

(2015) 09 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2923 of 2010, MP No. 01 of 2015, MP No. 3937 of 2012 and MP No. 4122 of 2010

Mastoori Begum (Mst.)

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 527

Hon'ble Judges : Mr. Tashi Rabstan, J.

Bench : Single Bench

Advocate : Mr. O.P. Thakur, Advocate, for the Petitioner; Mrs. Sindhu Sharma, ASGI, for the Respondent No. 1 to 4; Mr. F.A. Natnoo, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

Mr. Tashi Rabstan, J.—Petitioner through the medium of petition-in-hand is seeking quashment of PPO No. F/BC/0010/2010 (Army), dated

16.08.2010 whereby 50% pension has been sanctioned in favour of respondent No. 5 w.e.f. 01.08.2010, and PPO No.

F/BC/CORR/0361/2010, dated 16.08.2010, whereby the Special Family Pension of the petitioner has been reduced to 50%. She further seeks a

direction to respondents 1 to 4 to pay her full special family pension as has been sanctioned vide PPO No. F/BC/392/96.

2. The case set up by the petitioner is that she being the legally wedded wife of deceased Hav. Saifullah and being nominee appointed by the

deceased for receiving all pensionary and other benefits is entitled to receive family pension, which has become payable due to death of Hav.

Saifullah while performing military service. The petitioner, therefore, challenged

the PPO issued by the Army Authority whereby 50% of the pension has been sanctioned in favour of respondent No. 5 w.e.f. 01.08.2010 on the plea that respondent No. 5 was son of 2nd wife of deceased Hav. Saifullah, namely, Rehana Begum (since died). The plea of the petitioner is that in terms of Pension Regulation governing grant of family pension, son of 2nd widow is not entitled to family pension, as such, grant of 50% family pension in favour of respondent No. 5 is illegal and contrary to the provisions of Pension Regulation. It is further contended that rules/regulations for grant of family pension and special family pension are different. Rule 97 of Pension Regulation for the Army is applicable to the commissioned officers and not the army personnel of the rank of Havaldar. It is also contended that even deceased Saifullah did not make any mention of Mst. Rehana Begum or his son respondent No. 5 in the army record or in the nominee column. Learned counsel for the petitioner challenged the impugned PPO on the ground that the same has been issued without providing an opportunity of being heard to the petitioner. He further contends that there is no justification for reduction of family pension to 50% and sanction of remaining 50% in favour respondent No. 5.

3. Respondents 1 to 4 have filed their reply and have inter-alia disclosed that one Mst. Rehana Begum served a legal notice dated 11.08.1995

claiming therein that she had married with late Hav. Saif Ullah Khan in August, 1991 and out of said wedlock one child, i.e., respondent No. 5 was

born. She further alleged that Saif Ullah Khan had already divorced petitioner 5 years back. With a view to verify the assertion made by Mst.

Rehana Begum claiming to be wife of late Hav. Saif Ullah, the matter was referred to Zila Sainik Welfare Officer, Doda and Sr. SSP, HQ, Doda.

SSP, Doda. They appear to have confirmed vide letter dated 27.02.1996 that husband of the petitioner during subsistence of first marriage had

also married one Mst. Rehana Begum and that both were alive and had children. It is further submitted by respondents that as per their records

deceased Hav. Saifullah had nominated petitioner for the purpose of pensionary benefits, but as per the existing rules, children born from the 2nd

widow are also eligible for family pension. Pursuant to verification and relying upon relevant rules and regulations, respondent No. 5 was granted

50% of the pension of late Saif Ullah Khan w.e.f 01.08.2010 to 13.09.2017 or till

marriage or earning by respondent No. 5, whichever is earlier, and after that petitioner shall be eligible for full pension of her husband, which according to the official respondents was communicated to petitioner vide letter dated 14.10.2010 Official Respondents in their objections have also relied upon Rule 97 of Pension Regulation for the Army, which inter alia provides that the children born out of the wedlock of 2nd wife are eligible for grant of division of family pension till 25 years of age or marriage whichever is earlier As per existing Rules, 50% share of family pension in favour of respondent No. 5 was notified by respondent No. 4. Respondents claim that they had only given effect to Rule 97 of the Pension Regulation for the Army and have not violated any provision of law nor have they deprived the petitioner of any right. It is, thus, contended by the respondents that plea of the petitioner that she is exclusively entitled to family pension is not sustainable.

4. Heard learned counsel for the parties and perused the record. It is pertinent to reproduce paragraph no. 6 of Army Instructions of 1980 issued in respect of Regulation 86 of Pension Regulation for the Army, Part-1 (1961), wherein it is provided as under:-

6. Family for the purpose of Family Pension means:

- (a) Wife in the case of male Government servant, or husband in the case of a female Government servant;
- (b) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;
- (c) Son/daughter upto the date of his/her marriage or till the date he/she starts earning, or till the age of 25 years, whichever is earliest;
- (d) Unmarried, widowed/divorced daughter, upto the date of marriage/remarriage or till the date she starts earning whichever is earliest;
- (e) Parents who were wholly dependent upon officer when he/she was alive, provided the deceased officer has left behind neither a widow nor a child;
- (f) Dependent disabled siblings (i.e. brothers/sisters)

Note: Eligible son/daughter includes a posthumous child as well as step child.

Note 2: Children adopted legally after retirement Children born out of a void or

voidable marriage Children born from divorced wife when conception took place before divorce.

7. The pension will be admissible:

(a) To a widow or widower upto the date of death or remarriage whichever is earlier;

(b) son/daughter (including widowed daughter) upto the date of his/her marriage/remarriage or till the date he/she starts earning or till the age of 25

years, whichever is earlier. Provided that if a son or daughter is suffering from any disorder or disability of mind or is physically crippled or disabled

so as to render him or her unable to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to such son

or daughter for life.

(c) Unmarried/widowed/divorced daughter, not covered by (b) above, up to the date of marriage/remarriage or till the date she starts earning or

upto the date of death, whichever occurs earlier.

(d) Parents upto the date of death or till the period of income does not exceed Rs. 3500/- p.m., whichever occurs earlier.

(e) Disabled siblings for life if unable to earn a living even after attaining to age of 25 years.

5. It has been held by the Hon'ble Supreme Court in the case of Rameshwari Devi v. State of Bihar, 2000 (2) SCC 431 that even if the

second marriage is void, but the children born out of second marriage are legitimate and, therefore, such children are entitled to family pension,

whereas rather in the present case respondent No. 5 is the son of Mst. Rehana Begum, who as per the verification conducted by the Zila Sainik

Welfare Officer, Doda was the legally wedded wife of deceased Havaladar Saifullah.

6. In view of above, I do not find out any provision, which disentitles the second wife of deceased and her children to get the benefit of family

pension; rather provisions of Pension Regulation for the Army are explicit and make the provisions for grant of family pension to the widows in

equal share. Since second wife has died leaving respondent No. 5 as legal heir, as such, in terms relevant provisions of Pension Regulation for the

Army, 50% of pension would go to respondent No. 5 and rest 50% would be available to the petitioner. Learned counsel for the petitioner has not

been able to point out any illegality in PPO particularly in the face of explicit provisions Rule 97 of Pension Regulation for the Army relied upon by the respondents.

7. Viewed thus, this petition is found without any merit and is accordingly dismissed along with connected MP(s).

8. Registry to return the record to the learned counsel for the respondents after proper receipt.