

(2023) 01 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Petition No. 13556 Of 2021

Virendra Kumar

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Air Force Act, 1950 — Section 92, 92(i), 95
Code Of Criminal Procedure, 1973 — Section 125

Citation : (2023) 01 DEL CK 0025

Hon'ble Judges : Sanjeev Sachdeva, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Vibha Sharma, Arunima Dwivedi, Pinky Pawar

Final Decision : Dismissed

Judgement

Sanjeev Sachdeva, J

1. Petitioner seeks quashing of Section 92 (i) of the Air Force Act, 1950 (hereinafter referred to as 'the Act') and Air Force Order 03/2013 dated 06.02.2013 as ultra vires the Constitution and further seeks setting aside of order of maintenance dated 17.06.2019 passed by the Air Chief Marshal, Chief of the Air Staff.
2. Learned counsel for the Petitioner submits that the impugned order dated 17.06.2019 is erroneous and is liable to be set aside.
3. Learned counsel for the Petitioner submits that the said provisions are unconstitutional and further that the Respondent no. 3/wife has not disclosed this order in the proceedings filed under Section 125 Cr.P.C. seeking maintenance for herself and her child.
4. She submits that a sum of Rs. 15,000/- was originally being paid to the Respondent No. 3 and 4 for the purposes of their maintenance, however, since they refused to join the mediation proceedings, said amount was stopped.

5. It is not in dispute that the Respondent No. 3 is the lawfully wedded wife of the Petitioner and Respondent No. 4 is the son of the Petitioner. It is also not in dispute that no amount of maintenance was being paid to them at the time when the order impugned herein was passed rather the admission is that initially a sum of Rs. 15,000/- was being paid but it was subsequently stopped.

6. Section 92 (i) of the Air Force Act, 1950 reads as under:-

"92. Deductions from pay and allowances of airmen.—Subject to the provisions of section 95, the following penal deductions may be made from the pay and allowances of an airman, that is to say,—

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(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child."

7. Section 92 (i) of the Act stipulates that the Central Government or a prescribed officer is empowered to make deduction from the pay and allowance of the person being paid for maintenance of his wife and child. This Section is, however, subject to Section 95 of the Act which stipulates that the total deduction under Section 92 shall not exceed, in any one month, one-half of his pay and allowances for that month.

8. The Office Order 3/2013 lays down the procedure for grant, modification or cessation of maintenance allowance to the wife and the children of Air Force personnel. It also provides for systematic steps to be taken inter alia for maintenance allowance to the wife and the children of the Air Force personnel. The Office Order lays down the detailed procedure to be followed by the competent authority for grant of maintenance and also the quantum of maintenance allowance which is to be recommended.

9. The Office Order further stipulates that the duration of maintenance allowance for the wife under Section 92 (i) of the Act would be a maximum period of five years at a time or grant of maintenance allowance by civil court which order is liable to be reviewed after expiry of five years. Similarly, in respect of a son, maintenance allowance is to be granted till he attains the age of 25 years or till he is granted maintenance by a civil court.

10. We find that both the provisions of 92 (i) as well as the Office Order 03/2013 are beneficial provisions providing for beneficial relief to the dependent family members of the person. Said provisions are for grant of an urgent beneficial relief to the dependent family members and, in fact, have been made subject to any order being passed by a civil court on their respective petitions.

11. Learned counsel for the Petitioner has not been able to show that the said provisions are ultra vires the Constitution or breach any fundamental rights of

any individual including the Petitioner.

12. Consequently, we find no ground to quash the said provisions on the ground of being ultra vires the Constitution.

13. So far as the impugned order of grant of maintenance is concerned, we notice that admittedly, Petitioner was initially paying a sum of Rs. 15,000/- to the wife and the child but has thereafter stopped paying the same. The competent authority has granted a sum of Rs. 16,500/- as maintenance to the wife and the child which is nearly 1/3rd of the pay and allowance being drawn by the Petitioner.

14. The provisions of the Act themselves stipulate that the order of maintenance shall continue till the time an order is passed by the civil court. As per the Petitioner, proceedings have already been initiated by the Respondent under Section 125 Cr.P.C. for grant of maintenance.

15. We find no ground to interfere with the order, however, we clarify that in case any order is passed by the competent court under Section 125 Cr.P.C., the maintenance already being paid under the order impugned herein dated 17.06.2019 shall be appropriately taken into account.

16. Thus, we find no merit in the petition. The petition is, consequently, dismissed.