
(2005) 11 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 445 of 2000

Bimla Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-11-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Pensions Act, 1871 — Section 4, 6

Citation : (2006) 109 FLR 800 : (2006) 1 ShimLC 219

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant; Sandeep Sharma, Assistant Solicitor General of India for Respondents 1 to 4 and Sanjay Dutt Vasudeva, for the Respondent

Final Decision : Allowed

Judgement

K.C. Sood, J.—Petitioner Bimla Devi is widow of late Sepoy Amar Singh of Punjab Regiment, who laid down his life on 22nd September, 1965, during Indo-Pak War. Petitioner was granted special pension. On her remarriage special pension was withdrawn and instead was granted normal family pension permissible under the Pension Rules. Family pension was also withheld/stopped w.e.f. 1st February, 1972.

2. The petitioner by this writ petition prays for quashing of the orders/communications as communicated to her vide Annexures P-1 and P-2.

3. Admitted facts :

On the death of her husband, in action, during Indo-Pak War of 1965, petitioner was granted special family pension in January, 1966, being nominated person by her husband. However, respondent No. 5 Jharu Ram, father of the deceased, represented to the Army Authorities for the grant of the special family pension as he was totally dependant on the income of his son Amar Singh as Bimla Devi, the

petitioner, refused to maintain him. The Army Authorities divided the pension between Bimla Devi and Jharu Ram by an order dated 17th February, 1968 in the following proportionate:

Bimla Devi: 2/3rd of the admissible pension;

Jharu Ram: 1/3rd of the admissible pension.

4. Jharu Ram in January, 1966 made a representation that the petitioner had remarried one Dalipa Ram of village Ansoli and had given birth to a son from her second husband and has become ineligible for special family pension and therefore the entire special family pension should be made payable to him.

5. On civil investigation the Army Authorities took a view that Bimla Devi had not, infact, remarried Dalipa Ram in accordance with the custom though she live with him as his wife. Her special family pension was withheld and she was granted ordinary family pension. Subsequently even ordinary family pension was discontinued on the ground that the petitioner has not remarried, but was living with Dalipa Ram, without formally marrying him in accordance with custom, which would amount to misconduct within the meaning of Rule 74 (f) of the Pension Regulations Part-II (1961).

6. The case of the petitioner :

According to the petitioner, she had remarried Dalipa Ram after the death of her husband and a male child was born to her from Dalipa Ram. It is her case that she had formally married Dalipa Ram and it is only because of the representation of her father-in-law to the Army Authorities that her pension was withheld/ stopped on the grounds that she was living immoral life which is incorrect. The orders being illegal are not sustainable. It is her case that she was not given an opportunity to rebut the allegation nor was she given any hearing when civil investigation was made by the Army Authorities.

7. The case of the respondents No. 1 to 4:

The case of the respondents No. 1 to 4 is that ordinary family pension was stopped under Rule 74 (f) of the Pension Regulations Part-II (1961), after civil investigation which disclosed that the petitioner was living with Dalipa Ram without formally marrying him and has given birth to a child from the loins of Dalipa Ram which is an immoral act and therefore a misconduct under Rule 74(f) of the Pension Regulations.

8. According to the respondents No. 1 to 4, Bimla Devi changed her statement whenever investigation was undertaken. At the first instance she made a statement that she had not married Dalipa Ram. However, when the case was reinvestigated she had produced the Marriage Certificate signed by the Secretary, Zila Sainik Board, Dharamshala, showing that petitioner had remarried Dalipa Ram on 27th July, 1968. However, when CDA (P) Allahabad had asked for the affidavit of remarriage, she produced an affidavit duly sworn by her before

Sub-Divisional Magistrate, Kangra, saying that she had remarried Dalipa Ram on 30th January, 1972 according to Hindu Rites and therefore, Army Authorities concluded that she was living with Dalipa Ram without formally marrying him. So far the certificate issued by the Secretary, Zila Sainik Board, Dharamshala, is concerned, this certificate is not on record. However, it is clear from the averments made in the reply by the respondents No. 1 to 4 that in 1968 she had performed Court Marriage, but as the Army Authorities did not restore the ordinary family pension, she married Dalipa Ram on 30th January, 1972, according to Hindu Rites. I see nothing wrong in it nor is there any contradiction.

9. Mr. Sandeep Sharma, learned Assistant Solicitor General of India, would submit that in a representation made by the petitioner on 31st March, 1987 she had stated that she does not remember the exact date of remarriage with Dalipa Ram. Even assuming she did say so in her representation, this would not suggest or prove that she had not married Dalipa Ram as stated by her. No record is produced during the course of hearing which may suggest, even remotely, that the petitioner had not married Dalipa Ram. Learned Assistant Solicitor General of India submits that petitioner herself has stated before the Army Authorities that she had not married Dalipa Ram and was living with him without any formal marriage. He refers to letter dated 3rd January, 1979 (Annexure R-13) which is addressed to Records, The Punjab Regiment by CDA. Relevant para of the letter reads:

In the statement given by the widow Smt. Bimla Devi during civil investigation carried out on 29 October, 1971, she has confirmed that after the death of her husband, she was residing as a mistress and neither she had remarried with him nor she had been living with him as a legally wedded wife. She has however given birth to a son from Shri Dalipa Ram. Based on the above report the matter was brought to the notice of PH & HP Area, Ambala Cantt. for action under Rule 74(f) PR-11 on 23 January, 1972. Who have in turn ordered to remove the name of widow from the pensioner list permanently.

Later on Smt. Bimla Devi while completing the claim for Order FP which was submitted to this office vide your letter No. 2448734/ 56/Pen dated 8 January, 1974 duly investigated she stated that she remarried after the death of her husband on 27 July, 1968 and her pension was stopped due to her remarriage on 27th July, 1968.

10. This letter does not show that Bimla Devi had not married Dalipa Ram. On the contrary it is clearly stated that while completing the claim for family pension which was submitted by the concerned Authority to the CDA (Pension) Allahabad she, during the course of investigation, clearly stated that she remarried Dalipa Ram after the death of her husband on 27th July, 1968. Merely because in correspondence it is mentioned that in first investigation Bimla Devi stated that she was residing as mistress with Dalipa Ram would not ipse dixit show that she infact had not remarried Dalipa Ram. The statement of petitioner Bimla Devi which she might have given during the investigation was not annexed with the

reply nor it is produced during the course of hearing. It is to be noticed that even the respondent No. 5 who complained against the petitioner has stated that petitioner had remarried Dalipa Ram. There is nothing on the record to show to the contrary.

11. This apart, Rule 74 of the Regulations, under which the pension of the petitioner was withheld/stopped, provides that if a pensioner, who is convicted of a serious crime by a Court of law or is guilty of grave misconduct which is not of a political nature then the procedure given in the Clause (f) shall be followed.

12. Clause (f) stipulates that if a pensioner is guilty of grave misconduct not falling under Clauses (a) to (e), then it shall at once be reported to the competent authority who may if he considers it justifiable order the suspension of his pension from a date to be specified and the competent authority shall subsequently investigate the case in consultation with the Controller of Defence Accounts (Pensions) and if necessary the civil authorities, and-

(i) either authorize the withholding of pension in whole or in part from a date to be specified by him not earlier than the date of original suspension; or

(ii) authorize continuance in full.

13. There is nothing in the reply of the respondents No. 1 to 4 to show that any investigation was made under Clause (f) in consultation with the Controller of Defence Accounts (Pensions) for any misconduct on the part of the petitioner. Report of such investigation if at all held is not on record. In any event, it is admitted position that petitioner was not associated with this investigation and for that reason alone the finding of misconduct would be bad in law being against the rule audi-alteram-partem and violative of Article 14 of the Constitution of India.

14. No finding of such investigation, as noticed earlier, are placed on record.

15. It is apparent from the reply of the respondents No. 1 to 4 that the pension was withheld/stopped merely on the ground that the petitioner has given two different dates of her marriage. On one occasion she stated that she did not remember the date of her marriage.

16. Faced with this situation Mr. Sharma, learned Assistant Solicitor General of India, submits that the petition suffers from delay and laches. The decision to withhold/stop the pension was communicated to the petitioner in the year 1988 (Annexure P-1), but the petition has been filed in May, 2000.

17. Learned Counsel for the petitioner submits that the petitioner under the legal advice, as averred in para-7 of the petition, filed a suit in the Court of Sub-Judge, Dharamshala, which was dismissed and the petitioner carried an appeal. In the appeal order was passed on 27th February, 1993 and the plaint was returned to the petitioner for want of jurisdiction. I have seen the judgment of the learned District Judge, Dharamshala, dated 27th February, 1993. The learned

District Judge held that the petitioner was not entitled to the declaration from the Civil Court in view of provisions of Sections 4 and 6 of the Pensions Act, 1871, as Section 4, bars the Civil Courts from entertaining any suit "relating to any pension" and held that the Civil Courts has no jurisdiction to grant declaration as prayed for by the petitioner.

18. In any event, petitioner cannot be deprived of her legitimate claim of ordinary family pension for want of proper legal advice or for ill advice.

19. No other point is urged.

20. In result, the petition is allowed. The respondents No. 1 to 4 are directed to restore the ordinary family pension payable to the petitioner with effect from the date it was discontinued/withheld/stopped. The arrears of the pension from the date it was discontinued/withheld/ stopped shall be paid to the petitioner within two months from today, failing which the respondents No. 1 to 4 shall be liable to pay interest at the rate of 12% per annum from the date of the discontinuation of the pension till the entire arrears are paid. The petitioner shall be paid her pension for the month of January, 2006 onwards regularly as per Rules and Orders.

21. No costs.