

HIGH COURT OF MADHYA PRADESH : JABALPUR

WRIT PETITION No. 17945/2014

Smt. Chandradevi

Vs.

State of Madhya Pradesh and another.

Shri V.K. Lakhera, learned counsel for the petitioner.

Shri A.P. Singh, learned Government Advocate for the respondents/State.

Present : Hon'ble Shri Justice K.K. Trivedi

O R D E R
(19.10.2015)

1. This writ petition under Article 226 of the Constitution of India is the second round of litigation for grant of family pension, as claimed by a widow of an employee of the Police Department, who has expired after voluntary retirement.

2. Undisputedly, the husband of the petitioner by name Bhagwansingh was original resident of Uttarakhand, who came to be appointed in the services of Special Armed Forces in Madhya Pradesh and who served for quite some time. Thereafter, he obtained voluntary retirement and ultimately died. The petitioner being the first married wife of the said Bhagwansingh made a prayer before the competent authority for grant of family pension, which was not being considered and, therefore, she filed W.P. No. 9565/2012 before this Court. Certain documents were

placed on record of the said writ petition by the petitioner.

3. Upon service of notice of the writ petition a return with certain documents was filed by the respondents and a dispute was pointed out that in the service book of the employee concerned the name of his wife was recorded as Geetadevi and there was no indication of name of the petitioner in the said service roll. The family pension case is to be prepared only on the basis of information provided in the service roll.

4. Considering the aforesaid dispute, this Court passed a final order in the said writ petition on 19.11.2012. The operative part of the order is reproduced for ready reference.

“A proper fact finding enquiry into the matter has to be conducted by the competent authority or Court and it is only after such a fact finding enquiry is conducted, which can be done either by proceeding for grant of succession certificate or any other procedure, that benefit can be granted. If the petitioner is able to produce a document in this regard from a competent Court or authority, respondents are directed to consider her case afresh.

With the aforesaid liberty to the petitioner, for the present, finding no case for interference, this petition is disposed of.”

5. In view of the aforesaid liberty granted by this Court since the petitioner is the original resident of Uttarakhand, her marriage with the said Bhagwansingh

was solemnized at Uttarakhand, she made an application for grant of succession certificate before the competent authority of Uttarakhand State. The said authority conducted an enquiry and thereafter issued a certificate in favour of the petitioner, which certificate was counter signed by the Collector of the said area. It was categorically recorded in the said certificate that the marriage of the petitioner was performed with said Bhagwansingh, who has ultimately died on 15.02.2005.

6. On receipt of the certificate a prayer was made by the petitioner before the respondents-authorities for grant of family pension which prayer has been refused by communication dated 24.02.2014 (Annexure P/1) contending therein that the petitioner can obtain a succession certificate from the competent Civil Court in Madhya Pradesh and if the said certificate is produced, then only the application of the petitioner can be considered. The petitioner is aggrieved by this communication and has claimed the following reliefs :-

“(a) That, the Hon'ble Court be pleased to quash and set aside the impugned under reference letter No.10-14 dated 24.02.2014 issued by the Respondent No.2 respectively, and direct the respondent to pay the Applicants sanction of family pension, after admitting the “Utterjivi Parman Patra” dated 27.07.2013 as authentic documents issued by the competent authority of Uttarakhand Government. Counter signed by D.M. Pauri on 31.10.2014 under seal, District Magistrate, Garhwal.

(b) The cost of this petition be provided along with legal and other incidental expenses for in-favouring of the petitioner.

(c) Interest on the held up pension @ 18% be ordered to the applicable or deemed fit and proper by Hon'ble Tribunal."

7. The respondents have filed their return contending *inter alia* that the Madhya Pradesh Civil Courts Act, 1958, prescribed constitution of the Civil Court and Civil Court within the district is the competent authority to issue succession certificate. In case of any dispute, the said Court would be the competent authority to decide the dispute of succession and in that event only after obtaining the succession certificate from the competent Court the claim of the petitioner for grant of family pension can be considered. Thus, it is contended that rightly the succession certificate issued by an authority of Uttarakhand has not been accepted by the respondents and as such no illegality is committed in asking the petitioner to obtain the succession certificate from the competent Court. In view of the aforesaid, it is contended that the writ petition is devoid of any substance and deserves to be dismissed.

8. After hearing learned counsel for the parties at length and after going through the record as also the provisions of the rules in the matter of grant of family pension, it is seen that the demand made by the respondents is wholly unjustified. It is nowhere provided under Rule 47 of the M.P. Civil Services

(Pension) Rules, 1976, that the family pension would be granted only when the succession certificate is produced from the competent Civil Court. Precisely, this was the reason on earlier occasion when the writ petition of the petitioner was disposed of, this Court has granted liberty to the petitioner to obtain succession certificate from any competent authority. Even otherwise, succession certificate relating to the petitioner, taking into account her marriage with the said employee cannot be granted by the Court situated within the State of M.P. for the simple reason the marriage of the petitioner was not solemnized with the said Bhagwansingh in the State of Madhya Pradesh. As has been pointed out the said marriage was performed at Uttarakhand. The other aspect is that the respondents have not disputed the fact that the competent authority has not issued the certificate of succession to the petitioner at Uttarakhand or that the said authority was not authorized to issue such certificate. What is said in the communication is that since the succession certificate is to be granted by the Civil Court, such a certificate would not be acceptable. It cannot be said to be just and proper approach of the respondents. Asking the petitioner to go for succession certificate from the Court again would entail that she will have to file a succession case in the State of Uttarakhand and to obtain an order from that Court as the marriage of the petitioner was performed within the said State and not within the State of Madhya Pradesh.

9. In view of the aforesaid, such insistence on the part of the respondents for asking the petitioner to produce the succession certificate from the Court

cannot be countenance. Further such insistence would be in violation of liberty granted by this Court in terms of the order dated 19.11.2012 passed in W.P. No.9565/2012.

10. As a consequence, the writ petition is allowed. The communication dated 24.02.2014 (Annexure P/1) is hereby quashed. The respondents are directed to settle the claim of the petitioner for grant of family pension, on the basis of the succession certificate granted by the competent authority of the Uttarakhand State, within a period of three months from the date of receipt of certified copy of the order passed today.

11. The writ petition stands **disposed of finally**. There shall be no order as to costs.

(K.K. Trivedi)
Judge

