

Court No. - 1

Case :- WRIT - A No. - 1744 of 2025

Petitioner :- Union Of India Thru. Secy. Ministry Of Defence
New Delhi And 2 Others

Respondent :- Haruli Devi

Counsel for Petitioner :- Ajit Kumar Dwivedi

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri S.B. Pandey, learned Senior Advocate/Deputy Solicitor General of India assisted by Sri Ajit Kumar Dwivedi, the learned counsel for the petitioners and perused the records.

2. By means of the instant petition filed under Article 226 of the Constitution of India the petitioners have challenged the validity of judgment and order dated 30.11.2021, passed by learned Armed Forces Tribunal, Regional Bench, Lucknow allowing the Original Application No.256 of 2020: Haruli Devi Vs. Union of India and others.

3. The aforesaid original application has been filed by the opposite party herein challenging the orders rejecting the payment of family pension to her and seeking a direction for payment of family pension along with its arrears with effect from 20.10.2013.

4. The opposite party had submitted in her original application that her husband Ram Prasad (since deceased) had retired while working as Sepoy on 01.02.1998 and he was being paid pension. Subsequently, he was appointed afresh in CRPF on 13.06.1969 from where he retired on 04.03.1997 and his

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pension was fixed at Rs.1275/- per month.

5. The husband of the opposite party died on 20.10.2013. The opposite party raised claim for payment of family pension. Her husband was earlier married to one Smt. Kiti Devi on 04.07.1970 but the said marriage was dissolved on 20.03.1972 in presence of panch (village panchayat) and thereafter Smt. Kiti Devi got remarried with Sri Diwani Ram and Ram Prasad got married to the opposite party.

6. A certificate dated 04.08.2013 has been issued by the Gram Pradhan certifying that although Ram Prasad had earlier got married to Kiti Devi but Kiti Devi married one Diwani Ram about 36 years ago and Ram Prasad married the opposite party. Four children were born out of the wedlock between Ram Prasad and the opposite party. The Gram Pradhan certified that the marriage between Ram Prasad and Kiti Devi was dissolved as per the hindu rituals about 36 years ago.

7. After death of Ram Prasad the petitioner had given Rs.5,000/- to the opposite party for performing his last rites and the letter dated 04.04.2015 issued in this regard addresses the opposite party as "Smt. Haruli Devi, W/o Late Ram Prasad". The letter also states that the canteen smart card of her husband was being returned to the opposite party and she was directed to deposit the same in Golden Fish Canteen, Bageshwar and to apply for a new canteen smart card in her name.

8. A copy of ration card, relevant extracts of khatauni and aadhar card of the opposite party were annexed with the original application, in all of which she has been described as the wife of Ram Prasad.

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9. The petitioners had filed a counter affidavit wherein they stated that Ram Prasad was earlier married to Smt. Kiti Devi who eloped on 01.07.1972 and thereafter Ram Prasad got married to the opposite party on 21.01.1973. As per service document of late Ram Prasad, Smt. Kiti Devi stands as his next of kin. However, no document was annexed with the counter affidavit in which the name of Smt. Kiti Devi is recorded as next of kin of Late Ram Prasad. It was further stated in the counter affidavit that the opposite party could not produce any documentary proof in support of her claim that late Ram Prasad had got judicially separated from his first wife.

10. The Tribunal allowed the original application holding that the name of the opposite party is recorded in the service documents of Late Ram Prasad with the petitioners as well as with CRPF and she is receiving pension from CRPF. The opposite party being the legally wedded wife of late Ram Prasad, is entitled for grant of family pension.

11. Assailing the validity of the aforesaid order, the learned Deputy Solicitor General of India has submitted that a Hindu marriage can only be dissolved by a decree of divorce granted by a competent Court and the mere fact that the first wife of the employee had eloped and thereafter he married the opposite party, will not make her a legally wedded wife of the employee.

12. The definition of family given in Regulation 66 of Pension Regulation Part-I, 2008 is as follows:-

"66. Family for the purpose of Regulations in this Section shall consist of the following:

(i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after

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retirement.

(ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) Unmarried daughters/unmarried sons (including those legally adopted), widowed/divorced daughters.

(iv) Parents who were wholly dependent on the service personnel when he was alive.

Notes: 1- Eligible son/daughter includes a posthumous child.

2- In case Service personnel get marries after release/retirement /discharge /invalidment the marriage should be registered with the Registrar of the Marriages or other competent authority under the relevant law. In case where such marriage is not registered for some valid reasons, an affidavit sworn before a Magistrate or legal heirship certificate can be furnished.

3. Widowed/divorced daughter including disabled widowed/divorced daughter need not come back to her parental home

4. Child/children born out of the void marriage shall be entitled to share ordinary family pension, if otherwise eligible, though their mother would not have been eligible for the same had she been alive at the time of death of her husband on account of marriage being null and void."

13. A bare perusal of the aforesaid provision indicates that the definition of family is very widely worded and it includes even a judicially separated wife. The Tribunal found that the deceased employee got married to his first wife on 04.07.1970 and after she had eloped and remarried Sri Diwani Ram, the first marriage of Late Ram Prasad was dissolved on 30.03.1972 in presence of Village Panchayat and thereafter he married the opposite party according to Hindu rites, rituals and customs on 21.01.1973 and the name of the opposite party is recorded in the revenue records which indicates that she is legally wedded

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wife of late Ram Prasad. The petitioners themselves had granted Rs.5,000/- to the opposite party for performing the last rites of her husband late Ram Prasad, which proves that the petitioners themselves admitted that the opposite party was wife of Late Ram Prasad. The name of opposite party is recorded in the service documents of Late Ram Prasad. Her name was also recorded as such in the records of CRPF from where family pension is being paid to her. Accordingly, the Tribunal held that the opposite party is the legally wedded wife of late Ram Prasad and she is entitled to receive family pension.

14. From the aforesaid facts and circumstances of the case, it is apparent that the opposite party got married to Late Ram Prasad on 21.01.1973 after the first wife Late Ram Prasad had eloped and married some other person and after marriage of Ram Prasad with his first wife Smt. Kiti Devi was dissolved on 30.03.1972 before gram panchayat.

15. Section 29 (2) of Hindu Marriage Act, 1955 provides that Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

16. Late Ram Prasad got divorced to Smt. Kiti Devi in presence of panchayat about 53 years ago and he got married to the opposite party about 52 years ago. The opposite party and Late Ram Prasad lived as husband and wife till later died on 20.10.2013 and four children were born out of the wedlock. The opposite parties have themselves written that son of the applicant is entitled to get family pension. The first wife of Late Ram Prasad has not raised any claim that she is a member of

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the family of Late Ram Prasad and she is entitled to any benefit as such.

17. In these circumstances, there appears to be no illegality in the order passed by learned Tribunal holding that the opposite party is the legally wedded wife of Late Ram Prasad and she is entitled to receive family pension.

18. The writ petition is bereft of any merit and the same is **dismissed**.

[Subhash Vidyarthi, J.] [A.R. Masoodi, J.]

Order Date :- 14.2.2025

Ram.