
(2001) 07 DEL CK 0076
In the Delhi High Court
Case No : CWP No. 5964 of 1998

Smt. Surjeet Kaur

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Defense Services Regulation, 1962 — Regulation 623

Citation : (2003) 60 DRJ 133

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. Rajat Aneja, for the Appellant; Ms. Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—In this writ petition the claim for family pension has been raised by the petitioner who asserts that she is the widow of Late Ex. Hav. Mohinderpal Singh. It is not controverted that Late Ex Hav. Mohinderpal Singh was previously married to Smt. Gursharan Kaur. Information in respect of this marriage is also contained in the "Kindred Roll" maintained by the army Authority. In this Roll there is also a specific reference to D.O.II Ind/58/53.

2. Ms. Jyoti Singh learned counsel appearing for the Respondent has relied on the defense Service Regulation 623 which has the effect of mandating that all personnel including the Late Ex. Hav. Mohinderpal Singh should have mentioned the factum of his second marriage to the Army Authorities. This however was not so done. Rule 623(e) reads as follows:

"The documents mentioned above will be maintained through the medium of Dos Part II in which all casualties affecting the individual will be notified. Dos Part II will be prepared daily by all units unless there are no casualties to report..."

3. It is the Petitioner's case that she was married to Late Ex. Hav. Mohinderpal Singh in 1954. Despite the demands made by the Respondents for the

submission of the Marriage Certificate, she has been unable to comply therewith. It is reasonably contended on her behalf that at that time Marriage Certificate were seldom issued/obtained. Her husband retired in 1959 and has been receiving pension ever since. However, only as late as in 1994, an application for Endorsement of Family Pension-living Petitioner was submitted by Late Ex. Hav. Mohinderpal Singh to the Respondents. This Form duly mentioned the names of the Petitioner as the wife and the date of marriage as 15.1.1955. A photograph of Late Ex. Hav. Mohinderpal Singh as well as the Petitioner had been affixed on the Form. In response to my query whether the correctness of photograph has been accepted/verified by the Respondents, learned counsel for the Petitioner has pointed out that she had appeared before the Respondents in an Interview on 18th December, 2000. Thus it must be assumed that there is no dispute as to the identity of the petitioner as the person on the said joint photograph. It was in the course of this interview that she has stated that the previous wife Smt. Gursharan Kaur is married to a businessman, having their own children and grand-children and living somewhere in Chandigarh. It is further stated by the Petitioner that the husband and children of Smt. Gursharan Kaur are not aware of her previous marriage. Ms. Jyoti Singh has pointed out that in the writ petition the averment is to the effect that the in the writ petition the averment is to the effect that the previous wife Smt. Gursharan Kaur has died; or that her whereabouts are not known. She has emphasised that in respect of this pivotal questions, the Petitioner has herself pleaded conflicting versions and Therefore the petition cannot inspire confidence. Learned counsel for the Petitioner, however, has relied upon a number of documents including the Ration Card of Late Ex. Hav. Mohinderpal Singh which mentions Surjeet Kaur as his wife. It is further mentioned that a Sikhya, (stand to a marriage certificate) is on the record of the Respondent. As regards the marriage of Late Ex. Hav. Mohinderpal Singh to the Petitioner it must be observed that there is substantial documentation in its support; I say no more.

4. Since the factum of this marriage has not been admitted by the Respondent it would not be appropriate for the writ court to pronounce on disputed questions of fact. High prerogative writs should issue where it is palpably obvious that the stand of the Respondents is patently unfair or incorrect on facts or law. The Respondents' refusal to release the pension to the Petitioner is not capricious or without any formalities. There are several impediments in the path of the Petitioner. Firstly that the marriage was not mentioned in D.Os. Part II, and that a Marriage Certificate, recognisable in law, has not been placed on record. Furthermore the first request or "Endorsement of Family Pension" has been made in 1994 whereas the marriage of the Petitioner to Late Ex. Hav. Mohinderpal Singh is stated to have occurred over 40 years ago. If the marriage is viewed with suspicion by the Respondents, the fault can be laid only at the doorstep of the Petitioner or Late Ex. Hav. Mohinderpal Singh.

5. In these circumstances I am not convinced that a writ should issue to the Respondents. Not only would a determination of disputed question of fact have to

be made, but the effect of such an order would be that the Respondent would have to overlook the ignore the requirements of Regulation 623, applicable to the late husband of the Petitioner as all other armed forces personnel. The purpose and intention of the Regulation are indeed salutary, and calculated to snuff out any possible controversy pertaining to the personal facts of the personnel. For a writ court to enter upon a consideration of events allegedly occurring almost half a century ago would be fraught with dangers.

6. I am also mindful of the fact that if the court were to grant the relief prayed for in the writ petition, the effect may be to open a pandoras box in the future and invite bogus claims.

7. Since I have declined to go into the disputed and controverted question of fact, these orders should not be construed as any impediment or obstacle in the path of the Petitioner to prove these facts in any manner as she may be best advised.

8. For all these reasons the petition is dismissed, but there shall be no order as to costs.