried to Umda d/o Sh. Mohinder Singh (who is petitioner herein), and thereafter, they both are residing as husband and wife. Thus, on the basis of the affidavit dated 17.10.2016, petitioner is seeking pensionary benefits as widow of late Sh. Devinder Singh.

5. On the other hand, learned counsel Mr. Gaurav Goel, Advocate with Mr. Rakesh Sobi, Advocate, appearing on behalf of respondents No.2 to 5, raises two preliminary objections, i.e.:

(i) That for the same relief, Civil Suit i.e. CS-433-2023, was filed by the petitioner, which has already been allowed to be withdrawn vide order dated 09.09.2023, and no permission has been sought by the petitioner for approaching this High Court for filing any writ petition or to file any fresh civil suit.

and

(ii) As a matter of fact, an affidavit dated 17.10.2016, has been filed by the petitioner in the office of the answering respondents, wherein, she stated that her first marriage was with one Sh. Upinder Singh s/o Soki Singh, r/o Maghona, Distt. Khagaria, Bihar, and out of said wedlock, one son namely; Ram Vijay was born. Due to dispute with said

Upinder Singh, both the petitioner and said Upinder Singh were residing separately for the last about 24 years, and thereafter, she was residing with said late Devinder Singh s/o Surjan Singh, as his wife.

6. While making reference to the aforesaid affidavit, counsel for respondents No.2 to 5, submits that the factum of divorce from the first husband is missing in the said affidavit dated 17.10.2016, and therefore, it would be disputed question of fact, whether the petitioner would be termed as legally wedded wife of late Sh. Devinder Singh or not ?

Therefore submits that relief claimed in the present writ petition cannot be entertained in a petition filed under Article 226 of the Constitution of India. Rather, petitioner should avail any other remedy as per law for adjudication of her claim, after proving the disputed facts.

7. In response to the preliminary objections taken by learned counsel for respondents No.2 to 5, learned counsel for the petitioner submits that merely because some of the facts appear to be disputed, petitioner cannot be left remedy-less. Thus, he submits that Civil Suit i.e. CS-433-2023, had been withdrawn by seeking permission to file the writ petition before this Court, however, neither the permission is declined, nor the same is accepted.

Therefore, he is ready to withdraw the writ petition, if he is granted permission either to get his aforesaid suit revived or to file a fresh suit before the Civil Court for the same relief, which is claimed by her in the present writ petition.

8. Considering all the facts and circumstances of the case, this Court is also of the view that certain facts are under dispute. The entitlement for relief can be adjudicated only after ascertaining the authenticity of facts, i.e. whether the petitioner is legally wedded wife of late Sh. Devinder Singh or not.

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There is no dispute for the settled proposition of law that disputed facts cannot be decided in the writ jurisdiction.

9. Moreover, the petitioner cannot be left without any remedy, therefore, the prayer of the petitioner that she should be granted permission to revive the earlier civil suit or to file a fresh one before the Civil Court, appears to be genuine prayer and same seems to be permitted in the interest of justice, as well.

10. To the said prayer, counsel for respondents No.2 to 5 also agrees and undertake that if the earlier civil suit is got revived by the petitioner or a fresh one is filed for the same relief, no technical objection would be raised by the respondents regarding the maintainability of the said civil suit, under the pretext that she should approach to any other forum.

11. Be that as it may, present writ petition is **disposed of** with liberty to the petitioner to seek revival of the earlier civil suit filed by her or in alternative, she may file a fresh civil suit for the relief claimed in the present writ petition, if so advised. However, while granting the liberty, it is made clear that the earlier withdrawal of the civil suit would not be considered as a bar, by referring to the earlier civil suit or the writ petition before this Court.

Present writ petition stands **disposed of** with the observations and terms recorded here-above.

(SANJAY VASHISTH)
JUDGE

March 13, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~