IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.3919 of 2020

Decided on: 03rd November, 2026

Gulshan Devi ...Petitioner

Versus

State of H.P. and others ...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

Whether approved for reporting?[1]

For the petitioner: Mr. Ajay Sipahiya, Advocate.

For the respondents: Mr. Hemant Kumar Verma, Deputy Advocate General, for respondents No.1 to 3-State.

Mr. Neeraj Bhardwaj, Advocate, for respondents No.4(a) and 4(b).

Jiya Lal Bhardwaj, Judge *(Oral)*

The petitioner by way of present petition has prayed for the following substantive reliefs:-

> *"a) The impugned order (Annexure P-2) issued by the Respondent no.3 may kindly be quashed and set aside;*
>
> *b) The respondents may kindly be directed to pay family pension and death benefits to Applicant with effect from the date of death of the Government Employee namely late Sh. Charan Dass along with interest, till the actual amount is paid to the Applicant;"*

2. Shorn of unnecessary details, the key facts as per the pleadings in the petition are that the petitioner was married with late Sh. Charan Dass, who was earlier married to Smt. Dayawanti.

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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late Sh. Charan Dass was appointed as Assistant Sub Inspector (Band Master) with the respondent-State on 05.10.1976 and retired as Deputy Superintendent of Police on 31.03.1999. Smt. Dayawanti, who earlier married to late Sh. Charan Dass, husband of the petitioner lived separately from him since 1975 and ultimately died in the year 1985. Out of the wedlock with late Sh. Charan Dass, the petitioner gave birth to a male child in the year 1978, as evident from the birth certificate (Annexure P-3), in which the name of late Sh. Charan Dass has been shown as his father. Subsequently, after attaining the majority, the son of the petitioner namely Ravi got married in the year 2007 and in the marriage invitation card, the name of the petitioner was shown as his mother and late Sh. Charan Dass as his father. The marriage invitation card of the son namely Ravi, has also been placed on record, wherein the name of the petitioner has been shown as mother and name of father has been shown as late Sh. Charan Dass. The other documents have also been placed on record, in which the name of the petitioner has been shown as wife of late Sh. Charan Dass. In the Scheduled Caste certificate issued by the Sub Divisional Officer (C), Ambala in the year 1986 and 1993 (Annexure P-7), the name of the husband of the petitioner has been shown as late Sh. Charan Dass.

3. late Sh. Charan Dass, husband of the petitioner died

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on 12.11.2010 and after his death, the petitioner made a request to grant her family pension, but her claim came to be rejected vide Annexure P-2 on the ground that as per the information given in Form-3 while forwarding the pension case of late Sh. Charan Dass to the office of Accountant General, only Smt. Sangeeta, married daughter, was declared as family member and names of petitioner, and her son Sh. Ravi Kant were never declared as family members by late Sh. Charan Dass before his death, as per the records available in the office. The petitioner has not submitted the marriage certificate and further, as per the Government of India decision No.15 below Rule 54 of the CCS (Pension) Rules, 1972, second wife is not entitled to family pension as she is not legally wedded wife.

4. The petitioner feeling aggrieved by the said order, whereby her claim came to be rejected, has approached this Court *inter alia* on the grounds that once after the demise of first wife in the year 1985, the petitioner and late Sh. Charan Dass have lived together for more than 25 years, their relationship as wife and husband has been established. It has further been averred that family pension is admissible to a widow in her capacity as widow and could never be subject matter of testamentary disposition. Even if the nomination is made contrary to the statutory provisions, it

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would be inoperative and as such, prayed for quashing the order, whereby the claim of the petitioner has been rejected for pension and further sought a relief that the respondents be directed to pay her family pension and retiral benefits with effect from the date of death of her husband late Sh. Charan Dass, the Government employee.

5. The respondents filed reply to the petition and in preliminary submissions averred that the claim of the petitioner for grant of family pension is not tenable as in all the service records, she was never declared as legally wedded wife. The petitioner has submitted her claim as second wife after a lapse of more than five years after the death of late Sh. Charan Dass and assuming that she is second wife of late Sh. Charan Dass, even then second wife is not entitled to family pension as per the CCS (Pension) Rules.

6. On merits, it has been averred that the case of the petitioner was examined as per the provisions of the CCS (Pension) Rules, 1972 and it was informed to her that her case for grant of pension is not covered under the Rules. late Sh. Charan Dass was appointed as Assistant Sub Inspector (Band Master) on 05.10.1976 in the Himachal Pradesh Police Department and as per service record, he declared Smt. Dayawanti as his wife and Sangeeta as his daughter at the time of his entry to Government service (Annexure

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R-1). He also filed his nomination papers for General Fund Subscriptions on 04.08.1978 in favour of his wife, Smt. Dayawanti. He retired from service on attaining the age of superannuation as Deputy Superintendent of Police on 31.03.1999. At the time of retirement, while forwarding the papers to Accountant General, the information given in Form-3, he only declared Smt. Sangeeta, married daughter, as member of family (Annexure R-3). As per the papers submitted by late Sh. Charan Dass, he was not having any wife living at the time of retirement and he was granted pension by the Accountant General, but no family pension was granted in C&R (Annexure R-4). late Sh. Charan Dass has died on 12.11.2010 and the petitioner has now claimed herself as his wife and submitted her claim for pension after more than five years of death of late Sh. Charan Dass. The case of the petitioner was examined under the Pension Rules, wherein it has been clearly mentioned that the second wife is not entitled to family pension. Further, it is clarified that Section 5(1) of the Hindu Marriage Act stipulates that second marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. During the subsistence of first wife, second marriage would be a nullity and have no legal effect. Further, as per Rule 21 of CCS (Conduct) Rules, 1964, no Government servant having a spouse living, shall enter into, or

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contract, a marriage with any person. Such an act of the Government servant would disqualify the person concerned for appointment to government service. The case of the petitioner was considered in view of the above facts and thus, prayed for dismissal of the writ petition.

7. The petitioner filed an application i.e. CMP-T No.1070 of 2022, for impleading and bringing on record the legal heirs of late Smt. Sangeeta, who was entered as daughter of late Sh. Charan Dass and the application for bringing on record the legal heirs was allowed vide order dated 07.11.2024. The legal heirs of deceased Sangeeta are being represented by Mr. Neeraj Bhardwaj, learned counsel, who submits that he does not have any objection in case pension is granted in favour of the petitioner.

8. I have heard the learned counsel for the parties and also perused the record carefully.

9. From the documents placed on record, more particularly the certificate of birth dated 01.04.1987 (Annexure P-3), the son of petitioner was born on 23.07.1978 and the name of his father has been mentioned as late Sh. Charan Dass and name of the petitioner as mother. As per the Scheduled Caste certificate dated 28.02.1986 issued by the Sub Divisional Officer, Ambala (Annexure P-7), the petitioner has been shown as wife of late Sh.

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Charan Dass. Not only this, even in the subsequent certificate of Scheduled Caste issued by the Sub Divisional Officer (Civil), Ambala dated 02.02.1993 (page 28), the petitioner has been shown to be the wife of late Sh. Charan Dass.

10. Even if it is assumed that the petitioner was not legally married to late Sh. Charan Dass, once she had been living with him as his wife and out of the cohabitation, a son was born on 23.07.1978, the petitioner cannot be deprived of her right to pension only for the reason that the marriage was solemnized with her by late Sh. Charan Dass during the subsistence of first marriage and further, in the pensionary documents, her name was not mentioned as wife of deceased.

11. A three-Judge Bench of the Hon'ble Supreme Court in Civil Appeal No._____ of 2024, (@Special Leave Petition (C) No. _____ of 2024, (@Diary No.2365/2022), titled, ***Radha Devi vs. Chief General Manager & Ors.,*** has held that once the petitioner had continued to live as spouse with Jay Narayan Maharaj after the death of his first wife Rama Sawari Devi, she is entitled to receive family pension, which would help her to live with dignity and help her financially. No doubt, the Hon'ble Supreme Court has passed the order in aforementioned case while exercising power under Article 142 of the Constitution of India, but it is settled law in catena of

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judgments of the Hon'ble Supreme Court that once the woman and man have lived under one roof for quite a long period, it can be presumed that they were living as husband and wife.

12. In the present case, the petitioner has given birth to a child from the cohabitation with late Sh. Charan Dass and the name of late Sh. Charan Dass has been entered in the birth certificate as father of child on 01.04.1987, which has been issued much before the death of late Sh. Charan Dass, who died on 12.11.2010 and thereafter the petitioner has also placed on record the Scheduled Caste certificates dated 28.02.1986 and 02.02.1993, which have been issued by the competent authority, wherein too, the petitioner has been shown as wife of late Sh. Charan Dass and, therefore, she cannot be denied the benefit of pension simply on the ground that her name was not entered in the pension papers.

13. Learned counsel representing the legal heirs of deceased Sangeeta has conceded before the Court that they do not have any objection, in case the family pension is granted in favour of the petitioner.

14. Learned counsel representing the petitioner has also placed reliance upon the judgment passed by the Hon'ble Supreme Court in ***Shiramabai and others vs. Captain, Record Officer for O.I.C., Records, Sena Corps Abhilekh and another***, (2024) 16 SCC

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773, to contend that long, continuous cohabitation between man and woman raises presumption of valid marriage and in the present case, since the petitioner has given birth to a male child after the cohabitation with late Sh. Charan Dass, she is entitled to family pension. The relevant paragraphs of the judgment read as under:

> *"14. On the demise of Subedar Bhave in the year 2001, when Appellant 1 approached the respondents claiming family pension, the said request was rejected only on the ground that her marriage with late Subedar Bhave had taken place in February 1981 whereas he and Anusuya, got divorced much later, in the year 1990.*
>
> *15. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:*
>
> > *"114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*
>
> *16. In this above context, we may refer to Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, where the Privy Council observed thus: (SCC OnLine PC)*
>
> > *"... where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.*
> >
> > ** * **
> >
> > *The parties lived together for twenty years in the same house, and eight children were born*

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to them. The husband during his life recognised, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognised as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess —all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody."

17. In Mohabbat Ali Khan v. Mohd. Ibrahim Khan, it was again observed by the Privy Council that: (SCC OnLine PC)

"…'… the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years,…'"*

18. Similarly, in Badri Prasad v. State of U.P., this Court held as follows: (SCC p. 527, para 1)

"I. … A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy."

19. In S.P.S. Balasubramanyam v. Suruttayan, this Court held as under: (SCC p. 462, para 4)

"4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see Gokal Chand v. Parvin Kumari)."

20. It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its

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legal origin to prove that no marriage had taken place (refer: Tulsa v. Durghatiya).

21. A similar view has been taken by this Court in Madan Mohan Singh v. Rajni Kant, Indra Sarma v. V.K.V. Sarma and Dhannulal v. Ganeshram.

22. In Gokal Chand v. Parvin Kumari this Court observed thus: (SCC p. 716)

"... Continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them."

23. In Kattukandi Edathil Valsan case, citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property.

24. It can be discerned from the aforesaid line of decisions that the law infers a presumption in favour of a marriage when a man and woman have continuously cohabitated for a long spell. No doubt, the said presumption is rebuttable and can be rebutted by leading unimpeachable evidence. When there is any circumstance that weakens such a presumption, courts ought not to ignore the same. The burden lies heavily on the party who seeks to question the cohabitation and to deprive the relationship of a legal sanctity."

15. Learned counsel for the petitioner also placed reliance upon the judgment passed by a Division Bench of this Court in LPA No.545 of 2025, titled ***Umawati v. HPSEB and others*****,** wherein too, the Court after considering the various judgments of the Hon'ble

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Supreme Court, had come to the conclusion that the marriage *inter se* late Sh. Jai Ram and the appellant is illegal in terms of Section 5(i) of the Hindu Marriage Act; however, as per the law laid down by the Hon'ble Supreme Court, the same is not in immoral. It has further been held that the object of providing family pension cannot be different from the object of providing maintenance and the appellant was thus held entitled for grant of family pension.

16. In the present case, the petitioner has placed on record various documents, wherefrom it can easily be inferred that she had lived with late Sh. Charan Dass as his wife and further had given birth to a male child, which is evident from the birth certificate placed on record, in which deceased late Sh. Charan Dass has been recorded as father of the child and, therefore, she cannot be denied the pension solely on the ground that her name was not recorded in the pension papers and further she was married to late Sh. Charan Dass during the subsistence of first marriage. Thus, the order of rejection of her claim for family pension by the respondents on the ground that the petitioner has not submitted the marriage certificate and further, her marriage was during subsistence of first marriage does not entitle her for pension, as communicated vide Annexure P-2, is quashed and set aside.

17. Resultantly, in view of the observations made

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hereinabove, Annexure P-2 is quashed and set aside and the respondents are directed to grant family pension to the petitioner. Since the petitioner has approached this Court only in the year 2018, she is held entitled to the pension from three years prior to the date of institution of the present petition. It is made clear that in case the arrears of pension are not released to the petitioner within a period of six months from today and further she is not regularly paid the pension, she is also held entitled interest thereon @ 6% per annum from today till actual payment.

18. The petition is accordingly disposed of. No order as to costs. Pending application(s), if any, also stands disposed of.

03rd November, 2026 **(Jiya Lal Bhardwaj)**
(ankit) **Judge**

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