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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 19.01.2024

+ W.P.(C) 876/2024

BHAGIRATHI

..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. K.P. Mavi and Mr. D.P. Singh,
Advocates.

For the Respondents : Mr. Raghvendra Upadhyay, Panel Counsel
for GNCTD with Ms. Purnima Jain and Mr.
Vaibhav Tripathi, Advocates for R-1.
Mr. Puneet Yadav, Additional Standing
Counsel for MCD.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

(The proceeding has been conducted through Hybrid Mode)

CM APPL. 3681/2024 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. This is a writ petition filed under Article 226 of the
Constitution of India, 1950 seeking issuance of a writ of Mandamus



or any other appropriate writ, order or a direction to respondent No.1 to grant family pension to the petitioner.

4. It is the case of the petitioner that the petitioner got married on 15.04.1976 with Shri Rajinder Singh – the deceased husband of the petitioner, an employee, who was working with respondent No.1 as a Sports Teacher.

5. It is also the case of the petitioner that on 02.02.1984 a male child, namely, Sunil Kumar was born from the wedlock between the petitioner and late Shri Rajinder Singh.

6. According to the petitioner, family disputes arose between the petitioner and her late husband, which led to her late husband filing a petition seeking divorce bearing HMA No. 109 of 2001 on 06.02.2001 before the Family Court at Delhi under Section 13 (1) (ia) of Hindu Marriage Act, 1955.

7. The petitioner submits that on 19.10.2001, the Family Court had dismissed in default the aforesaid divorce petition filed by the late husband. Subsequently, the late husband also filed another divorce petition bearing HMA No. 1881 of 2005 on 12.04.2005 before the Family Court under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 seeking dissolution of marriage between the parties.

8. The same was yet again dismissed on 25.07.2005. Subsequently, the petitioner had filed Civil Suit bearing CS No. 929 of 2008 (renumbered as HAMA No. 04 of 2016) under Section 18 (2) of Hindu Adoption and Maintenance Act, 1986 seeking a separate residence as a right of maintenance. She also filed a Maintenance Case No. 27 of 2009 under Section 125 Cr.P.C., 1973, whereby *vide*



the Order dated 02.01.2010, the Court had granted maintenance at the rate of Rs. 6000/- per month.

9. It is also the case of the petitioner that in the maintenance petition filed by the petitioner, the petitioner had not only cross-examined the late husband but also one Ms. Kanchan, who is stated to have admitted that she was not married to the late husband Rajinder Singh.

10. It is also the submission of the petitioner that even her late husband had also admitted that he was not married to Ms. Kanchan, nor did she bear any children from him.

11. Learned counsel for the petitioner inviting attention of this Court to page 103 of the present petition, which is the statement and the cross-examination of Ms. Kanchan Shivali as also invites attention to page No. 121 of the present petition, which is the cross-examination of late Rajinder Singh – late husband of the petitioner, particularly to page No. 123, which is extracted as under :-

“It is wrong to suggest that I got second marriage with one Kanchan. Vol. I never solemnized any second marriage. The petitioner herein filed a false complaint case against me on CC 146/12 titled Smt. Bagirathi V. Rajinder Singh and the Court of Sh. Sharad Gupta, the then Ld. ACCM, Karkardooma Courts Delhi dismissed the complaint of the petitioner and discharged me.”

The statement of Ms. Kanchan Shivali is extracted hereunder :-

“Q. I put it to you that you gave the birth to a female child in AIIMS on 08.10.2001 and you gave your consent at page 2 and your signatures are appearing at point B?

A. It is wrong. I never gave any document, since I am unmarried and my signatures are not appearing at any place on the said document.



Q. I put it to you that you were residing in year 2003 at A-269 Kidwai Nagar East, Delhi ?

A. No

At this state, Ld. Counsel for the plaintiff wants to confront the witness with the one documents i.e. extract from the electoral rolls of the year 2002 in which at s. no. 765, the name of one Kanchan W/o Rajender Singh is mentioned at the above address. The witness states that the said document does not pertain to her. Same in Mark D2.

It is wrong to suggest that you have been residing with defendant no.1 Rajender Singh as his wife. It is wrong to suggest that I have been given birth to two children after marriage with Rajender Singh. It is wrong to suggest that I am deposing falsely in the court today”

From the aforesaid facts elicited during cross-examination of her late husband Rajinder Singh and Ms. Kanchan, learned counsel argues that it is beyond doubt that the petitioner along is the legally wedded wife of late Rajinder Singh. Both the late husband and Ms. Kanchan had categorically admitted this fact before a Court of law in judicial proceedings which were never challenged by any of the parties and as such, have become final and binding.

12. It is submitted that on 16.06.2021, the husband of the petitioner had unfortunately expired. The petitioner thereafter approached the respondent No.1 seeking family pension, which was subsequently refused.

13. Learned counsel submits that the petitioner had submitted first representation to the Department for release of the family pension in her favour.



14. The respondent/ Department is stated to have directed the petitioner to approach the Bank concerned for the said purpose.

15. It is also the case of the petitioner that the Bank re-directed the petitioner back to the respondent No.1 for such grant of family pension.

16. On finding this, the petitioner filed a second representation, which resulted in the order dated 01.02.2023 directing the petitioner to obtain a Succession Certificate from Court, so as to initiate the claim with their pension disbursing authority.

17. Learned counsel appearing for the petitioner submits that the issue regarding entitlement of family pension is no more *res integra*, in view of the judgment passed by the Hon'ble Supreme Court in ***Violet Issac vs. Union of India*** reported in **1991 (1) SCC 725**, whereby it has been categorically held that the salary or the pension is not the estate of a person and as such, would not fall within the purview of the succession laws.

18. As such, learned counsel submits that the respondent cannot disentitle the petitioner from seeking or claiming family pension on the basis of non-submissions of Succession Certificate.

19. *Per contra*, learned counsel appearing for the respondent No.1 draws attention of this Court to the Death Certificate dated 22.06.2021 annexed to the petition at page No.178 as Annexure P-11, to submit that the name of the spouse indicated in the said Death Certificate discloses the name of one Ms. Kanchan Chaudhary and not the name of the petitioner.



20. Learned counsel submits that in view of the respondents' finding that there could be more than one widows of late Shri Rajinder Singh – the husband of the petitioner, the direction of the Department to the petitioner to obtain Succession Certificate is legally sound and valid. It was also contended that the Nomination Form filled by the late husband did not disclose the name of the petitioner. It is stated that the nominee was the mother of the late husband, who had, in fact pre deceased the late husband and no amendment was further carried out.

21. This Court has considered the aforesaid submissions of learned counsel for the parties and has also perused the documents placed on record by the petitioner. The documents relied upon by the petitioner are all certified copies of the proceedings before the Court of law. In that, the divorce proceedings initiated by the late husband of the petitioner, namely, Shri. Rajinder Singh and the order of dismissal of the said divorce petition, the certified copies of the orders relating to the maintenance awarded to her against the late husband, as also the certified copies of the evidence recorded in the Maintenance Case, whereby the petitioner had cross-examined not only the late husband but also Ms. Kanchan in detail, who had disclosed that she was not married to late Shri Rajinder Singh and as such, verifiable document. The presumption in law appears to be in favour of the petitioner.

22. So far as the issue of the name of one Ms. Kanchan Chaudhary appearing in the Death Certificate is concerned, there is nothing on record to show as to how and in what manner the name of Ms. Kanchan Chaudhary has been reflecting against the column - "name



of the spouse”. In any case, the documents that are placed on record by the petitioner indicate otherwise.

23. It is seen from the impugned order passed by the Department that none of the aforesaid issues have been considered while passing a perfunctory order directing the petitioner to obtain Succession Certificate in a routine manner without applying mind, has been rendered. As such, this Court is of the considered opinion that the present writ petition along with all its documents placed on record, be considered by respondent No.1 as a detailed representation on behalf of the petitioner seeking family pension and the same be disposed of in accordance with law within a reasonable period, not exceeding eight weeks.

24. It is made clear that since the issue is in respect of a legal entitlement of a widow, the Department shall not exceed the time limit so prescribed above. As also, it would be a violation of the mandate laid down by the Hon'ble Supreme Court in the aforesaid judgment.

25. The copy of the present petition alongwith the annexures and the present order be transmitted forthwith to the respondent No.1.

26. The Department shall grant an opportunity of personal hearing to the petitioner. The order passed on the representation shall be communicated within 3 days of the passing of the order.

27. In view of the above directions, the petition along with all the pending application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J

JANUARY 19, 2024

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