THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No.545 of 2025
Reserved on: 20.04.2026
Decided on : 25.04.2026
Uploaded on: 25.04.2026

Umawati ...Appellant

Versus

HPSEB and others …Respondents.

Coram

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.

Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?[1]

For the appellant	:	Mr. Inder Singh Chandel and Mr. Arun Kumar, Advocates.
For the respondent	:	Ms. Sunita Sharma, Sr. Advocate with Ms. Meenakshi Katoch and Mr. Dhananjay Sharma, Advocates.

Bipin Chander Negi, Judge

The present appeal has been preferred against the impugned judgment dated 3.4.2025 passed in CWP No. 7584 of 2023 filed by the present appellant, whereby the claim of the appellant qua family pension in respect of one late Jai Ram, alleged to be the husband of the appellant, has been rejected.

2. Late Sh. Jai Ram had retired from the respondent-Board as a foreman on 31.8.1998. The appellant claimed to have solemnized marriage with late Sh. Jai Ram in the year 1994. The

[1] *Whether the reporters of the local papers may be allowed to see the Judgment?*

marriage inter-se the present appellant and late Sh. Jai Ram is alleged to have taken place after the appellant had obtained a customary divorce from one Sh. Dasia. In order to establish the fact that marriage had happened inter-se the appellant and Sh. Jai Ram, affidavit dated 6.5.1994 sworn by late Sh. Jai Ram has been placed on record as Annexure P-1 along with the writ petition (page 32 of the paper book). Further, a copy of the Parivar Register has been placed on record as Annexure P-2 along with the writ petition (page 34 of the paper book). Late Sh. Jai Ram is stated to have died on 10.1.2020. Subsequent thereto, a claim qua family pension was made by the present appellant vide Annexure P-4 appended along with the Civil Writ Petition dated 4.4.2023 (page 36 of the paper book). In the writ petition, it has been averred that the appellant had been got recorded as a nominee in the service book/pension record of the deceased Sh. Jai Ram.

3. In the response filed to the writ petition by the respondent-Board, it has been admitted that prior to the superannuation of deceased Jai Ram i.e. on 31.8.1998, the appellant had been got recorded as a nominee. However, subsequent thereto, the nomination so made was sought to be withdrawn vide letter dated 1.1.2009, affidavit dated 13.7.2009 and the application dated 20.12.2012 appended along with the response as Annexures R-1, R-2 and R-3 respectively (pages 70, 72/73, 74/75 of the paper book).

4. Other than the aforesaid, in the response filed, judgment dated 14.6.2012 passed in the petition filed under Section 9 of the Hindu Marriage Act, 1955 by the present appellant seeking restitution of conjugal rights has been placed on record (page 76 of the paper book). In the same, an issue with respect to locus standi of the appellant to file a petition for restitution of conjugal rights has been raised based on the fact that no legal or valid marriage was ever solemnized inter-se the parties. Upon considering the pleadings and evidence on record, the Civil Judge,Senior Division, Shimla (exercising the powers of District Judge under the Hindu Marriage Act) held that the appellant had not acquired the status of the wife of deceased Jai Ram, as existence of a valid marriage inter-se the parties had not been proved. Hence, the petition for restitution of conjugal rights was dismissed, holding that the appellant had no locus standi to file the same.

5. In the aforesaid backdrop, the learned Single Judge was of the view that the decision dated 14.6.2012 passed in an application under Section 9 of the Hindu Marriage Act had attained finality and the fact that late Jai Ram, vide representation dated 1.1.2009 (Annexure R-1 appended along with the response), affidavit dated 13.7.2009 (Annexure R-2 appended along with the response) and application dated 20.12.2012 (Annexure R-3appended along with the response), had specifically sought deletion of the name of the

appellant from the service record, therefore, the learned Single Judge in the impugned judgment concluded that the appellant was disentitled from claiming family pension.

6. Heard counsel for the parties. Perused the record.

7. From a perusal of Annexure P-1 appended along with the writ petition (page 32 of the paper book), it is evident that in terms of the said affidavit dated 6.5.1994, Sh. Jai Ram admitted having got married to the appellant on the date on which the affidavit was made. As per the affidavit, the first wife of Jai Ram had died one year prior to the making of the affidavit. In the Nakal Parivar Register (Annexure P-2) filed along with the writ petition (page 34 of the paper book), the appellant has been shown as the wife of the deceased.

8. The petition for restitution of conjugal rights was filed on 3.8.2006. Meaning thereby that since 6.5.1994 till immediately prior to the filing of the petition seeking restitution of conjugal rights, the appellant and late Sh. Jai Ram had cohabited.

9. If a man and a woman cohabit as husband and wife for a long duration, then a presumption under Section 114 of the Evidence Act can be drawn to the effect that they were living together as a consequence of a valid marriage. The presumption is rebuttable and can be rebutted by leading unimpeachable evidence. The burden lies heavily on a party who seeks to question the cohabitation and to deprive the relationship of legal sanctity. In this respect, a reference

can be made to (2014) 16 SCC 773, titled as ***Shiramabai w/o Pundalik Bhave and others*** vs. ***Captain Record Officer for O.I.C. Records Sena Corps Abhilekh, Gaya, Bihar State and another.***

10. However, as has already been stated supra, the marriage of the appellant with the deceased Jai Ram was held to be a nullity by the Court of the Civil Judge, Senior Division, Shimla (exercising the powers of District Judge under the Hindu Marriage Act) in a petition filed under Section 9 of the Act by the appellant herein seeking restitution of conjugal rights on account of the fact that the appellant's marriage with one Sh. Dasia was subsisting when the appellant got married to late Sh. Jai Ram on 6.5.1994.

11. In the aforesaid backdrop, the first and foremost aspect to be considered is the nature of relationship inter se late Sh. Jai Ram and the present appellant. Taking into account the present status of statutory Hindu law, specifically Section 5(i) of the Hindu Marriage Act, a bigamous marriage is illegal as it is in contravention of the Hindu Marriage Act. However, in similar circumstances where parties had cohabited for 9 years (1981 to 1990), a bigamous marriage was held to be illegal, not immoral, thereby permitting the spouse (lady/wife), financially weak and economically deprived, to claim alimony or maintenance under Section 25 of the Hindu Marriage Act. (See 2005 (2) SCC 33 titled as ***Rameshchandra Rampratapji Daga***

vs **Rameshwari Rameshchandra Daga**). Relevant extract whereof reads as follow;

> **19.** Learned counsel for the husband has argued that extending the benefit of Section 25 to even marriages which have been found null and void under Section 11 would be against the very object and purpose of the Act to ban and discourage bigamous marriages.
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> **20.** It is a well-known and recognised legal position that customary Hindu law like Mohammedan law permitted bigamous marriages which were prevalent in all Hindu families and more so in royal Hindu families. It is only after the Hindu law was codified by enactments including the present Act that bar against bigamous marriages was created by Section 5(*i*) of the Act. Keeping in consideration the present state of the statutory Hindu law, a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse financially weak and economically dependent. It is with the purpose of not rendering a financially dependent spouse destitute that Section 25 enables the court to award maintenance at the time of passing *any type of decree* resulting in breach in a marriage relationship.
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> **21.** Section 25 is an enabling provision. It empowers the court in a matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance.

12. In ***Rameshchandra*** (supra), marriage inter se the parties had been solemnized on 11.7.1981. However, the marriage between the respondent wife therein and her former husband had not been annulled on 11.7.1981. In view thereof, the Family Court, High Court and the Apex Court all held the marriage inter se the parties to be a nullity. However as has already been stated (supra), maintenance was permitted.

13. The claim of the appellant for grant of family pension is governed by the Central Civil Services (CCS) Pension Rules. When such affirmative actions are taken by the lawmaker, in the form of

subordinate legislation, they need to be enforced appropriately by taking into account relevant considerations such as empowerment of women, social justice so that the purpose that is intended is suitably achieved.

14. The Apex Court in ***Richa Sharma*** *vs.* ***State of Chhattisgarh and others,*** (2016) 4 SCC 179 observed that real empowerment of women would only take place if there is economic empowerment of women. Economic empowerment therein was perceived as equipping women to be economically independent, self-reliant, self-esteemed, and with the ability to participate in developmental activities. The bidirectional relationship between economic development and women empowerment was considered therein in the following terms:-

> **25.** Women in this world, and particularly in India, face various kinds of gender disabilities and discriminations. It is notwithstanding the fact that under the Constitution of India, women enjoy a unique status of equality with men. In reality, however, they have yet to go a long way to achieve this constitutional status. It is now realised that real empowerment would be achieved by women, which would lead to their well-being facilitating enjoyment of rights guaranteed to them, only if there is an economic empowerment of women as well. Till sometime back, the focus was to achieve better treatment for women and for this reason, the concentration was mainly on the well-being of women. Now the focus is shifted to economic empowerment. Such objectives have gradually evolved or broadened to include the active role of women when it comes to development as well. No longer the passive recipients of welfare-enhancing help, women are increasingly seen, by men as well as women as active agents of change: the dynamic promoters of social transformation that can alter the lives of both women and men.
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> **26.** It is now realised that there is a bidirectional relationship between economic development and women's empowerment defined as improving the ability of women to access the

> constituents of development, in particular health, education, earning opportunities, rights, and political participation. This bidirectional relationship is explained by Prof. Amartya Sen by propounding a theory that in one direction, development alone can play a major role in driving down an equality between men and women; in another direction, continuing discrimination against women can hinder development. In this scenario, empowerment can accelerate development. From whichever direction the issue is looked into, it provides justification for giving economic empowerment to women. It is, for this purpose, there is much emphasis on women empowerment (as it leads to economic development) by the United Nations, World Bank and other such bodies.
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> **27.** Interestingly, the 2012 World Development Report (World Bank 2011) adopts a much more nuanced message. While it emphasises the "business case" for women empowerment, it mainly takes it as given that the equality between women and men is a desirable goal in itself, and policies should aim to achieve that goal. Poverty and lack of opportunity breed inequality between men and women, so that when economic development reduces poverty, the condition of women improves on two counts: first, when poverty is reduced, the condition of everyone, including women, improves, and second, gender inequality declines as poverty declines, so the condition of women improves more than that of men with development.
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> **28.** Economic development, however, is not enough to bring about complete equality between men and women. Policy action is still necessary to achieve equality between genders. Such policy action would be unambiguously justified if empowerment of women also stimulates further development, starting a virtuous cycle. Empowerment of women, thus, is perceived as equipping them to be economically independent, self-reliant, with positive esteem to enable them to face any situation and they should be able to participate in the development activities.

15. In the case at hand, this Court is dealing with an appellant who was in a bigamous relation with the deceased (Sh. Jai Ram) held not to be immoral by the apex court in ***Rameshchandra***(supra). The appellant belongs to a marginalized section of society. Hence, it becomes the bounden duty of this Court to advance the constitutional vision of social justice. The approach to be adopted is one of "social justice adjudication" as opposed to a purely "adversarial approach". Therefore, the role of the Court is to

understand the purpose of law in society and to assist the law in achieving its intended purpose. An interpretation which reduces the subordinate legislation to a futility should be avoided, and a view that the rule making authority made the rule only for the purpose of bringing about an effective result should be adopted.

16. In this regard, a reference can be made to (2014) 1 SCC 188 titled as ***Badshah*** vs. ***Urmila Badshah Godse and another.*** Relevant extract whereof reads as under:-

> 14. Of late, in this very direction, it is emphasized that the Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:
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> "It is, therefore, respectfully submitted that "social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social- economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."[5]
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> 15. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.
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> 16. The law regulates relationships between people. It prescribes patterns of behavior. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a

given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both Constitutional and statutory interpretation, the Court is supposed to exercise direction in determining the proper relationship between the subjective and objective purpose of the law.

17. Cardozo acknowledges in his classic "….no system of jus scriptum has been able to escape the need of it", and he elaborates: "It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre- existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a stature." Says Gray in his lecture "The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine that the legislature did mean on a point which was present to its mind, but to guess what is would have intended on a point not present to its mind, if the point had been present."

18. The Court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonize results with justice through a method of free decision—"libre recherché sceintifique" i.e. "free Scientific research". We are of the opinion that there is a non-rebuttable presumption that the Legislature while making a provision like Section 125 Cr.P.C., to fulfill its Constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano[8] to Shabana Bano[9] guaranteeing maintenance rights to Muslim women is a classical example.

19 In Rameshchandra Daga v. Rameshwari Daga [10], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act, 1955. The Court had commented that though such marriages are illegal as per the provisions of

> the Act, they are not 'immoral' and hence a financially dependent woman cannot be denied maintenance on this ground.
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> 20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon's Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat guam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife.
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> 21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

17. The sole contention urged on behalf of the respondent-Corporation is that, in terms of the Central Civil Services (CCS) Pension Rules, the appellant is not entitled to grant of family pension. The relevant Rule 50 (6) of the CCS Pension Rules reads as follow:-

> (6) The family pension shall be payable to the members of the family of the deceased Government servant or pensioner in the following order, namely:-

(i) subject to provisions of sub- rule (8), widow or widower, (including a post-retiral spouse and judicially separated wife or husband),

(ii) subject to provisions of sub-rule (9), children (including adopted children, step children and children born after retirement of the pensioner),

(iii) subject to provisions of sub-rule (10), dependent parents (including adoptive parents) of the deceased Government servant or pensioner,

(iv) subject to provisions of sub-rule (11), dependent siblings (i.e. brother or sister) of the deceased Government servant or pensioner, suffering from a mental or physical disability,

Explanation.- For the purposes of this rule, 'widow' and 'widower shall mean a spouse, legally wedded to the deceased Government servant or the pensioner.

8(c) Where the deceased government servant or pensioner is survived by more widows than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow her share of the family pension shall become payable to her child or children who fulfil the eligibility conditions in sub-Rule (9)

(See GID 22 below this Rule).

(22). Settlement of Family Pension between two wives of a Government servant or Pensioner under Central Civil Services (Pension) Rules, 2021.-It is directed to say that Department of Pension, in supersession of the Central Civil Services (Pension) Rules, 1972 has notified the Central Civil Services (Pension) Rules, 2021 and Rule 50 of the Central Civil Services (Pension) Rules, 2021 deals with payment of family pension on death of a Government servant / pensioner.

2. In accordance with Rule 50 (6) of the CCS (Pension) Rules, 2021. family pension shall be pavable to the members of the family of the deceased Government servant or pensioners in the following order. the

(i) Subject to provisions of sub-rule (8), widow or widower, (including a post-retiral spouse and judicially separated wife or husband)

(ii) subject to provisions of sub-rule (9), children (including adopted children, step children and children born after retirement of the pensioner),

(ii) subject to provisions of sub-rule (10), dependent parents (including adoptive parents) of the deceased Government servant or pensioner,

(iv) subject to provisions of sub-rule (11), dependent siblings (i.e. brother or sister) of the deceased

> Government servant or pensioner, suffering from a mental or physical disability.
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> whereas the Explanation to Rule 50 (6) (1) of the CCS (Pension) Rules, 2021 states that - For the purpose of this rule, 'widow' and 'widower' shall mean a spouse, legally wedded to the deceased Govemment servant or the pensioners.
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> 3. Whereas Rule 50(8)(c) of the CCS (Pension) Rules, 2021 states that-Where the deceased Govemment servant or pensioner is survived by more widow than one, the family pension shall be paid to the widows in equal shares and on the death or ineligibility of a widow, her share of the family pension shall become payable to her child or children who fulfil the eligibility conditions mentioned in sub-rule (9).
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> 4. In this regard, references have been received in this department regarding eligibility of family pension to the second wife when the first wife is alive. Having second wife when the first wife is alive is against the provisions of Hindu Marriage Act, 1955 and also contradictory to the provisions of CCS (Pension) Rules, 2021. The matter has been examined and it has been decided that such cases need to be processed in accordance with the provisions of CCS (Pension) Rules, 2021 and the issue of second wife or second marriage being legal or otherwise, may be decided first in consultation with Department of Legal Affairs on case-to-case basis for deciding the eligibility for Family Pension.
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> 5. All Ministries/Departments are requested to follow the process of consultation with Department of Legal Affairs before arriving at decision regarding Settlement of Family Pension between two wives under Central Civil Services (Pension) Rules, 2021. Such cases must be brought to the notice of the officer dealing with the pensioners' benefits in the respective Ministry/Department by the attached/subordinate offices.

18. Rule 50(8) of the CCS (Pension Rules), 2021 provides for family pension to two wives. Moreover in terms of GID 22 second wife would not be entitled to family pension when the first wife is alive .The wife of Jai Ram had died prior to his marriage with the appellant, as is evident from Annexure P-1 (page 32 of the paper book). The marriage inter se late Sh. Jai Ram and the appellant is illegal in terms of Section 5(i) of the Hindu Marriage Act; however, in terms of the law

laid down by the Apex Court in ***Ram Chandra's case*** (supra), the same is not immoral. In *Ram Chandra's case* despite holding the marriage to be illegal, the right to claim maintenance was up-held. The object of providing family pension cannot be different from the object of providing maintenance.

19. In the case at hand, late Sh. Jai Ram and the appellant cohabited from 6.5.1994 till immediately prior to the filing of the petition seeking restitution of conjugal rights by the present appellant in August 2006. The long cohabitation inter se the parties, the entry of the name of the appellant in the service book/pension record of the deceased Sh. Jai Ram (though subsequently withdrawn), the fact that late Sh. Jai Ram had two sons and two daughters from his previous marriage, all of whom have attained majority and none of whom is claiming any right over the family pension due to the family of late Sh. Jai Ram, when considered with relevant factors like economic empowerment, social justice, dignity of the individual requires this Court to be sensitive to and positively inclined towards the weaker party. Thereby, in our considered view, the appellant, who is financially weak and economically dependent, would be entitled to pension.

20. In taking the aforesaid view, we are also encouraged by the following observations of the Apex Court in Capt. Ramesh Chander Kaushal vs. Veena Kaushal, (1978) 4 SCC 70:

> "The brooding presence of the Constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause- the cause of the derelicts."

21. In view of the aforesaid discussion, the present appeal is allowed. The impugned judgment dated 03.04.2025 passed in CWP No. 7584 of 2023 is hereby set aside. The appellant is held entitled to the grant of family pension in respect of late Shri Jai Ram.

The appeal stands disposed of in the aforesaid terms, so also, the pending miscellaneous applications, if any.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

25th April, 2026
(vs/Tarun Singh)