Serial No. 21

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 2830/2024

Pronounced on: 02.11.2026
Uploaded on: 03.11.2026

Sumitra Devi, Age 64 years, ...Petitioner(s)
W/o Late Sh. Swayamber Dutt
R/o Village Garhwal, Uttarakhand
A/p 101, CDA Road, Jammu Cantt.

Through: Ms. Surekha Bhat, Advocate

vs

1. Union of India ..... Respondent(s)
   Through Secretary, Ministry of Defence
   South Block, New Delhi.

2. PCDA
   Draupadighat Allahabad.

3. Senior Record Officer
   Sena Police Corp Abhilekh Karyalaya
   Corps of Military Police Record
   Pin 900493, C/o 56 APO

4. Commandant
   Military Hospital Garhi Cantt.,
   Dehradun, 248003.

Through: Mr. Eishaan Dadhichi, CGSC vice
Mr. Vishal Sharma, DSGI (Sr. Adv)

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
02.11.2026

1. By way of the present writ petition under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ of certiorari for quashing communications bearing No. 4037684/NE (F Pen) dated 05.09.2023, issued by respondent No. 3, and No. Coy/1050/19/Sumitra/M-3(B)/Civ Ests dated 19.05.2023, issued by respondent No. 4, with a further prayer

for issuance of a writ of mandamus, commanding the respondents to grant family pension to the petitioner on account of the death of her husband, namely, Swayamber Dutt.

2. The case, as set up in the petition, is that petitioner is the legally wedded wife of Ex-Naik Swayamber Dutt, who was initially appointed in Sena Police Corporation on 10.01.1959 and served there till 01.02.1979, whereafter he joined Military Hospital, Garhi Cantt., Dehradun. During his service, he earned two separate pensions, one from the Senior Record Officer, Corps of Military Police Records, Bangalore, and the other from the Commandant, Military Hospital, Garhi Cantt., Dehradun.

3. That the petitioner's husband died on 24.11.1996, leaving behind two families. He had initially married Sarojani Devi, from whom he had two daughters, and subsequently married the petitioner on 07.12.1978, in accordance with the customs and traditions prevalent in the Bhatt community, during the subsistence of his first marriage. Out of the wedlock with the petitioner, two sons and one daughter were born. The second marriage was duly recognized by the community and society.

4. That after the death of her husband, 50% of the first family pension was sanctioned in favour of his first wife, Sarojani Devi, while the remaining 50% was sanctioned in favour of the petitioner's son, Mahesh Kumar, till he attained the age of 25 years. The said pension was discontinued on 15.11.2004, whereas Sarojani Devi died on 04.12.2014. However, no family pension was sanctioned in favour of the petitioner at any stage.

5. That the petitioner, being an illiterate and economically disadvantaged woman, has been continuously approaching the respondent authorities

since the death of her husband for grant of family pension. However, her claim for the first family pension was rejected by respondent No.3 vide communication No.4037684/NE (F Pen) dated 05.09.2023, on the ground that her marriage was solemnized during the subsistence of the first marriage. Her claim for the second family pension was also rejected by respondent No.4 vide communication No. Coy/1050/19/Sumitra/M-3(B)/Civ Ests dated 19.05.2023, on similar grounds.

6. That the petitioner assails both rejection orders on the following grounds:

(i) That her marriage with Ex-Naik Swayamber Dutt was solemnized in accordance with the customary laws and practices prevalent in the Bhatt community, under which such marriage was recognized and permissible, thereby entitling her to family pension.

(ii) That during his lifetime, the deceased had nominated the petitioner for grant of family pension with respondent No. 4, thereby acknowledging her entitlement thereto.

(iii) That a second marriage solemnized in accordance with a valid and established community custom is not void merely because it was contracted during the subsistence of the first marriage. Consequently, the petitioner claims entitlement to both family pensions arising from the death of her husband.

7. Reply stands filed on behalf of the respondents, wherein it is stated that as per PCDA (Pension), Allahabad letter No. G/C/42/1-99/XI dated 21.04.1999, Smt. Sarojini Devi was recognized as the first wife of deceased Shri S.D. Bhatt. Subsequently, vide letter No.G-1/C/CM11116/MISC/156/7-2017/V dated 25.06.2018, the PCDA (Pension), Allahabad held Smt. Sumitra Devi not to be the legally wedded wife of the deceased and declined her claim for family pension. In her application dated 06.02.1999 addressed to CMP Records, Bangalore, Smt. Sarojini Devi had objected to the second marriage of

Shri S.D. Bhatt with Smt. Sumitra Devi, stating that the same was solemnized without her consent. The deceased had drawn pensions in respect of both his military and civil employments, having also served as a Mazdoor in Station Health Organisation (S), Prem Nagar, Dehradun. The alleged second marriage was solemnized on 07.12.1978, whereas the marriage certificates relied upon by the petitioner were issued by the Gram Panchayat on 05.05.1998, 18.08.1999, 23.08.2016 and 23.01.2018, i.e., much after the alleged marriage.

8. Further stand taken in the objections is that 50% of the military family pension was sanctioned in favour of Smt. Sarojini Devi and the remaining 50% in favour of Shri Mahesh Kumar, younger son of Smt. Sumitra Devi, till he attained the age of 25 years. The said pension was discontinued thereafter. Further, Shri Kamlesh Kumar, elder son of Smt. Sumitra Devi, was appointed on compassionate grounds as Tradesman Mate in Health Section, Prem Nagar, w.e.f. 25.07.1998, but subsequently absconded w.e.f. 01.08.2020. Smt. Sarojini Devi, the first wife of the deceased, died on 04.12.2014. The case for grant of civil family pension was referred to PCDA (Pension), Allahabad by Station Health Organisation, Prem Nagar, vide letter No. 9806629/SD/SHO dated 17.12.1998. However, the claim was rejected vide letter dated 25.06.2018, whereas the grounds for rejection of the military family pension were communicated by CMP Records, Bangalore, vide letter No. 4037684/NE/(F Pen) dated 05.09.2023. Thus, the respective authorities have duly explained the reasons for denying the petitioner's claims.

9. It is also stated in the reply that the issue is not merely whether the petitioner claims to have contracted a customary marriage, but whether the first marriage between Shri S.D. Bhatt and Smt. Sarojini Devi stood dissolved before the alleged second marriage. Although Section 29(2) of the Hindu Marriage Act, 1955 recognizes certain customary rights to dissolution of marriage, the petitioner has neither pleaded nor established any such custom or dissolution of the first marriage. In the absence of proof thereof, the second marriage, contracted during the subsistence of the first marriage, cannot be recognized as legally valid. It is further submitted that although the deceased had nominated Smt. Sumitra Devi for family pension, such nomination cannot, by itself, confer the status of a legally wedded wife, particularly when the first marriage was subsisting and no documentary evidence of its dissolution exists. Consequently, the petitioner is not entitled to the claimed family pension.

10. With the above submissions, respondents seek dismissal of the writ petition stating since no legal, fundamental or statutory right of the petitioner has been violated.

11. Heard learned counsel for the both sides as also gone through the file.

12. The controversy involved in the present writ petition essentially revolves around the entitlement of the petitioner to family pension on the death of Ex-Naik Swayamber Dutt, on the strength of her alleged second marriage with the deceased, solemnized on 07.12.1978, during the subsistence of his first marriage with Smt. Sarojini Devi. The petitioner seeks to justify the said marriage on the basis of the customs and traditions allegedly

prevalent in the Bhatt community and also relies upon the nomination stated to have been made by the deceased in her favour.

13. Indisputably, the deceased had contracted his first marriage with Smt. Sarojini Devi, which subsisted on the date of the alleged second marriage. The petitioner has not placed on record any cogent or legally acceptable material to establish that the first marriage had been dissolved in accordance with law or that there existed any legally recognized custom permitting dissolution of such marriage, or otherwise validating the alleged second marriage during the subsistence of the first. Mere assertion that the second marriage was solemnized in accordance with the customs and traditions of the Bhatt community, without establishing the existence, continuity and applicability of such custom through reliable evidence, cannot be accepted as sufficient proof of a legally valid marriage. The marriage certificates relied upon by the petitioner, having been issued in the years 1998, 1999, 2016 and 2018, much after the alleged marriage, do not, by themselves, establish the legal validity of the second marriage.

14. The contention of the petitioner that the deceased had nominated her for the purpose of grant of family pension is equally misconceived. A nomination, by itself, neither creates nor confers the status of a legally wedded wife upon a nominee, nor can it override the statutory conditions governing entitlement to family pension. The entitlement to family pension has to be determined in accordance with the applicable service

rules and the legal status of the claimant. Consequently, the alleged nomination cannot be treated as a substitute for proof of a valid marriage.

15. It is also borne out from the record that the competent pension authorities have examined the petitioner's claim on both accounts. The claim relating to military family pension was declined by the competent authority vide communication dated 05.09.2023, whereas the claim relating to civil family pension was rejected vide communication dated 25.06.2018. The respondents have also explained that 50% of the military family pension had already been sanctioned in favour of the first wife, Smt. Sarojini Devi, and the remaining 50% in favour of the petitioner's son, Mahesh Kumar, until he attained the age of 25 years. The subsequent discontinuation of the said pension, or the death of the first wife on 04.12.2014, would not, by itself, create an independent right in favour of the petitioner to claim family pension in the absence of her establishing the requisite legal entitlement.

16. This Court is conscious of the circumstances pleaded by the petitioner, particularly her economic condition and the fact that she claims to have remained dependent upon the deceased. However, sympathy or hardship, howsoever genuine, cannot be a substitute for the legal requirements governing the grant of family pension. The constitutional jurisdiction under Article 226 of the Constitution of India cannot be exercised to confer a statutory benefit upon a person who has failed to establish the foundational legal requirement for claiming such benefit.

17. In view of the foregoing discussion, this Court finds that the petitioner has failed to establish that her alleged marriage with the deceased was legally valid or that she otherwise fulfils the prescribed conditions for entitlement to family pension under the applicable rules. The respondents, therefore, cannot be said to have acted illegally or arbitrarily in declining her claim. No perversity, jurisdictional error or violation of any enforceable legal or statutory right has been demonstrated so as to warrant interference by this Court in exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

18. Accordingly, the writ petition, being devoid of merit, is dismissed. Consequently, the communications bearing No.4037684/NE (F Pen) dated 05.09.2023 and No. Coy/1050/19/Sumitra/M-3(B)/Civ Est's dated 19.05.2023 do not call for any interference. No order as to costs.

(SanjayParihar)
Judge

Jammu
02.11.2026
Narinder

Whether order is speaking? Yes
Whether order is reportable? Yes