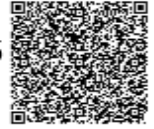


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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-32831-2024 (O&M)
Date of decision: 17.09.2025**

Abshekh Dutta and another

... Petitioners

Vs.

Punjab State Power Corporation Ltd. and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

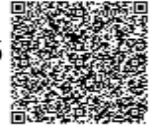
Present: Mr. Harpreet S. Rakhra, Advocate and
Ms. Gurvinder Kaur Jaura, Advocate
for the petitioners.

Mr. Puneet Bali, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *mandamus* directing the respondents to disburse the remaining 50% of the retiral/pensionary benefits accrued to the deceased Rakesh Kumar, father of the petitioners, and all the consequential benefits including arrears and

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allowances as per Rules along with interest at the rate of 18% per annum.

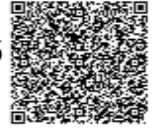
FACTUAL BACKGROUND

2. Briefly, the facts are that Rakesh Kumar, father of the petitioners, was working as an Assistant Lineman (ALM) with the respondent-PSPCL. He died on 26.05.2013 and the petitioners are his only surviving legal heirs since the death of their mother (Rajni) and their grandmother (Vijay Rani) on 05.01.2023 and 07.03.2017, respectively. However, since the death of deceased employee, half of the pension amount and half of the gratuity amount have been withheld from his legal heirs citing that he had two families.

CONTENTIONS

3. Learned counsel for the petitioner, *inter alia*, contends that the deceased was married to one Meena, who had divorced him and remarried to one Raj Kumar, as discernible from her Aadhar Card (Annexure P-1) and she had been residing separately from the deceased since her remarriage with abovenamed Raj Kumar. Subsequently, the deceased married Rajni, mother of the petitioners, in the year 1988 and till date, neither Meena nor her children have ever claimed benefits of the services rendered by the deceased. Moreover, as per Dependency Certificate dated 20.09.2013 (Annexure P-2) issued by the Deputy Commissioner, Kapurthala as well as the data retrieved from the employee ID of the deceased (Annexure P-6), his legal heirs only

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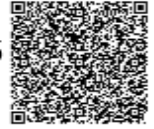
ever included are Rajni (wife), Abhishek (son), Priyanka (daughter) and Vijay Rani (mother). As such, the petitioners deserve the retiral benefits to be disbursed to them in whole. However, half of the gratuity amount and half of the pension has been illegally withheld from legal heirs of the deceased, as the same was neither disbursed to the petitioners nor their late mother during her lifetime. Nothing mentioned in the Pension Payment Order justifies this approach taken by the respondent-PSPCL in terms of Rule 6.17 of the Punjab Civil Services Rules, Volume II.

4. On the other hand, learned counsel for the respondents submits that the petitioners have been paid all the admissible dues to the extent of 50% in terms of Rule 6.17 (*supra*), which provides that if 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. Further, the petitioners failed to submit any documents proving that deceased Rakesh Kumar was divorced from his first wife Meena. As such, the petitioners are only entitled to half of the financial benefits accrued on death of the deceased.

OBSERVATIONS AND ANALYSIS

5. Having learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that half of the retiral benefits accrued to the deceased have been withheld from the petitioners on

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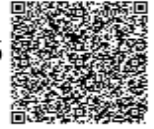
account of the fact that this is his second marriage. The deceased was previously married to one Meena, however, their marriage did not survive and she married one Raj Kumar subsequently. Thereafter, the deceased married Rajni in the year 1988 and the petitioners were born out of the said wedlock. Admittedly, the deceased and Meena had been residing separately for over 25 years, with their respective families, till his death.

6. It is trite law that family pension is a social security measure intended to provide continuity of livelihood to those dependent upon a deceased government servant, in order to enable them to tide over the financial hardship arising out of such death. In order to claim the same, the dependents must prove that they were dependent on the deceased employee prior to his death. A two-Judge Bench of the Hon'ble Supreme Court in ***Ram Shridhar Chimurkar Vs. Union of India***, (2023) 4 SCC 312, speaking through Justice B.V. Nagarathna, made the following observations in this regard:

“31. It may also be appropriate to refer to the decision of this Court in Poonamal v. Union of India, (1985) 3 SCC 345, wherein the purpose for which 'family pension' is granted, was highlighted by this Court in the following words:

*"Family pension came to be conceptualised in the year 1950. When a Government servant die in harness or soon after retirement, in the traditional Indian family on the death of the only earning member, the widow or the minor children were not only rendered orphans but faced more often destitution and starvation. **Traditionally speaking***

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the widow was hardly in a position to obtain gainful employment. She suffered the most in as much as she was deprived of the companionship of the husband and also became economically orphaned. As a measure of socioeconomic justice family pension scheme was devised to help the widows tide over the crisis and till the minor children attain majority to extend them some succour. This appeared to be the underlying motivation in devising the family pension scheme. It was liberalised from time to time. The liberalisation was however subject to the condition that the Government Servant had in his life time agreed that he shall make a contribution of an amount equal to two months' emoluments or Rs. 5,000 whichever is less out of the death-cum-retirement gratuity. Those Government servants who did not accept this condition were denied the benefit of family pension scheme."

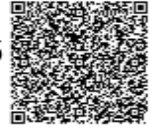
32. It is evident from the passage quoted above from Poonamal case [Poonamal v. Union of India, (1985) 3 SCC 345 : 1985 SCC (L&S) 802] that family pension was devised as a means to help the dependents of the deceased government servant tide over the crisis and to extend to them some succour. Therefore, the definition of the term "family" cannot be extended to include those persons who were not even dependents of the government servant, at the time of his death.

33. The canon of construction described in the principle, *noscitur a sociis*, may be applied to the present case. The said principle posits that the meaning of a phrase must be construed having regard to the words immediately surrounding it. In the present case, the heirs listed under Rule 54(14)(b) of the CCS (Pension) Rules are the immediate dependents of the deceased government servant. Therefore, persons who were not dependent on the government servant prior to his death cannot be held to be included in the definition of "family" under Rule 54(14)(b) of the CCS (Pension) Rules."

(emphasis added)

7. On that note, a perusal of the dependency certificate dated

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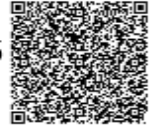
20.09.2013 (Annexure P-2) issued by the Deputy Commissioner, Kapurthala indicates that only Rajni (wife), Vijay Rani (mother) and Abshekh Dutta (son) and Pornima @ Priyanka (daughter) are dependents of the deceased. In fact, petitioner No.1-Abshekh Dutta was also provided a job on compassionate ground, being son of the deceased. The aforementioned factual position remains un rebutted. Further still, neither Meena nor any of her children has ever laid claim to the property of the deceased since his second marriage with Rajni i.e. mother of the petitioners in the year 1988 or the financial benefits that accrued upon his death in the year 2013. Thus, it is evident that the deceased did not have any persisting relationship with his first wife since their separation.

8. Furthermore, the claim of the petitioners has been denied in view of Rule 6.17 (*supra*) Note 1, which reads as follows:

“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.”

9. Distinctly, the deceased was not in a marital relationship with Meena, at the time of his death. It is also not the case of the respondents that she or her children had ever pursued their share in the retiral benefits of the

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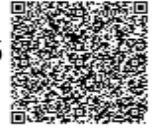


deceased. As such, there is no palpable reason to deprive the petitioners of the retiral benefits accrued to the deceased by invoking Rule 6.17 (*supra*) Note 1. This Court is of the considered opinion that the respondent-PSPCL is thoroughly unjustified in withholding half of the benefits in unfounded anticipation of the first wife laying a claim to the same, especially since no such representation in this regard has been moved by her in over two decades. Taking such a hyper-technical approach, devoid of context and nuance, does not further the cause of justice in any way. In fact, such mechanical application of the Rules is often counter-productive, as it has the potential to deprive the deserving of their substantive rights.

10. Moving on, the factum of marriage between the deceased and Rajni, mother of the petitioners remains unchallenged and even if the same is presumed to be illegal, the fact remains that they cohabited as husband and wife for about 25 years and also raised a family together. At this juncture, it would be profitable to refer to the judgment rendered by a three-Judge Bench of the Hon'ble Supreme Court in ***Radha Devi Vs. Chief General Manager, Civil Appeal No.8032 of 2024***, wherein grant of family pension to the second wife during the subsistence of the first marriage of the deceased was confirmed. The relevant observations are reproduced below:

“4. It appears that during the lifetime of Ram Sawari Devi @ Sawari Devi, Jay Narayan Maharaj had gotten married to Radha

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Devi.

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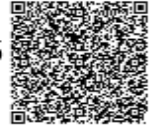
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7. We would, in these circumstances, having regard to the peculiar facts of the case and in order to do complete justice, observe that Jay Narayan Maharaj and Radha Devi had lived and cared for each other, post the death of Ram Sawari Devi @ Sawari Devi on 20.04.1984. **Radha Devi at the old age should not be denied the `status of spouse', which entitles her to receive family pension. This would help her live with dignity and help her financially.** In view of the aforesaid position, we exercise our power under Article 142 of the Constitution of India and direct that Radha Devi shall be paid family pension with effect from 01.01.2010 till today on or before 31.12.2024. She will receive family pension till her death. Radha Devi will furnish all details and particulars to the Manager, SECL, and complete formalities within a period of eight weeks from today.

(emphasis added)

11. Further still, a two-Judge bench of the Hon'ble Supreme Court in ***Vidyadhari and others Vs. Sukhrana Bai and others, (2008) 2 SCC 238*** has categorically held that second marriage during subsistence of first marriage would be void, however, the children born out of the same would be considered legitimate. It was also held that the first wife would not be entitled to Succession Certificate merely for the reason of being a legally wedded spouse, especially since the second wife, who shouldered all marital

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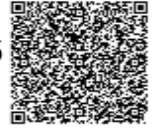


responsibilities and was the nominee in all relevant records. Speaking through Justice V.S. Sirpurkar, the following was opined:

“10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed.

This Court in a reported decision in Rameshwari Devi's case (supra) has held that even if a Government Servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. The High

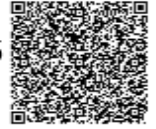
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Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life-time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of Succession Certificate the court has to use its discretion where the rival claims, as in this case, are made for the Succession Certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

11. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would chose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal

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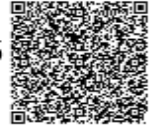
heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, chose to grant Succession Certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the Trial Court to the satisfaction of the Trial Court."

(emphasis added)

12. Further reliance may be placed on the judgment rendered by a two-Judge Bench of the Hon'ble Supreme Court in ***Tulsa Devi Nirola and others Vs. Radha Nirola and others, 2020 (2) SCT 301***, wherein it was opined that the right to family pension is conditional in nature and a favourable presumption may be drawn in the favour of the nominee. Speaking through Justice Navin Sinha, the following was observed:

"9. Rule 35 (5) provides that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provides for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come retirement gratuity that may be due to him. In view of the partition deed the deceased while filling his nomination in the prescribed Form under Rule 38 mentioned the name of respondent no.1 only as the sole beneficiary of family pension. We are of the considered opinion that Rule 40(6) is conditional in nature and does not vest an automatic statutory right in appellant no.1 to equal share in the family pension. The family pension would be payable to more than one wife only if the

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government servant had made a nomination to that effect and which option was open to him under the Pension Rules.

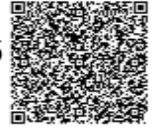
"40. Family Pension- (6) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares."

10. The Pension Rules therefore recognize the nomination of a wife or wives for the purpose of family pension. True, the family pension did not constitute a part of the estate of the deceased. If the settlement deed had not been executed and acted upon different considerations may have arisen. The right to family pension in more than one wife being conditional in nature and not absolute, in view of nomination in favour of respondent no.1 alone, appellant no 1 in the facts of the case can also be said to have waived her statutory right to pension in lieu of benefits received by her under the settlement deed. The deceased resided exclusively with respondent no.1 and occasionally visited appellant no.1. The deceased was exclusively taken care of by respondent no.1 during his illness including the expenditure incurred on his treatment. In view of the statutory rules, it is not possible to accept the argument that respondent no.1 was nominated only for purpose of receipt of the family pension and per force was required to share it equally with appellant no.1."

(emphasis added)

13. Pension and other retiral benefits do not possess a gratuitous nature. Rather, such benefits accrue to the retiree by virtue of dedicated service rendered by him to his employer for a significant portion of his life. A Constitution Bench of the Hon'ble Supreme Court in ***D.K. Nakara and others Vs. Union of India, (1983) 1 SCC 305*** has categorically stated that

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pension is not a matter of bounty or grace but a vested right. Speaking through Justice D.A. Desai, the following was opined:

*“20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar, 1971 (Supp) SCR 634 wherein this Court authoritatively ruled that **pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion.** It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh, (1976) 3. SCR 360.*

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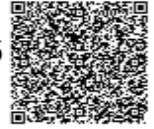
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*28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Dodge v. Board of Education, (1937) 302 US 74 : 82 Law Ed 57 a pension is closely akin to wages in that it consists of payment provided by an employer, **is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.***

*29. Summing-up it can be said with confidence that **pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is***

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ebbing corresponding to ageing process and therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the he day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

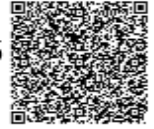
(emphasis added)

14. The hyper-technical approach adopted by the respondents to deprive the petitioners of well-deserved and family pension accrued to them by virtue of the services rendered by the deceased. Time and again, the Hon'ble Supreme Court has reiterated that pension falls in the ambit of 'property' in terms of Article 300A of the Constitution of India. Recently, a two-Judge Bench of the Hon'ble Supreme Court ***Vijay Kumar Vs. Central Bank of India, 2025 AIR SC 3343***, speaking through Justice Joymala Bagchi, made the following observations in this regard:

"17. There is no cavil that pension is not a discretion of the employer but a valuable right to property and can be denied only through authority of law. When an authority is vested with the discretion to grant pension less than full pension admissible under the Pension Regulations, all procedural safeguards in favour of the employee including prior consultation must be strictly followed."

(emphasis added)

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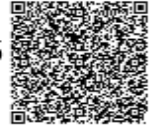


15. Oftentimes, retiral benefits are the only source of income for many families, especially when the primary breadwinner has passed away. The retired employees and their kin not only rely on the same for fiscal security but also for their very survival. It was also observed in *D.K. Nakara (supra)* that pension and retiral benefits are akin to wages, relied upon by the pensioner and his family for assistance post-retirement. Reference may be drawn to the judgment rendered by a Constitution Bench of the Hon'ble Supreme Court in *Olga Tellis Vs. Bombay Municipal Corporation, (1985) 3 SCC 545*, whereby the scope of Article 21 of the Constitution of India was expanded by interpreting it to include the right to livelihood. Speaking through Justice Y.V. Chandrachud, the following was observed:

32. ...An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. **If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.** And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. **Deprive a person of his right to livelihood and you shall have deprived him of his life. ...**

(emphasis added)

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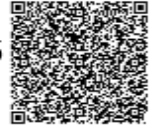


16. Furthermore, the right to life enshrined in Article 21 of the Constitution of India, is not limited to mere animal-like existence but includes the right to live a meaningful life, with dignity in the truest sense of the term. The Hon'ble Supreme Court in ***Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi, (1981) 1 SCC 608*** has opined that any act offending human dignity constitutes violation thereof. It was further clarified that bare necessities such as “*adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings*” as well as any other activities constituting a “*bare minimum expression of human self,*” subject to the degree of economic development of the State, form a part and parcel of right to life under Article 21 of the Constitution of India.

CONCLUSION

17. In the context of Indian service jurisprudence, bigamy is a serious misconduct. However, the rights of second wife and children born out of the second marriage are recognized and preserved by the Rules itself as Rule 6.17 (*supra*) entitles them to receive at least 50% of the retiral dues upon death of the deceased employee. Be that as it may, the extent of entitlement i.e. 50% or 100%, of the second wife would depend upon the existence of a surviving widow from the first marriage. In the present case, Meena, first wife

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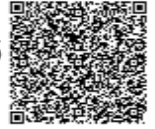
of the deceased employee, had separated from him, performed a second marriage and had been living with her second husband for over two decades. She has also not claimed anything with respect to his property or service benefits during his lifetime or after his death in the year 2013. Whether the first wife, who has remarried and had been living with her second husband, can be considered to be a dependent widow of the first husband, is debatable. However, in the matter at hand, it would defy the objective standards of reason to presume that Meena was in fact a dependent widow of the deceased.

18. Indubitably, validity of second marriage of the deceased has not been questioned. Further, the fact that the nomination and the succession certificate were made in favour of Rajni, mother of the petitioners, Vijay Rani, mother of the deceased as well as the petitioners, which tilts the scales completely in their favour. This approach is further buttressed by the fact that petitioner No.1-biological son of second wife of the deceased employee received compassionate appointment upon his death. Therefore, this Court has no hesitation in holding that the petitioners are entitled to the retiral benefits to their full extent, as they are the only surviving legal heirs of the deceased.

19. No other argument was raised.

20. Accordingly, the present petition is allowed. The respondents are directed to release the retiral/pensionary benefits accrued to deceased Rakesh Kumar, in its entirety, to the petitioners within a period of three months from

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the date of receipt of a certified copy of this order.

21. All the pending miscellaneous application(s), if any, shall stand disposed of.

17.09.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No