



**REPORTABLE**

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 5<sup>th</sup> DAY OF AUGUST, 2022**

**BEFORE**

**HON'BLE MS. JUSTICE JYOTSNA REWAL DUA**

**CIVIL WRIT PETITION No.1657 of 2016**

**Between:-**

**DURGI DEVI**

**.....PETITIONER**

**(BY MR. SANJEEV BHUSHAN, SENIOR ADVOCATE  
WITH MR. RAJESH KUMAR, ADVOCATE)**

**AND**

- 1. STATE OF HIMACHAL PRADESH,  
THROUGH SECRETARY (HOME)  
TO THE GOVERNMENT OF  
HIMACHAL PRADESH, SHIMLA-2.**
- 2. DIRECTOR- GENERAL OF POLICE,  
HIMACHAL PRADESH, SHIMLA-2.**
- 3. ACCOUNTANT GENERAL,  
HIMACHAL PRADESH, SHIMLA-3.**

**.....RESPONDENTS**

**(MR. NARENDER SINGH THAKUR, DEPUTY  
ADVOCATE GENERAL WITH MR. RAM LAL  
THAKUR, ASSISTANT ADVOCATE, GENERAL,  
FOR R-1 AND R-2.  
MR. LOKINDER PAL THAKUR, SENIOR PENAL  
COUNSEL FOR R-3)**

**Reserved on:29.07.2022**

**Decided on: 05.08.2022**

This petition coming on for hearing this day, the Court passed the following:

**ORDER**

Petitioner's claim is that she is second wife of deceased Bhola Ram, so she is entitled to family pension, more so, after the death of his first wife, who was recipient of the family pension.

**2.** The facts as submitted by learned Senior Counsel for the petitioner are that:-

**2(i)** The petitioner got married to Bhola Ram in the year 1964. The marriage was solemnized as per customs and rituals prevailing in the area. Six children were born from this wedlock. Petitioner was not aware at the time of her marriage that Bhola Ram was already married and had a wife. She became aware of this fact much later.

**2(ii)** Bhola Ram superannuated in the year 1983. He died on 17.01.2002. Bhola Ram had nominated the petitioner in the official record for the purpose of family pension. However, claim for family pension was put forth by his first wife-Smt. Ramku Devi. The respondents conducted inquiry in the matter and came to the conclusion that Smt. Ramku Devi was the first and legally wedded wife of late Bhola Ram. On

this basis, family pension was sanctioned and paid to Smt. Ramku Devi.

**2(iii)** The petitioner challenged the decision of the respondents in declining her the family pension by filing Civil Writ Petition No. 7571 of 2010 in this Court. The writ petition was dismissed on 27.07.2011.

**2(iv)** The petitioner's present claim is that Bhola Ram's first wife Smt. Ramku Devi has also died on 01.08.2015, hence, no other claimant qua family pension survives, but for the petitioner and her children. On such basis, she has now stacked her claim on family pension w.e.f. August 2015.

**3.** The arguments of learned Senior Counsel for the petitioner are that the petitioner was lawfully married to Bhola Ram. She gave birth to his children. So, she is entitled for family pension after Bhola Ram's first wife passed away. Inviting attention to Rule 54 of CCS Pension Rules, learned Senior Counsel asserted that law envisages a situation where pension is payable to more than one wife. Learned Senior Counsel also placed reliance upon judgment of Madras High Court, dated 23.01.2020, titled **C.Sarojini Devi Vs. The Director of Local Fund Audits and others, WP No.34592 of 2019**, wherein, the decision of the official respondents in

rejecting the proposal for family pension to the petitioner (therein) on the sole ground that when the petitioner married the deceased government servant, the marriage between the government servant and his first wife was subsisting, was held to be incorrect. The second wife was held entitled to the family pension.

The argument of learned Deputy Advocate General was that the petitioner had already invoked extraordinary jurisdiction of this Court for the same relief as claimed herein. Having lost in her earlier Civil Writ Petition No.7571 of 2010, it is not open for the petitioner to agitate the same issue once again. The prayer was made for dismissing the writ petition.

**4. Observations:**

**4(i).** Rule Position.

**4(i)(a).** Rule 54 of CCS Pension Rules, 1972 pertains to family pension. Sub Rule (7) thereof talks about the situation where family pension is payable to more than one widow of the deceased. Rule 54(7) is extracted hereinafter:

*“(7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.*

*(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:*

*Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.*

- (b) *Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.*

*Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.*

- (c) *Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced.*

*Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.*

- (d) *where the family pension is payable to twin children, it shall be paid to such children in equal shares:*

*Provided that when one such child ceases to be eligible, his/her share shall revert to the other child and when both of them cease to be eligible the family pension shall be payable to the next eligible single child / twin children.”*

Second wife (widow) can be granted family pension, in those cases, where more than one marriage is permissible under the applicable personal laws of the deceased employee and not otherwise. This position has also been clarified by the Government of India decision No.(13) Below Rule 54 of CCS Pension Rules, which provides that second wife will not be entitled for family pension as legally wedded wife. The extract of the decision is as under:-

**“(13) When second wife not entitled to the family pension.** -The Department of Pension and Pensioners' Welfare have since clarified that the second wife will not be entitled to family pension as a legally wedded wife. A copy of their clarification is enclosed for information.

*COPY OF D.O., LETTER NO. 1/39/86-P. & P.W., DATED 16-2-1987, RECEIVED FROM SHRI HAZARA SINGH, DEPUTY SECRETARY, DEPARTMENT OF PENSION AND P.W., NEW DELHI. An extract of the relevant advice given by the Ministry of Law in the matter is enclosed. You may like to take necessary action in the matter accordingly.*

**EXTRACT**

*It is specifically a question arising under the Hindu Marriage Act, 1955. Under Rule 54 (7) of the CCS (Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased*

*Government servant. Section 11 of the Act provides that any marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in Clauses (i), (iv) and (v) of Section 5 of the Act. Section 5 (1) stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu male after the commencement of the 1955 Act during the lifetime of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife.”*

**4(1)(b).** In **2015(14) SCC 511, titled Raj Kumari and others Vs Krishna and others**, claim of pension was made by Krishna-the second wife of the deceased-Atam Parkash. The High Court decided in favour of the second wife. The Apex Court set aside the judgment delivered by the High Court and held as under:-

“14. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination one can say that the Plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married to another woman in Arya Samaj temple, as submitted by the learned Counsel appearing for the Appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived and the decree passed by

*the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present Appellants in accordance with the rules and Regulations governing service conditions of late Shri Atam Parkash.”*

A Division Bench of Bombay High Court while deciding Writ Petition No. 2949 of 2019 vide judgment dated 16.02.2022, held that petitioner (therein the second wife) would not be entitled to family pension under the pension Rules notwithstanding the death of first wife as petitioner's marriage to the deceased itself was void under the provisions of Hindu Marriage Act.

The judgment of Madras High Court cited by the learned Senior Counsel is distinguishable on facts. In the said case, the marriage between the deceased government servant and his first wife had dissolved in the year 2003.

**4(1)(c).** Against the backdrop of above legal position, facts of the instant case may be examined. It is the admitted case of the petitioner that her marriage was solemnized with the deceased during subsistence of his first marriage, lawfully solemnized with Smt. Ramku Devi. The petitioner as second wife of the deceased Bhola Ram, cannot be held entitled to family pension. Bhola Ram had died on 17.01.2002. He was survived even at that time by his lawfully married first wife



Smt. Ramku Devi, who died on 01.08.2015. Smt. Ramku Devi had received the family pension till her death on 01.08.2015.

In view of these facts considered in light of the applicable legal position, the petitioner being the second wife of deceased Bhola Ram, cannot be held entitled to family pension after the demise of his first wife Smt. Ramku Devi.

**4(ii).** There is one more reason for dismissing the present writ petition. The petitioner had earlier filed CWP No.7571 of 2010, seeking quashing of the decision of the official respondents to grant family pension to Smt. Ramku Devi, first wife of deceased Bhola Ram. While dismissing the writ petition on 27.07.2011, the Court had held that the deceased had solemnized second marriage with the petitioner during subsistence of his first marriage with Smt. Ramku Devi, which is void, therefore, there could not be a valid nomination in favour of the petitioner by the deceased for the payment of family pension. The Court also held that even otherwise the nominee is only a trustee of the rightful claimant and no relief cannot be granted to him. The judgment goes as under:-

*“By means of present writ petition the petitioner seeks the quashment of Annexure P-8 whereby respondent No.4 the first wife of deceased Bhola Ram was granted family pension after his death.*

2. *Said Shri Bhola Ram had retired from the Army service and got reemployment in Police Department. The petitioner was entered in the service record by the deceased as his wife alongwith children born from the said wedlock. On attaining the age of superannuation, he was retired from the service on 30.6.1983. His pension was sanctioned by respondent No.5. He died on 17.1.2002 and the family pension was sanctioned in favour of the petitioner as per entry contained in the service-book. Later respondent No.4 sent a complaint to the Secretary (Home) to the Government of Himachal Pradesh claiming herself to be the first and legally wedded wife of deceased Bhola Ram. An enquiry was initiated, which was conducted by the Superintendent of Police, Bilaspur. It revealed that respondent No.4 Ramku Devi alias Ram Kaur was the legally wedded wife of deceased Bhola Ram, but there was no issue out of the said wedlock. Consequently, Bhola Ram solemnized second marriage with the petitioner. It also revealed during the enquiry that the petitioner had also requested the army authorities to release family pension of said Shri Bhola Ram to her being the second wife, but they rejected her claim and recommended full family pension to respondent No.4, who was already recorded as the wife of the deceased.*
3. *From the record, it stands established that the petitioner herein was kept as a wife by the deceased during the subsistence of the first marriage with respondent No.4, which is void. Therefore, there could not be a valid nomination in her favour by the deceased for the payment of pension. Even otherwise also, the nominee is the trustee of the rightful claimant and no relief can be granted to her. In view of the aforesaid circumstances, the prayer sought cannot be allowed. As such, the petition is dismissed.”*

The petitioner has accepted the above verdict dismissing her writ petition for claim of family pension. In the instant writ petition, the petitioner has essentially prayed for the same relief as was claimed by her in her earlier writ petition. The only difference being that she has now restricted her claim from August 2015 i.e. when Smt. Ramku Devi, the first wife of deceased Bhola Ram, died. The relief claimed by the petitioner cannot be granted to her on the principle of *res-judicata*.

For the aforesaid reasons, I find no merit in the claim of pension set forth by the petitioner-the second wife of the deceased employee.

**5.** Having turned down the pension claim of the second wife of the deceased employee, there is yet another facet which remains to be examined that is entitlement of children born from other marriages to the pension of their father.

**5(i)** As per Section 11 of the Hindu Marriage Act, any marriage shall be null and void, if the party has a spouse living at the time of marriage. According to Section 16 of the Act, children of such null and void marriage shall be legitimate.

**5(ii)** Government of India vide O.M. No. 1/16/96-P & PW(E) dated 02.02.1996 had clarified that pensionary benefits will be granted to the children of a deceased government servant from void or voidable marriages as per their turn in accordance with Rule 54(8) of Pension Rules, 1972. It was also clarified that such children will have no claim whatsoever to receive family pension as long as legally wedded wife is the recipient of the same.

**5(iii)** In supersession of O.M. dated 02.02.1996, another O.M. was issued on 27.11.2012 to the effect that share of children from illegally wedded wife in the family pension shall be payable to them in the manner given under Rule 54(7) (c) of CCS (Pension) Rules, 1972 alongwith the legally wedded wife. It was also decided that in past cases, no recovery from previous beneficiary should be made.

**5(iv)** Thus the sum total about entitlement of children of null and void marriages to pension of their deceased father is that:-

- (a)** If deceased employee is survived by more than one widow and children from these wedlocks, family pension will be shared equally by first wife being

legally wedded wife alongwith children from the other wedlocks.

The eligibility of each child for pension has to be considered in terms of Rule 54(8)(iii) of CCS (Pension) Rules, 1972.

**(b)** In terms of Rule 54(7)(b) and (c) of CCS (Pension) Rules, 1972:-

**(i)** On the death of legally wedded wife, who is not survived by any child eligible to receive pension, share of family pension to her stream would not lapse, but would be payable to eligible children from other wedlock (the other stream) in full i.e. 100%.

**(ii)** If children from the other wedlock become ineligible to receive pension, their share of the family pension would not lapse but would be payable to the legally wedded wife and her children as the case may be in full i.e. 100%.

**(iii)** In case deceased employee is survived by a widow and children from first wife however second marriage was solemnized after the death of first wife or after getting divorce from

first wife, family pension will be shared equally by second widow being legally wedded wife alongwith children from first wedlock. ◊

The writ petition filed by the second wife, claiming family pension, is accordingly dismissed with the above observations. All pending application(s), if any, also stand disposed of.

August 05, 2022  
*R.Atal*

Jyotsna Rewal Dua  
Judge

High Court of H.P.