Neutral Citation No:=2025:PHHC:075172

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19578 of 2023 (O&M)
Reserved on:24.04.2025
Pronounced on:29.05.2025

Kirandeep Kaur and others

....Petitioners

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

****

Present: Mr. G. S. Punia, Sr. Advocate, with
Ms. Harleen Kaur, Advocate, for the petitioners.

Mr. Rangat Joshi, Advocate, for the respondents.

****

DEEPINDER SINGH NALWA, J. (Oral)

1. In the present writ petition, petitioner No.1 is praying for direction to the respondents to grant compassionate appointment being wife of Tirath Singh (since deceased), who was employed as Assistant Lineman on regular basis with Punjab State Power Corporation Limited (for short 'Corporation') and also for grant of solatium to petitioners No.2 and 3, being minor daughters of Tirath Singh (since deceased).

2. The brief facts of the case are that the husband of petitioner No.1 i.e. Tirath Singh was working on the post of Assistant Lineman with the respondent Corporation, who had expired on 26.02.2022 while he was in service with the Corporation. Tirath Singh, the husband of petitioner No.1 was earlier married with Baljinder Kaur in the year 2006 and Tirath Singh

Neutral Citation No:=2025:PHHC:075172

(since deceased) obtained Panchayati divorce from her in the year 2007. There was no child born from the aforesaid wedlock. Baljinder Kaur contracted second marriage with one Tejinder Pal Singh and is separately residing with him since her marriage. Tirath Singh (since deceased) married petitioner No.1 on 02.02.2009 and was blessed with two daughters i.e. petitioners No.2 and 3. After the death of Tirath Singh on 26.02.2022, petitioner No.1 applied for grant of appointment on compassionate ground and submitted an application dated 02.03.2022 to the competent authority. The case of the petitioner for grant of compassionate appointment was duly considered at various levels. Various affidavits and documents were submitted by petitioner No. 1 with the respondent Corporation. After submission of all the relevant documents, the case of the petitioners was considered for compassionate appointment. The first wife of Tirath Singh (since deceased) also submitted an affidavit to an extent that she will not claim compassionate appointment nor will make any claim in future. The case of the petitioner for grant of appointment on compassionate ground was sent to the Law Officer of the Corporation for opinion. The Law Officer gave his opinion on 06.04.2023 (Annexure P-26) wherein, it was opined that legal Panchayati compromise regarding dissolution of marriage cannot be equated with the decree of divorce passed by the Court of competent jurisdiction and as such, the marriage cannot be dissolved by Panchayti compromise. In view of the abovesaid opinion given by the Law Officer of the Corporation, the petitioner has not been offered appointment on compassionate ground.

3. Aggrieved against the abovesaid action of the respondents Corporation in not appointing petitioner No.1 on compassionate ground, the

Neutral Citation No:=2025:PHHC:075172

present writ petition has been filed by the petitioners. It may be mentioned here that during the pendency of the present writ petition, appointment letter was issued to petitioner No.1 offering appointment on compassionate ground vide appointment letter dated 12.09.2023 (Annexure P-27). As per the abovesaid appointment letter, petitioner No.1 was to join at Trans Mandal PSPCL Sirhind. A perusal of the facts of the case would show that despite the fact that the appointment letter was issued to petitioner No. 1, she has not been permitted to join the duty.

4. Learned Senior Counsel appearing on behalf of the petitioners submits that petitioner No.1 was married with late Tirath Singh in the year 2009. Two children were born from the abovesaid wedlock. The petitioners have been residing with late Tirath Singh till he expired. He submits that as per the service record of late Tirath Singh, petitioner No.1 has been declared as a nominee for the purpose of retiral benefits of late Tirath Singh. He further submits that the first wife of late Tirath Singh has already given an affidavit that she will not claim the benefit of compassionate appointment. As the petitioners were dependent upon late Tirath Singh. Therefore, petitioner No.1 is entitled for grant of appointment on compassionate ground.

5. In support of his contentions, learned counsel for the petitioner relies upon the judgments passed by the Hon'ble Supreme Court in cases of **Vidyadhari & Ors. versus Sukhrana Bai & Ors.** 2008(1) RCR (Civil) 900; **Tulsa Devi Nirola & Ors. versus Radha Nirola & Ors.** 2020 (2) SCT 301 and a judgment of Andhra Pradesh High Court passed in case titled as

Neutral Citation No:=2025:PHHC:075172

Gaddam Ruth Victoria versus The State of Andhra Pradesh and 4 others 2023 (6) Andh LD 194.

6. On the other hand, in order to rebut the case of the petitioners, learned counsel for the respondents submits that as Panchayati divorce regarding dissolution of marriage cannot be equated with the divorce passed by the Court of competent jurisdiction and as such, the marriage of petitioner No.1 is void hence petitioner No.1 cannot be offered appointment on compassionate ground.

7. Further, in support of his contentions, learned counsel for the respondents has placed reliance on the judgment passed by a co-ordinate Bench of this Court in case titled as **Nishan Singh and another versus State of Punjab and others** (CRWP No.763 of 2021, decided on 27.01.2021 and another judgment of High Court of Karnataka in case titled as **Smt. Manjula. N versus The Commissioner of Police** (Writ Petition No.33134-2016, decided on 19.10.2022)

8. I have heard learned counsel for the petitioner and have perused the records available on the case file.

9. A perusal of the facts mentioned above would show that although, petitioner No. 1 does not acquire a status of the wife/spouse for a contracted marriage during the subsistence of the first marriage, however, it is an admitted fact that petitioner No. 1 was married with Tirath Singh (since deceased) in the year 2009 and was blessed with two daughters. It is admitted fact that petitioner No.1 was residing with late Tirath Singh almost for 23 years till he expired on 26.02.2022. Petitioner No.1 has been declared as a

Neutral Citation No:=2025:PHHC:075172

nominee in the service record of late Tirath Singh and is entitled for grant of retiral benefits in accordance with law. First wife of Tirath Singh (since deceased) has already given an affidavit to the effect that she will not claim appointment on compassionate ground. It is admitted fact that the petitioners were wholly dependent upon late Tirath Singh. An appointment letter has already been issued to petitioner No.1 offering appointment on compassionate ground on the post of Peon/Sewadar.

10. Taking into consideration the abovesaid facts, it is relevant to refer to following judgments:-

i) **Vidyadhari & Ors. versus Sukhrana Bai & Ors.**

2008(1) RCR (Civil) 900;

In the above said case, the husband contracted second martriage during the subsistence of first marriage being void however the second wife was held entitled for grant of pension on the basis that she was declared as a nominee in the service record. The relevant paragraphs of the abovesaid judgment is reproduced as under:-

> "9. There can be no dispute that Vidhyadhari had never pleaded any divorce, much less customary divorce between Sukhrana Bai and Sheetaldeen. There were no pleadings and hence no issue arose on that count. In our opinion, therefore, the High Court was right in holding that marriage between Sukhrana Bai and Sheetaldeen was very much subsisting when Sheetaldeen got married to Vidhyadhari. Learned counsel tried to rely on the reported decision in Govind Rajus case (supra). We are afraid the decision is of no help to the respondent as basically the issue in that decision was about the legitimacy of the children born to a mother whose first marriage was not

Neutral Citation No:=2025:PHHC:075172

dissolved and yet she had contracted the second marriage. This is apart from the fact that in the present case there were no pleadings about the existence of custom and alleged divorce thereunder. Therefore, there was no evidence led on that issue. In our opinion the decision in Govind Raju's case is not applicable. Even the other decision in Yamanaji's case is not applicable as the facts are entirely different. In Yamanji's case there was a Deed of Divorce executed by the wife. The question was whether there was a customary divorce. There was a custom permitting divorce by executing deed existing in the community to which the parties belonged. Such is not the situation here. There is neither any Divorce Deed nor even the assertion on the part of Vidhyadhari that Sheetaldeen had divorced Sukhrana Bai. We, therefore, accept the finding of the High Court that Sukhrana Bai was the legally wedded wife while Vidhyadhar could not claim that status.

10. However, unfortunately, the High Court stopped there only and did not consider the question as to whether inspite of this factual scenario Vidhyadhari could be rendered the Succession Certificate. The High Court almost presumed that Succession Certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this Succession Certificate was for the purposes of collecting the Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the Succession Certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed. This Court in a reported decision in Rameshwari Devi's case (supra) has held that even if a Government Servant had contracted second marriage during

Neutral Citation No:=2025:PHHC:075172

the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for Succession Certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Indian Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his life-time. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his Provident Fund, Life Cover Scheme, Pension and amount of Life Insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the Succession Certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of Succession Certificate the court has to use its discretion where the rival claims, as in this case, are made for the Succession Certificate for the properties of the deceased. The

Neutral Citation No:=2025:PHHC:075172

High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a Succession Certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had born his four children and had claimed a Succession Certificate on behalf children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

11. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would chose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be ⅕th. To balance the equities we would, therefore, chose to grant Succession Certificate to Vidhyadhari but with a rider that she would protect the ⅕th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the ⅕th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the Trial Court to the satisfaction of the Trial Court.

13. It should not be understood by the above that we are, in any way, deciding the status of Vidhadhari finally. She may still prosecute her own remedies for establishing her own status independently of these proceedings.

14. In the result the appeal is allowed. In the facts and circumstances of the case, there will be no order as to costs.

Neutral Citation No:=2025:PHHC:075172

ii) **Tulsa Devi Nirola & Ors. versus Radha Nirola & Ors.** 2020 (2) SCT 301;

In the abovesaid case, on the basis of the nomination declared by the deceased employee, second wife was held entitled for family pension. The relevant paragraphs of the abovesaid judgment is reproduced as under:-

"9. Rule 35 (5) provides that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provides for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come retirement gratuity that may be due to him. In view of the partition deed the deceased while filling his nomination in the prescribed Form under Rule 38 mentioned the name of respondent no.1 only as the sole beneficiary of family pension. We are of the considered opinion that Rule 40(6) is conditional in nature and does not vest an automatic statutory right in appellant no.1 to equal share in the family pension. The family pension would be payable to more than one wife only if the government servant had made a nomination to that effect and which option was open to him under the Pension Rules.

"40. Family Pension-

(6) (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."

10. The Pension Rules therefore recognize the nomination of a wife or wives for the purpose of family pension. True, the family pension did not constitute a part of the estate of the deceased. If the settlement deed had not been executed and acted upon different considerations may have arisen. The right to family pension in more than one wife being conditional in nature

Neutral Citation No:=2025:PHHC:075172

and not absolute, in view of nomination in favour of respondent no.1 alone, appellant no 1 in the facts of the case can also be said to have waived her statutory right to pension in lieu of benefits received by her under the settlement deed. The deceased resided exclusively with respondent no.1 and occasionally visited appellant no.1. The deceased was exclusively taken care of by respondent no.1 during his illness including the expenditure incurred on his treatment. In view of the statutory rules, it is not possible to accept the argument that respondent no.1 was nominated only for purpose of receipt of the family pension and per force was required to share it equally with appellant no.1.

11. In Vidhyadhari (supra), this Court accepted the claim of the second wife to receive inter alia pension based on nomination since, like the present case, the deceased was residing with the second wife to the exclusion of the first. The grant of succession certificate to the second wife was held valid. However, to balance equities, this Court granted ⅕th share to the first wife in the properties. We may have also considered the balancing the equities if the deceased had not executed a settlement deed with regard to his movable and immovable properties and which was accepted and acted upon by the appellant no.1.

12. We, therefore, find no merit in the appeal. The appeal is dismissed."

iii) **Gaddam Ruth Victoria versus The State of Andhra Pradesh and 4 others** 2023 (6) Andh LD 194.

In the abovesaid case, the issue is with regard to the entitlement of second wife for family pension in the equal share on the basis of nomination. The relevant paragraphs of the abovesaid judgment is reproduced as under:-

Neutral Citation No:=2025:PHHC:075172

"21. In the aforesaid peculiar factual situation coupled with the fact that both are widows, in their old age, and the Tribunal having taken a middleway, whether the direction as issued by the Tribunal under the impugned judgement deserves interference, by us, and if so, to what extent, keeping in view, what the social justice demands. Should we allow the claim of the petitioner in to to, only because, she is the 1st legally wedded wife, and deny the benefit to 5th respondent only, because, her marriage, was during subsistence of 1st marriage of Gaddam Danam, though since 1986 she lived with Gaddam Danam till his death, and looked after him as wife and also being recorded in the service records as wife.

22. We may at this very stage profitably refer the judgement of the Hon'ble Court in the case of *Vidhyadhari v. Sukhrana Bail (2008) 2 SCC 238*.

23. In Vidhyadhari (supra), the facts were that during the subsistence of the first marriage, one Sheetaldeen working as CCM Helper in Mines of the Western Coalfields at Pathakheda solemnized second marriage. From that wedlock four children were born. The first wife did not have any children. After the death of Sheetaldeen, two separate applications came to be filed under section 372 of the Indian Succession Act for obtaining succession certificate with respect to the movable properties of the deceased, one by the first wife and the other by the second wife. The application filed by the second wife was allowed and the application filed by the first wife was dismissed. Two appeals were filed by the 1st wife which were allowed in her favour by the High Court and the matter approached the Hon'ble Supreme Court at the instance of the second wife. The High Court held that the marriage of Sheetaldeen with the first wife is very much subsisting when the second wife got married. Consequently, the first wife alone was entitled to the grant of succession certificate. The Hon'ble Apex Court held that the marriage of the second

Neutral Citation No:=2025:PHHC:075172

wife during subsistence of the first marriage and in the absence of any divorce deed or even assertion that there was customary divorce, the High Court was right in holding that the second wife could not claim the status of wife and the finding of the High Court did not call for interference. The Hon'ble Apex Court, however, further observed that the High Court ought not to have stopped there only and the question as to whether in spite of the factual scenario, the first wife could be rendered the succession certificate ought to have been considered.

24. In Vidhyadhari (supra) it was held that the succession certificate was for the purpose of collecting Provident Fund, Life Cover Scheme, Pension and amount of life insurance and amount of other dues in the nature of death benefits of Sheetaldeen. The second wife was a nominee, which was not disputed and was therefore proved. The Hon'ble Apex Court held that a nominee like, the second wife, who was claiming the death benefits arising out of the employment can always file an application under section 372 of the Succession Act, as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. The Hon'ble Apex Court observed that the High Court should have realized that the second wife was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and their names were found in Form-A which was the declaration of Sheetaldeen during his lifetime. It was observed that the second wife continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen, who had nominated her for his provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues. The Hon'ble Apex Court held that under such circumstances, she was always preferable even to the legally wedded wife like the first wife, who had never stayed with Sheetaldeen as his wife. The Hon'ble Apex Court observed that

Neutral Citation No:=2025:PHHC:075172

the High Court should have taken into consideration these crucial circumstances. Merely because the first wife was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to the second wife who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also.

25. It is apt to reproduce paras 11 to 14 of Vidhyadhari (supra) as under:

> "11. There can be no dispute that Vidhyadhari had never pleaded any divorce, much less customary divorce between Sukhrana Bai and Sheetaldeen. There were no pleadings and hence no issue arose on that count. In our opinion, therefore, the High Court was right in holding that marriage between Sukhrana Bai and Sheetaldeen was very much subsisting when Sheetaldeen got married to Vidhyadhari. Learned counsel tried to rely on Govindaraju case [(1996) 5 SCC 467 : AIR 1997 SC 10].
>
> We are afraid the decision is of no help to the respondent as basically the issue in that decision was about the legitimacy of the children born to a mother whose first marriage was not dissolved and yet she had contracted the second marriage. This is apart from the fact that in the present case there were no pleadings about the existence of custom and alleged divorce thereunder. Therefore, there was no evidence led on that issue. In our opinion the decision in Govindaraju case [(1996) 5 SCC 467 : AIR 1997 SC 10] is not applicable. Even the other decision in Yamanaji case [(2002) 2 SCC 637] is not applicable as the facts are entirely different. In Yamanaji case [(2002) 2 SCC 637] there was a deed of divorce executed by the wife. The question was whether there was a customary divorce. There was a custom permitting divorce by executing deed existing

Neutral Citation No:=2025:PHHC:075172

in the community to which the parties belonged. Such is not the situation here. There is neither any divorce deed nor even the assertion on the part of Vidhyadhari that Sheetaldeen had divorced Sukhrana Bai. We, therefore, accept the finding of the High Court that Sukhrana Bai was the legally wedded wife while Vidhyadhari could not claim that status.

12. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the succession certificate. The High Court almost presumed that succession certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this succession certificate was for the purposes of collecting the provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the succession certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed.

13. This Court in Rameshwari Devi case [(2000) 2 SCC 431 : 2000 SCC (L&S) 276] has held that even if a government servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an

Neutral Citation No:=2025:PHHC:075172

application for succession certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the deathbenefits arising out of the employment can always file an application under section 372 of the Succession Act as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his lifetime. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of succession certificate the court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to Vidhyadhari who all through had stayed as

Neutral Citation No:=2025:PHHC:075172

the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

26. In Vidhyadhari (supra) the Hon'ble Apex Court, though in agreement with the finding of the High Court that the first wife was only the legitimate wife, yet, chosen the second wife to grant the certificate who was the nominee of the deceased Sheetaldeen and mother of his four children.

27. In Vidhyadhari (supra) the Hon'ble Apex Court, however, observed that the equities must be balanced, as the first wife is also one of the legal heirs, besides the four children, she would have the equal share in the estate of Sheetaldeen which would be 1/5th . To balance the equities, while granting the succession certificate to the second wife, a rider was put that she would

Neutral Citation No:=2025:PHHC:075172

protect the 1/5th share of the first wife and would hand over the same to the first wife.

28. Recently, in Tulsa Devi Nirola v. Radha Nirola 2020 SCC Online SC 283 the Hon'ble Apex Court held that family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible for the same. Tulsa Devi Nirola (supra) is a case where the second marriage was held not invalid. So far as the grant of family pension is concerned, the nomination was made in favour of the second wife. The rules provided for such nomination. It was held that Rule 40 (6) of Sikkim Services Pension Rules 1990, was conditional in nature and did not vest an automatic statutory right in the first wife, therein, to equal share in the family pension. In Tulsa Devi Nirola (supra), Rule 35 (5) of the Pension Rules provided that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife. Rule 38 provided for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come retirement gratuity that may be due to him. In the nomination form under Rule 38, the deceased mentioned the name of the 2nd wife only. There was also a settlement deed in favour of the first wife by the deceased husband, under which she received certain benefits.

29. The Hon'ble Apex Court in Tulsa Devi Nirola (supra) held the right of family pension in favour of the second wife, as the sole nomination was in her favour. The Hon'ble Apex Court observed that the deceased husband resided exclusively with the second wife and occasionally visited the first wife. The deceased was exclusively taken care of by the second wife during his illness including the expenditure incurred on his treatment. The contention as raised in that case that the nomination in favour of 2nd wife was only for purpose of receipt of the family pension

Neutral Citation No:=2025:PHHC:075172

and per force she was required to share it equally with the 1st wife was not accepted by the Hon'ble Apex Court.

30. In Tulsa Devi Nirola (supra) the Hon'ble Apex Court, however, observed that if the deceased had not executed settlement deed with regard to the movable and immovable properties, which was accepted and acted upon by the first wife, the Court could have considered, balancing the equities in favour the 1st wife as well.

31. The principle as laid down in the said case with respect to grant of family pension is that the family pension is not the estate of the deceased and if the rules provide for nomination and the nomination has been made, in favour of the second wife, she would be entitled for the family pension, and the nomination is not for the purpose of mere receipt of the family pension, requiring her to share equally with the 1st wife, per force.

32. In view of the aforesaid judgements, we are of the considered view that in such matters, even if it is found that the second wife does not acquire the status of wife, for the marriage having been contracted during the subsistence of the first marriage, still for the service benefits and service claims of the deceased husband, she is entitled for protection. The endeavour of the Courts has always been to balance the equities amongst two wives though the second may not be understood in the strict sense as 'wife', a legally wedded. For balancing the equities, the Courts can pass appropriate orders in favour of both the wives.

33. In the present case also, we have observed above and have found that the first wife left the deceased Gaddam Danam in 1979, thereafter the deceased Gaddam Danam got the service in 1980, he married the present 5th respondent during the subsistence of the first marriage with the petitioner. There is nothing on record to show any customary divorce. On the other hand, the divorce case was filed in the year 2011, but the same came to end due to the death of Gaddam Danam during its

Neutral Citation No:=2025:PHHC:075172

pendency. There is also nothing on record to indicate that during the long years, since 1979 till the death of Gaddam Danam, the first wife ever took care of Gaddam Danam. It was only for the first time in the year 2010 the claim for maintenance was filed just before the retirement of Gaddam Danam, and for enforcement of such claim of maintenance, as was granted, the order of attachment was passed in 2011 which was set aside by this Court, but the amount was directed to be kept in abeyance till passing of fresh orders on matter having been remitted. The three daughters were born out of the wedlock of Gaddam Danam with the 5th respondent, and even if it be taken that the marriage of 5th respondent is void for the reason of having been solemnized during subsistence of first marriage, the children would be legitimate. The 5th respondent resided with the deceased Gaddam Danam since after her marriage and also attended him during his illness for which the original medical bills were filed. During the lifetime, Gaddam Danam also nominated her, of which there is entry in the service book. Though that is disputed by the petitioner, being suspicious, and even though in that respect an order of the Tribunal in the same O.A, dated 18.03.2016 is there, in which the Tribunal observed that such entry creates an amount of suspicion, but, we are of the view that there is nothing on record to show that the entry in the service record was forged. Merely because the entry was made with different ink etc., and might have been seen with suspicion by the Tribunal in its previous interlocutory order dated 18.03.2016, but in passing the final order, such alleged suspicion did not prevail with the Tribunal. It is settled in law that the suspicion, howsoever strong, it may be, cannot take the place of proof. We are of the view that the entry in the service records, when considered in the light of the undisputed fact that in the family members details submitted by the deceased at the time of his pension proposals, he gave the particulars of the 5th

Neutral Citation No:=2025:PHHC:075172

respondent and the three daughters, it can be said that the deceased during his lifetime had nominated the 5th respondent in the service records, and such an entry cannot give rise to any suspicion. Filing of the divorce petition by Gaddam Danam against his first wife, in 2011, is also indicative of the fact that he wanted that after his death there may not arise any dispute, for the benefits in favour of the 2nd wife and wanted to secure the interests of the 2nd wife and the children from her, may be because the first wife started litigation against Gaddam Danam for maintenance etc., in the year 2010.

34. The submission of the learned counsel for the petitioner placing reliance on Rule 50 of the Andhra Pradesh Revised Pension Rules 1980 is that if the second marriage is contracted with permission of the competent authority, such wife will have legal status for all purposes for receiving the family pension with the first wife and children of the first wife. He submits that the payment of family pension to the 2nd wife is therefore dependent upon the permission obtained. If the permission is not obtained for marriage, the 2nd wife will have no legal status of 'wife', the marriage being void. He submitted that there was no permission to Gaddam Danam to solemnize 2nd marriage.

35. Before we deal with the aforesaid submission of the learned counsel for the petitioner, we would refer to the relevant provisions as hereinafter. We observe that this provision Rule 50 is a beneficial provision in favour of woman with whom the government employee contracts another marriage during subsistence of the first marriage. This provision is therefore required to be construed liberally to achieve its very object of the grant of family pension after the death of the government employee in favour of and to the extent reasonably possible to make available, both the wives, the family pension, and none of them be deprived of the same, in particular to the 2nd wife with whom the deceased government employee solemnized 2nd

Neutral Citation No:=2025:PHHC:075172

marriage during subsistence of first marriage. The issue requires coinsideration from the view point of social justice as well.

36. Rule 50 (2) of the Andhra Pradesh Revised Pension Rules 1980 (in short 'Rules 1980'), provides that the family of the deceased shall be entitled to a monthly family pension at the percentage as specified therein.

37. Rule 50 (12) (b) of the Rules 1980 provides that for the purpose of this rule 'family' in relation to government service means Category-I (i) wife in the case of a male government servant, or husband in the case of a female government servant.

38. The Executive Instructions (Circular Memo No.36840-A/329/A2/Pen.I/93, F & P (FW.Pen.I) Dept., Dt 11.09.1996) on the point of grant of family pension to the second living wife provides as under:

> "Irrespective of the Personal Laws if a Government employee having a living wife contracted second marriage after the introduction of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 without the permission of the competent authority, such marriage is null and void and, second wife does not have any legal status and such second wife is not entitled to the family pension. On the other hand if the employee contracted second marriage with permission of the competent authority such wife will have legal status for all purposes for receiving family pension along with the first wife the children of the first wife in terms of sub-rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980. If the second marriage is contracted before the introduction of Andhra Pradesh Civil Services (Conduct) Rules, 1964 Family Pension can be paid in the same manner."

39. Rule 49 of the Rules 1980, provides for nominations. A government servant shall on his appointment, make a nomination in Form-I or Form-2, as may be appropriate in the

Neutral Citation No:=2025:PHHC:075172

circumstances of the case, conferring on one or more persons the right to receive the retirement/gratuity payable under Rule 47.

40. From the aforesaid provisions, it is evident that there is provision for grant of family pension to the second living wife also. Point No.1 of the Circular Memo dated 11.09.1996 provides for the family pension to the wives. Irrespective of Personal Laws if the government employee having a living wife contracted second marriage after the introduction of the Andhra Pradesh Civil Services (Conduct) Rules 1964, without the permission of the competent authority, such marriage is null and void, and second wife does not have any legal status and such second wife is not entitled to the family pension. If the employee contracted second marriage with permission of the competent authority, such wife will have legal status for all purposes for receiving family pension along with the first wife, the children of the first wife, in terms of sub-rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules 1980.

41. We may refer to the case of the Hon'ble Apex Court in Badshah v. Urmila Badshah Godse (2014) 1 SCC 188, though the same is, dealing with Section 125 of Code of Criminal Procedure (Cr.P.C), where maintenance was claimed by the second wife, the second marriage being performed during subsistence of the first marriage of husband, but is of assistance in the present case, as well.

42. In Badshah (supra) the petitioner husband therein was already married. His second marriage was also proved between the parties to the said case. He duped the respondent therein by suppressing the factum of the first marriage. It was held that he (husband) could not be permitted to deny the benefit of maintenance to the respondents. The reasons for such course of action, as stated by the Hon'ble Apex Court, were threefold, one of which, we would refer, was that in such cases, purposive interpretation needs to be given. While dealing with an

Neutral Citation No:=2025:PHHC:075172

application of a destitute wife or hapless children, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the preamble of the Constitution of India. The preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society. 43. In Badshah (supra) the Hon'ble Apex Court further observed that the Courts have to adopt different approaches in "social justice adjudication" which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate.

44. The Hon'ble Apex Court in para-14 of Badshah (supra), quoted, as described by Professor Madhava Menon as under:

> "It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is

Neutral Citation No:=2025:PHHC:075172

> achieved by what we call social context judging or social justice adjudication."

45. The Hon'ble Apex Court held that the provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

46. The Hon'ble Apex Court in Badshah (supra) observed that the law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. The law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Change in social reality is the law of life, responsiveness to change in social reality is the life of the law. In both constitutional and statutory interpretation, the Court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law. The Hon'ble Apex Court held that there is a non-rebuttal presumption that the legislature while making a provision like Section 125 Cr.P.C, to fulfill its constitutional duty in good faith, had always intended to give relief to the woman becoming 'wife' under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice.

47. It is apt to refer paras-20, 21 & 22 in Badshah (supra) as under:

> "20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] which became the historical source of purposive interpretation.

Neutral Citation No:=2025:PHHC:075172

The court would also invoke the legal maxim construction of ut res magis valeat quam pereat in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in Capt. Ramesh Chander Kaushal v. Veena Kaushal [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] : (SCC p. 74, para 9)

Neutral Citation No:=2025:PHHC:075172

> "9. ... The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause - the cause of the derelicts."

48. We are of the view that the object of providing family pension to wife after the death of the husband / government employee cannot be different from the object of providing maintenance during lifetime of the husband in case of divorce.

49. In our view, Rule 50 of the Rules 1980 is with intend to give relief to the woman becoming wife. Under such circumstances, even the wife from the second marriage was made entitled for family pension, as the main object of this rule was to give family pension to the wives i.e., more than one, and for that reason, to clarify the expression 'wife' used in Rule 50 (12) of the Rules 1980, Circular Memo dated 11.09.1996 was issued providing that irrespective of the personal Laws. The only thing that requires consideration is the permission from the department for second marriage.

50. We have already referred to the judgement of the Hon'ble Apex Court in Vidhyadhari (supra) & Tulsa Devi Nirola (supra) that family pension is not the estate of the deceased. The nominee shall be the sole beneficiary. If the nomination is in favour of the second wife, she would be entitled to the family pension and not merely for the purpose of receipt of the family pension. There being nomination in favour of the 5th respondent by the deceased made during his lifetime, as per the pension proposals, as also entry in the service book, the 5th respondent would be entitled to family pension because of the nomination, irrespective of the fact that there was no permission taken from the department by the deceased government employee for second marriage. The point of permission may become relevant,

Neutral Citation No:=2025:PHHC:075172

if the 2nd wife also claims family pension, but there is neither permission for 2nd marriage to the government employee nor nomination in favour of 2nd wife.

51. Consequently, even if there was no permission for 2nd marriage, the 5th respondent cannot be denied family pension because of the Circular, provision rule 50 (12), when she had been nominated by the deceased Gaddam Danam.

52. In view of the above, we do not find force in the above submission of the learned counsel for the petitioner on the point of the permission.

53. In view of the above consideration, we find that to do complete justice between the petitioner and the 5th respondent, it is necessary to balance the equities in the facts and circumstances of this case.

54. The order passed by the Tribunal is in advancement of the social justice doing justice, to both the petitioner and the 5th respondent.

55. We may observe that the amount of Rs.3,60,000/- was attached towards arrears of maintenance amount of the first wife under the orders of the Court as the maintenance awarded by the Family Court was not paid to the first wife. The FCOP.No.232 of 2011 was finally dismissed for want of prosecution, by order dated 03.07.2014. There is nothing on record to show that such amount was paid to the first wife/petitioner. We are of the view that such amount if not paid, but as that is the arrears towards maintenance granted to the petitioner during the lifetime of and against, the deceased Gaddam Danam, that amount should go to the petitioner the 1st wife, notwithstanding the dismissal of the FCOP No.232 of 2011 for default.

56. In the rest amount of dues towards the service benefits of the deceased, to balance the equities, we provide that the same shall go to the 5th respondent including the claim for medical bills.

Neutral Citation No:=2025:PHHC:075172

57. With respect to the family pension, we provide that the petitioner and the 5th respondent, both shall be entitled in equal shares.

58. With the aforesaid directions and modification in the judgement of the Tribunal, the writ petition stands allowed in part.

59. Let the official respondents grant the benefit, as aforesaid, within a period of 6 (six) weeks from the date of receipt the copy of this judgement, without insisting for succession certificate from any of the parties i.e., the petitioner and the 5th respondent.

60. No order as to costs."

11. So far as the judgments cited by learned counsel for the respondents are concerned, perusal of the facts of the judgments would show that in ***Nishan*** *Singh*'s case *(supra)* the issue was involved with regard to police help to the petitioner who had got married without being legally and validly divorced. In ***Smt. Manjula. N***'s case *(supra),* there was no material on record to show that the respondent therein was a nominee of the deceased employee in service record. A perusal of the facts and circumstances of the judgments cited by learned counsel for the respondents would show that the same are totally different from the facts and circumstances of the present case and as such, the same does not support case of the respondents.

12. Taking into consideration the abovesaid peculiar facts and circumstances of the case and the above referred judgments, present writ petition is allowed. Petitioner No.1 (widow) of late Tirath Singh, who has been declared nominee in the service record and was wholly dependent upon the late Tirath Singh, is held entitled for grant of appointment on

Neutral Citation No:=2025:PHHC:075172

compassionate ground, the respondents are directed to permit petitioner No.1 to join the duty in pursuance to the appointment letter dated 12.09.2023 (Annexure P-27) issued to petitioner No.1 within a period of 02 weeks from the date of receipt of certified copy of this order.

13. Pending application(s), if any, also stand(s) disposed of.

(DEEPINDER SINGH NALWA)
JUDGE

May 29, 2025
dinesh

Whether speaking : Yes

Whether reportable : Yes