

**(2006) 10 DEL CK 0167**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 7753 of 2003**

Smt. Murti Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 19-10-2006

**Acts Referred:**

**Citation :** (2007) 3 SLJ 307

**Hon'ble Judges :** Swatanter Kumar, J;G.S. Sistani, J

**Bench :** Division Bench

**Advocate :** S.R. Kalkal, for the Appellant; Rao Vijay Pal, for the Respondent

**Final Decision :** Disposed Off

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## **Judgement**

G.S. Sistani, J.—The petitioner is the widow of late JEM Man Singh. She has filed the present writ petition, praying to issue a writ or direction in the nature of certiorari, quashing the order dated 17.1.1996 and further to issue a writ in the nature of mandamus directing the respondents to restore ordinary family pension in favor of the petitioner w.e.f. 1.9.1990 along with arrears and 12% interest there upon.

2. The facts as set out in the petition are that the husband of the petitioner was enrolled in Honk Kong Singapore Royal Artillery on 19.11.1932 and was granted Junior Commission on 1.1.1941, he was discharged on 21.11.1947 after rendering 15 years 3 days of service. The late husband of the petitioner was granted service pension from Army-Pension Office, Ministry of defense, Glasgow, till he expired on 18.2.1985. The petitioner's case for grant of ordinary family pension was submitted to the Officer in charge, Record Room, Artillery, Nasik Road Camp (Maharashtra), (respondent No. 2 in the writ petition). Accordingly, ordinary family pension was granted to the petitioner w.e.f. 1.1.1990. Copy of the letter dated 11.6.1991, granting ordinary family pension w.e.f. 1.1.1990 to the petitioner has been filed along with the writ petition. It is pleaded in the petition that from the petitioner's village a complaint was made to the

respondents, stating that the petitioner was the second wife of late JEM Man Singh. It is not disputed that JEM Man Singh was earlier married to one Mamo Devi, who died somewhere in the year 1942. There was no issue out of that wedlock. While the husband of the petitioner (JEM Man Singh) was in service, he remarried on 10.7.1946 to the petitioner and was blessed with four children. Suddenly, a communication dated 7.8.1991 was received by the petitioner from the pension authority Glasgow that because she is the second wife of JEM Man Singh, Therefore, she is not entitled to family pension. The respondent No. 2 took up the case of the petitioner with the Chief Controller of defense (Accounts) stating that the petitioner is the legally wedded wife of late JEM Man Singh and a request was made to look into the matter and for grant of family pension w.e.f. 1.10.1991. It has also been pleaded in the petition that the respondent No. 2 had got an enquiry conducted through branch recruiting officer Hisar and in the said enquiry it was established that the petitioner is the legally wedded wife of JEM Man Singh and that the petitioner was married to him after the death of his first wife. The petitioner had made requests to the respondents that the ordinary family pension which was wrongly discontinued, should be re-started, however, the respondents did not favorably respond to her request.

3. It has been submitted by learned Counsel for the petitioner that it is not disputed that the petitioner's husband was enrolled in the Honk Kong Singapore Royal Artillery. It has also not been disputed that late JEM Man Singh after demise of his first wife Smt. Mamo Devi, during his service, had re-married to the petitioner on 10.7.1946, while he was in active service and the name of the petitioner had been recorded in the old pension book of her late husband. The Counsel for the petitioner in support of the submission has relied upon the pension certificate which has been filed along with the writ petition as well as letter dated 11.6.1991, by virtue of which the petitioner was granted ordinary family pension by the respondents. At this stage, it would be useful to reproduce the Pension order and letter dated 11.6.1991.

#### PENSION CERTIFICATE OF

Rank.....Ex. JEM Name.....Smt. Murti Devi W/o Late Man Singh.  
Regt.....HKSRA. Class of Pension.....HKSRA Family Pension

Military Pension Certificate Family..... Serial No. ....HKSRA  
No. 6263..... Regimental No. ....Rank.....Ex JEM  
Name..... Corps of Military Pensioner.....

OR

Name of Family Pensioner.....Smt. Murti Devi Relation to deceased.....wife  
Rank, Name and Corps of Deceased.....Ex. JEM-Late Man Singh, HSKRA

This is to certify that Smt. Murti Devi W/o Late Man Singh has been admitted to the Indian/Family Pension Establishment and is entitled to receive the pension and allowances noted below payable by the DPDO Hisar.

----- Pension  
and Rates in Period of Authority Allowances figures Grant and words  
----- Rs.P.

484/- Indian Pensioner Four 1-1-90 to F/NA/25 Military Personal hundred  
30.9.90 75/91 Pension Allowances and 1.10.90 Personal Eighty till death  
Allowances Four or Annuity 518/- remarriage Param Vir Five whichever Chakra  
hundred is earlier Indian and Order of eighteen Merit only Jagir Allowances  
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#### NOTES

(1) In addition to above a sum of Rs. 608/- only and a sum of Rs. 340/- only on account of arrears of pension up to 31.12.1989 and up to 30.9.1990 respectively is also paid to the widow.

(2) Relief is not payable in addition.

(3) FP has been granted under APO Glasgow Pension Authority dated 14.3.1990 and 1.10.1990

Station Allahabad Signature\_\_\_\_\_ Date 5/1991 Designation  
\_\_\_\_\_AO"\_\_\_\_\_ Topkhana Abhilekh Records Artillery, Nasik Road Camp.  
11 June, 91 6263/FP-64/713/NE Smt. Murti Devi Widow of Late JEM Man  
Singh House No. Vill Kharar Alipur PO -do- Tehsil : Hisar Distt. : Hisar  
(Haryana)

GRANT OF ORDINARY FAMILY PENSION No. 6263

LATE JEM MAN SINGH (HKSRA)

1. Refer to your pension/application for grant of ordinary family pension dated nil.
2. Pension Certificate for grant of ordinary family pension as under if forwarded herewith. You are advised to report to DPDO Hisar

(a) Ordinary Family Pension

----- Ordinary  
Amount Period of PPO No. Family Grant Pension Name of Petitioners  
----- (a) Smt.

Murti Rs. 484 1.1.90 to F/N a/2574/ Devi 30.9.90 91 dated 23 May 91

Rs. 518 1.10.90 to till widowhood (b) Arrears/lifetime of pension and relief  
with effect from...will be payable as per PPO.

----- Capt/Lt.  
Record Officer For Officiating Commanding Officer Copy to:- TREASURY  
OFFICER 1. The above mentioned PPO from defense PENSION CCDA (P)  
Allahabad duly embossed DISBURSING OFFICER with the payment authority  
seal TREASURY OFFICER notifying initial first grant only together with claim  
forms and acknowledgment of first payment (IAFZ-2010) are forwarded  
herewith

4. Once it has been established that the petitioner was legally wedded wife of late JEM Man Singh and the fact that she was being paid ordinary family pension, at this stage, there can be no reason to discontinue with the same.

5. The Counsel for the respondents has contended that the claim of petitioner for family pension is highly belated and the same was rejected by Army Pension Office, Ministry of defense, Glasgow vide letter dated 7.8.1991. Learned Counsel further placed reliance on the said letter dated 7.8.1991 received from the pension office Glasgow, wherein it has been stated that in view of the fact that petitioner was the second wife, no pension is payable.

6. We have heard learned Counsel for the parties and perused the record. As per the counter affidavit of the respondents it has been admitted that the name of the petitioner is recorded as wife of late Sh. JEM Man Singh and that she was sanctioned family pension @ Rs. 484/- per month vide pension payment order No. F/Na/2574/91. It has also been admitted in the counter affidavit that out of the wedlock of petitioner and late Sh. JEM Man Singh four children, namely Jain Singh and Ajmer Singh (Sons) and Kushleya Devi and Santosh Kumari (Daughters) were born.

7. Learned Counsel for the respondents has not been able to deny the factual position of the matter. In fact the respondents have admitted in their counter affidavit, in reply to Paras 2, 6, 7 and 9 of the writ petition that the name of the petitioner has been recorded as the wife of the deceased, JEM Man Singh and that the petitioner was sanctioned family pension @ Rs. 484/- per month vide Pension Payment Order No. F/NA/2575/91. Paragraphs 2, 6, 7 and 9 of the counter affidavit read as under:

2. With reference to the contents of Para 2 it is submitted that in accordance with Para 595 of Regulation for the Army 1987 (Revised Edition) the time, limit for preservation of service documents in respect of pensioners is 50 years and non-pensioners is 25 years from their sticking of strength from the Army. Hence, service documents of No, 6263 Late JEM Man Singh of HKSRA (Hong Kong and Singapore Royal Artillery) have been destroyed by burning. Artillery Record is not in a position to submit detailed comments on the case. However, the factual position of the case as per information available in IAFK-1172 (particulars of non-effective documents of JCOs/ OR Destroyed) of the above mentioned individual is given in the succeeding paragraphs, As per details recorded in the IAFK-1172 (Particulars of non-effective documents of JCOs/OR Destroyed). No. 6263 Late JEM Man Singh was enrolled in the Army (Hong Kong and Singapore Royal Artillery) on 12 Jan. 1940. He was discharged from service with effect from 22 Nov. 1947 under Para 390 xviii (a) of KRS 1940. Name of Smt. Murti is recorded as wife of the individual in (AFK-1172). She was sanctioned family pension @ Rs. 484/- per month vide Pension Payment Order No. F/ NA/2575/91.

6-7. With reference to the contents of Paras 6 and 7 it is submitted that as per entry recorded in IAFK-1172 (particulars of Non-effective documents of JCOs/OR

Destroyed) Name of Smt. Murti is recorded as wife of the deceased. No records regarding marriage of Late JEM Man Singh with Smt. Mamo Devi is available.

8. xxx xxx xxx

9. With reference to the contents of Para 9 it is submitted that the name of Smt. Murti is recorded in IAFK-1172 (Particulars of Non-effective documents of JCOs/ OR Destroyed) as a wife of the deceased. Particulars of following children are also recorded in ibid document:

(a) Jain Singh - Son (b) Ajmer Singh - Son (c) Kushleya Devi - Daughter (d) Santosh Kumari - Daughter

8. The fact that the respondents are even aware of the children of the petitioner and her demised husband and their names, also shows that the records of the respondents was up to date. The pension certificate which has been extracted above along with the letter dated 11.6.1991 and has been filed on the record, clearly suggests that after the death of the petitioner's husband, the petitioner had been receiving family pension from the CDA (P), Allahabad. After family pension was discontinued w.e.f. 1.9.1991, the petitioner made a request to the respondents for payment of pension which was discontinued. The request of the petitioner was forwarded by Topkhana Abhilekh, Records Artillery, Nasik Road Camp to CCDA (Pensions) for re-consideration of family pension, at the earliest. After the letter dated 15.10.1992 forwarded by Topkhana Abhilekh, Records Artillery, Nasik Road Camp, a reminder dated 11.3.1994 was again sent to 6263/FP-94/713/NE, CCDA (Pensions), G2 (HKSRA Section), Allahabad (U.P.), to take up the case of the petitioner with the authority concerned for reconsideration of family pension, at the earliest. The letter dated 11.3.1994 was also marked to the Director General of Artillery (Arty-3), General Staff Branch, Army Headquarters DHQ New Delhi-110011.

9. The pension certificate issued in the name of the petitioner clearly certifies as under:

This is to certify that Smt. Murti Devi W/o. Late Man Singh has been admitted to the Indian/Family Pension Establishment and is entitled to receive the pension and allowances noted below payable by the DPDO Hisar.

10. This certificate has neither been revoked nor withdrawn nor any show cause notice has been issued to the petitioner except that the family pension was abruptly discontinued and in the said certificate it has been mentioned that family pension is to be granted from 1.1.1990 to 30.9.1990, and thereafter from 1.10.1990 till the death or re-marriage, whichever is earlier.

11. The Hon''ble Supreme Court has repeatedly held that pension is payable on the consideration of past services rendered by the Government servant. In the case of Smt. Bhagwanti Vs. Union of India (UOI), the Supreme Court while dealing with a case where the person had married after retirement and has held as under:

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he had retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on account of the fact that the spouse contributed to the efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection secure companionship and to secure support in old age. The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition of "family" by keeping the post retiral spouse out of it.

12. The respondents have at no stage suggested that the petitioner was not the legally wedded wife of late Sh. JEM Man Singh, in fact the respondents have categorically admitted the petitioner to be the wife of late Sh. JEM Man Singh and accepted that out of the wedlock four children were born and even their names have been given in the counter affidavit. As per the pension certificate extracted above, pension and allowances are payable by DPDO Hisar.

13. Keeping the aforesaid facts, we find absolutely no justification on the part of the respondents to discontinue the ordinary family pension which was being disbursed by them to the petitioner from 1.1.1990 to 30.9.1991. Once the petitioners have admitted that the name of the petitioner is recorded as wife in their records coupled with the facts that the respondents themselves were disbursing the ordinary family pension to the petitioner, we are of the view that the pension, so granted, could not have been discontinued.

14. The petitioner is a widow of a member of the force. After her pension was stopped she made representations to the respondents and when no favorable response was received, she sent a legal notice dated 2.9.2003 and thereafter was forced to approach this Court in the year, 2003.

15. For the foregoing reasons, we direct the respondents to restore the ordinary family pension in favor of the petitioner from three years immediately proceeding the date of filing of the present writ petition. The arrears shall be paid within a period of three months from this judgment and the respondents are directed to continue paying the ordinary family pension to the petitioner in future, in accordance with law.

16. The petition stands disposed of while leaving the parties to bear their own costs.