

CWP No.28008 of 2017

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**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Writ Petition No. 28008 of 2017

Date of Decision: March 13 , 2020.

Suman PETITIONER (s)

Versus

The State of Haryana and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vinod Bhardwaj, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl.AG, Haryana.

Mr. Surender Dhull, Advocate
for respondent No.4.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This writ petition has been filed seeking quashing of memo dated 17.11.2017, Annexure P8 calling upon the petitioner to deposit the amount released to her towards widow pension under the 'Haryana Pension to Widows and Destitute Women Scheme Rules, 1988-1989' on the ground that she had solemnized marriage/Kareva marriage with her brother-in-law (Devar) Dalbir Singh and thus had received the said amount though not entitled to it after her re-marriage.

It is the petitioner's case that her husband, who was a labourer by profession died on 04.04.2007. His death certificate is attached as Annexure P1. The petitioner, who claimed to be a poor lady belonging to the Harijan community claimed pension under the Widow Pension Scheme i.e., one of the social security schemes of the State of Haryana. The petitioner was afforded pension under the said scheme (Annexure P2). She claimed to be totally dependant upon the widow pension and her father-in-law as well as brother-in-law (Devar), namely, Dalbir, who was unmarried at that time. Petitioner performed Kareva marriage with her brother-in-law, namely, Dalbir and a daughter was born out of the wedlock on 28.01.2011. The petitioner's father-in-law is stated to be working with some landlord in a nearby village. A dispute arose between the petitioner's father-in-law with one Gian Chand son of Puran Chand in respect to which an application was submitted by her father-in-law (Annexure P7). Due to the said incident, Gian Chand submitted a complaint alleging that the petitioner was withdrawing widow pension in an illegal manner having solemnized a second marriage with her Devar (brother-in-law). Widow pension being released to the petitioner was accordingly stopped and vide impugned order/memo dated 17.11.2017 (Annexure P8), recovery of ₹1,82,727/- with interest at the rate of 12% per annum was demanded from the petitioner. Aggrieved therefrom, this writ petition has been filed.

Learned counsel for the petitioner argues that pension was granted to the petitioner, who was rendered a widow on the death of her husband on 04.04.2017. Pension under the social security schemes, Annexure P2, was released to her being a destitute woman. Kareva marriage was performed by the

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petitioner with her brother-in-law (Devar), namely, Dalbir Singh. Learned counsel for the petitioner contends that the petitioner is entitled to receive the pension despite her Kareva marriage. He relies upon decision dated 22.04.2014 in CWP No.10344 of 2013 (Ramrati Devi v. State of Haryana and others) and 05.09.2009 in CWP No.17970 of 2008 (Shanti Devi v. State of Haryana and others) by coordinate Bench of this Court. It is further contended that there is no bar in the scheme for release of the pension to a widow who remarries subsequently and in any case, a Kareva marriage does not translate to remarriage. Notice for recovery of the amount from the petitioner, it is submitted, is clearly unjustified in the facts and circumstances of the case. It is urged that the said notice has been actuated due to *mala fides* and active connivance of respondent No.4 with the officials. It is, thus, prayed that this writ petition be allowed. Notice dated 17.11.2017 be quashed and the official respondents be directed to continue releasing the widow pension to the petitioner, besides, releasing the arrears thereof to her. It is thus prayed that this writ petition be allowed.

Per contra, learned counsel for the State argues that the scheme in question is meant to help a widow to tide over the difficult circumstances which may arise on the death of her husband and to provide social security to a woman who is unable to sustain herself from her own resources and is in need of financial assistance being rendered a destitute. It is further stated that the petitioner herself had approached the department and submitted an application on 24.08.2017 stating that she had remarried and did not wish to receive the widow pension any longer and the same may be stopped. Learned counsel for the State further refers to notification dated 24.08.1992 in respect to the provisions for

stoppage of pension. It is further contended that the judgments relied upon by the petitioner are not applicable to the facts and circumstances of the case as there is a specific provision under Rule 8.35 of the Punjab Civil Services Rules, wherein pension is admissible to a widow who subsequently contracts/solemnizes Kareva marriage. There is no such provision in the present case and moreover, family pension under the service rules applicable to the deceased employe, cannot be equated to pension given to a widow under the special schemes formulated by the State to take care of contingencies as mentioned therein. Dismissal of the writ petition is, thus, prayed for.

I have heard learned counsel for the parties and have gone through the file as well as the judgments relied upon by the learned counsel.

It is not in dispute that the petitioner's husband, namely, Joginder Singh died on 04.04.2007. The petitioner claimed pension under the Widow Pension Scheme i.e., one of the social security schemes promulgated by the State of Haryana. The aim of the scheme is specifically stated to be a provision for social security to women who are unable to sustain themselves from their own sources and are in need of financial assistance from the State. It is specifically mentioned that the widow pension scheme is one under which destitute or deserted women and widows of 18 years of age or above are awarded the pension as per the eligibility criteria specified therein. The eligibility criteria reads as under:-

“Eligibility Criteria:

A woman of age 18 years and above is eligible for grant of pension under the scheme if she is domicile of Haryana and has been residing in Haryana State for the last one year at the time of submission of application and her own income from all sources is below ₹2,00,000/- per annum and

further any one of the three conditions are fulfilled:

- i) She is a widow; or
- ii) She is destitute without husband, parents and son(s); or
- iii) She is destitute due to desertion or physical/mental incapacity of,
 - (a) Husband, in case of married woman; or
 - (b) Parents, in case of other women.”

It is apparent that the said scheme has been floated to take care of a situation where a woman is rendered destitute with no source of income consequent to the death of her husband. 'The Haryana Pension to Widow and Destitute Women Scheme Rules, 1988-1989' were promulgated and came into effect from 01.07.1991. Rule 3 of the Haryana Pension to Widows and Destitute Women Scheme Rules, 1988-1989 reads as under:-

“3. A woman, in the age group of 18 years and above is eligible for grant of pension if she is widow or unmarried woman or a married woman who has been deprived of the financial support from from her husband because of his physical/mental incapacity or desertion by husband or any other reasons and her close relative such as parents, sons, son's son are not supporting her and her own income from all sources is less than the income prescribed by Government in this regard in consultation with Finance Department, provided she is a domicile of Haryana and has been residing in Haryana State for the last 1 year at the time of submission of application.”

In the case of Ramrati Devi v. State of Haryana and others (supra) the controversy revolved around the entitlement of a widow to family pension as per Rule 8.35 of the Punjab Civil Services Rules, Volume II. It is with reference to clause 2(b) of Rule 8.35 of the Punjab Civil Services that the petitioner therein was held entitled to the grant of family pension notwithstanding solemnization of

Kareva marriage by her.

“(b) Notwithstanding anything contained in sub-clause – (a) a widow who re-marries her deceased husband's brother and continues to live a communal life with or contributes to the support of other dependants of her deceased husband shall not be disqualified for the grant of extraordinary pension otherwise admissible to her under these rules.”

The case of Shanti Devi v. State of Haryana and others (supra) also pertains to the family pension received by the widow on account of death of her husband, who was an employee in the Irrigation Department, Haryana. In Shanti Devi's case (supra), the coordinate Bench referred to the relevant instructions which regulated the grant of family pension which provide that in case a widow remarries her husband's real brother and continues to live a communal life with and/or contributes to the support of other living eligible heirs, she would continue to be eligible to the liberalized special family pension.

However, in the present case, pension was released to the petitioner under a social security scheme followed by the State with a categorical aim to provide for women who are rendered destitute due to the death of physical/mental incapacity or desertion by their husband.

Furthermore, it is not denied that the petitioner herself had submitted application (Annexure R1) clearly stating that she wished the pension being received by her to be stopped as she had performed Kareva marriage three years after the death of her husband on 04.04.2007. It is further stated that as she was not aware of the provisions, she continued to draw the pension. There is nothing on record to indicate that the petitioner is a destitute.

Therefore, keeping in view the factual matrix of the case, I am of the

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considered opinion that the petitioner is not eligible to draw pension under the Haryana Pension to Widows and Destitute Women Scheme Rules, 1988-1989 having solemnized Kareva marriage with her brother-in-law (Devar). Argument raised by learned counsel for the petitioner that Kareva marriage is, in fact, not a marriage, is noticed only to be rejected. This argument is clearly devoid of any merit and is totally unsubstantiated.

However, at the same time keeping in view the facts and circumstances of the case, it is considered just and expedient to set aside the impugned order/memo dated 17.11.2017 (Annexure P8) to the effect that it seeks recovery of the amount released to the petitioner.

It is relevant to note, at this stage, that the Rules provide for verification of the pensioners. It is provided that the Committee for Scrutiny may also investigate if any of the pensioners is no longer eligible for pension. The said exercise was clearly not undertaken. The petitioner herself has submitted the application, Annexure R1, revealing her Kareva marriage and seeking the stoppage thereof. In the given circumstances, it is held that though the petitioner is not entitled to grant of pension under the aforesaid scheme, the respondents are not entitled to recover the amount already released to her.

Writ petition is accordingly disposed of.

March 13, 2020.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No