



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 3193/2022

Urmila Devi W/o Late Shri Bankelal Agarwal, Aged About 83 Years, Resident Of Sampati Niwas, Arya Samaj Road, Bayana, District Bharatpur - 301401 And Presently Residing At 124/69, Thadi Market, Mansarovar, Jaipur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Principal Secretary Finance, Government Of Rajasthan, Rajasthan Secretariat, Jaipur (Raj.)
2. Director, Pension And Pensioners Welfare Department, Pension Bhawan, Vidhyut Marg, Jyoti Nagar, Rajasthan Jaipur-302005
3. Chief Inspector Works And Boilers, Department Of Works And Boilers Inspection, 6-C, Jhalana Institutional Area, Rajasthan, Jaipur - 302004.
4. Smt. Janak Agarwal, Resident of (i) B-189, Janta Colony, Jaipur (ii) A-4A, Adarsh Nagar, Opposite Police Station, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Shailesh Prakash Sharma
Mr. Ganesh Chandra Gupta

For Respondent(s) : Mr. Avanish Kumar Sharma, Dy.GC
with Mr. Ajay Verma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

03/09/2024

Reportable

1. The legal issue involved in this petition is 'whether the first or the second wife/widow of the deceased employee or both are entitled to get family pension?' The



other issue is 'whether a Succession Certificate is required for getting family pension?' It is in this background that issue involved in this petition is required to be decided.

2. By way of filing of this petition, the petitioner is seeking a direction against the respondents to grant her family pension.

3. Learned counsel for the petitioner submits that husband of the petitioner stood retired from the post of Deputy Chief Inspector on 31.07.1993, after attaining the age of superannuation. Counsel submits that a divorce petition was filed by husband of the petitioner under Section 13 of the Hindu Marriage Act, 1955 (for short "the Act of 1955") before the Family Court. However, the same was returned to him vide order dated 23.07.1987 for presenting the same before the Competent Court of Law. Counsel submits that after passing of the aforesaid order, husband of the petitioner never submitted any divorce petition against the petitioner before any Competent Court of Law. Counsel submits that when husband of the petitioner stopped maintaining her, she approached the Court of Metropolitan Magistrate No.18, Jaipur Metro seeking maintenance by way of filing an application under Section 12 of the Domestic Violence Act, 2005 (for short "the Act of 2005"). Counsel submits that a reply to the said application was submitted by the husband, wherein, he admitted that the petitioner is his legally wedded wife, but social divorce has taken place between them. Counsel submits that an interim order was passed in favour of the petitioner vide order dated



07.07.2015, by which the husband was directed to pay an interim maintenance of Rs.4,000/- per month to the petitioner. Counsel submits that the aforesaid order was assailed by the petitioner by way of filing an appeal for enhancement of the amount of maintenance before the Special Court (Fake Currency), Jaipur City Jaipur and the said appeal was allowed and the interim amount of maintenance of Rs.4,000/- per month was enhanced to Rs.7,000/- per month vide order dated 27.10.2015. Counsel submits that unfortunately, husband of the petitioner died on 07.10.2016 and after the death of husband of the petitioner, the petitioner submitted an application before the respondents on 21.10.2016 seeking family pension. Counsel submits that instead of passing the order of family pension in favour of the petitioner, the respondents directed the petitioner to get a succession certificate from the Competent Court of Law for getting pension. Counsel submits that since the petitioner is the legally wedded wife of the deceased, therefore, under these circumstances, she is not supposed to get the succession certificate from any Competent Court. Counsel submits that in the judicial proceedings pending before the Court of Magistrate, the husband of the petitioner has accepted the status of the petitioner as his legally wedded wife. Hence, under these circumstances, the petitioner is entitled to get the family pension.

4. Per contra, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that prior to his death, the husband of the



petitioner submitted an application before the Pension Department to enter name of one Smt. Janak Agarwal as his wife and name of Anil and Sushma Agarwal as his son and daughter respectively. Counsel submits that under these circumstances, the petitioner was directed to get the succession certificate from the Competent Court of Law, but the petitioner has failed to secure the same, hence, under these circumstances, the respondents have not caused any illegality in not granting family pension to the petitioner.

5. Heard and considered the submissions made at Bar and perused the material available on the record.

6. Perusal of the record indicates that husband of the petitioner was serving the respondents on the post of Deputy Chief Inspector and he stood retired on 31.07.1993, after attaining the age of superannuation. This fact is not in dispute that husband of the petitioner was receiving a pension of Rs.20,625/- monthly from the respondents. This is not in dispute that there was matrimonial dispute between the petitioner and her husband, which compelled the husband of the petitioner to file a divorce petition under Section 13 of the Act of 1955 before the Family Court, Jaipur, however, the same was not decided on merits and the same was returned to him vide order dated 23.07.1987 for filing the same before the Competent Court of Law having jurisdiction to hear and entertain such divorce petition. This fact is not in dispute that subsequently, no steps were taken by husband of the petitioner for filing any other application for dissolution of marriage against the



petitioner, meaning thereby, the petitioner remained as wife of the deceased, till his death and presently she is the widow of the deceased husband/employee. This fact is also not in dispute that during the lifetime of the husband, a complaint under Section 12 of the Act of 2005 was filed against him by the petitioner, wherein orders of maintenance were passed against him and in those proceedings, he has not denied the status of the petitioner as his wife. The only objection taken by him before the Court of Magistrate was that 'social divorce' has taken place between them.

7. In India, divorce is governed by specific personal laws depending on an individual's religion, and these laws specify the legal steps involved in getting a divorce. The term "social divorce" is not recognized in the legal system and does not carry any legal significance or consequence. "Social divorce" could be an informal term used in some communities to describe a situation where a couple separates and ceases to live as husband and wife without going through the legal process of divorce. This might be accepted socially within a community but has no legal recognition. Such separations do not affect the legal status of the marriage, and the couple would still be considered legally married until a formal divorce is obtained through the courts.

8. It is settled proposition of law that there is no term as "social divorce" existing under the law. A marriage



cannot be dissolved unless a decree of divorce has been passed by the Competent Court of Law.

9. Now, the question which remains for consideration of this Court is 'whether the petitioner or one Janak Agarwal (respondent No. 4) is entitled to get family pension of the deceased-husband'.

10. For getting family pension, one has to prima facie prove entitlement under the Rajasthan Civil Services (Pension) Rules, 1996 (for short "the Rules of 1996"). Chapter-V (C) of the Rules of 1996 deals with the provisions of grant of family pension. Rule 3(f) defines 'family pension' means "family pension admissible under Chapter V(C) but does not include Dearness Relief and Interim Relief".

Rule 66 of the Rules of 1996 deals with the clause "family" and defines the same under Rule 66 which reads as under:

"66. Definitions:

(1) 'Family' for the purpose of these rules will include the following relations of the Government servant:-

(a) wife, in the case of a male Government servant and husband, in the case of a female Government servant;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery;

(c) son/daughter including widows/divorced daughter till he/she attained the age of 25 years or on earning a monthly income exceeding Rs.2550/- or upto the date of his/her marriage/re-marriage, whichever is earlier. The term son/daughter shall also include son/daughter adopted legally and posthumous child of a Government servant.



(d) parents who were wholly dependant upon the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than Rs.2550/- per month."

11. Similarly, Rule 67 deals with the conditions of grant of family pension and its admissibility. Rule 67 is reproduced as under:-

"Rule 67. Condition of Grant

The family pension shall be admissible to -

- (a) a widow/widower, up to the date of death or remarriage, whichever is earlier;
- (b) unmarried son till he attains the age of twenty five years or on earning a monthly income exceeding Rs.2550/-.
- (c) daughter including widowed/divorced daughter till she attains the age of 25 years or on earning a monthly income exceeding Rs.2550/- per month or upto the date of her marriage/re-marriage, whichever is earlier.
- (d) parents who were wholly dependent upon the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than Rs.2550/-."

Provided that if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life, subject to the following conditions, namely,-

- (i) If there are more than one such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family



pension only after the elder next above him/her ceases to be eligible;

(ii) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning livelihood evidenced by a certificate obtained from a medical officer not below the rank of Chief Medical & Health Officer/Medical Jurist setting out, as far as possible, the exact mental or physical incapacity; and

(iii) the person receiving the family pension as natural/legal guardian of such son or daughter or such son or daughter not receiving the family pension through the guardian, shall produce every three years a certificate from a medical officer not below the rank of Chief Medical & Health Officer/Medical Jurist to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

EXPLANATIONS:

- (1) A son/daughter shall become ineligible for family pension from the date he/she gets married or on earning a monthly income exceeding Rs.2550/- per month. He/she will be required to produce six monthly a certificate regarding marital status and an annual certificate regarding monthly income.
- (2) In such a case, it shall be the duty of the natural/legal guardian or daughter, to furnish a certificate to the Treasury or Bank, as the case may be, every year that she has not yet married.
- (3) Family pension to an eligible Government servant/pensioner is payable in addition to his/her pay or pension, in cases where both husband and wife are Government servants.

12. The expression "family" for the purposes of this case is defined under Rule 66(1) of the Rules of 1996. As per the above provision, the definition of 'family' includes





wife (Clause (a)) and judicially separated wife or husband, such separation not being granted on account of adultery (Clause (b)). Similarly, Rule 67(a) of the Rules of 1996 provides that the family pension shall be admissible to a widow/widower upto the date of death or remarriage, whichever is earlier.

13. Bare perusal of Rule 67(a) of the Rules of 1996 clearly proves that a widow is entitled to get family pension.

Now, the question which remains for consideration is when a retired government servant pensioner dies, leaving behind two widows, then which of the two widows, or both widows, would be entitled to get family pension? The term 'widow' has not been defined under the Rules of 1996. According to the Black's Law Dictionary, "a widow would be a woman whose husband has died and who has not remarried". As per Oxford English Dictionary, "the widow would be a woman who has lost her husband by death and who has not married again." It appears that the dictionary meaning of the word "widow" would be a woman who had been married and has lost her husband thereafter. As the marriage between a Hindu man and a woman, during the lifetime of his first wife is void, in terms of Section 11 of the Hindu Marriage Act, 1955 (for short, "the Act of 1955"), the marriage between the said Government Servant and the second wife would not be a valid marriage in the eye of law. As per Section 5 of the Act of 1955, at the time of marriage between two Hindus, neither of them should have a spouse living. Section 11 of



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the Act of 1955 says that any marriage solemnized in contravention of conditions specified in Clause (i), (iv), (v) of Section 5 shall be void. Hence, it is clear that a woman performing the so called 'marriage' with a Hindu Government servant, during the lifetime of the latter's wife, cannot be said to be his widow.

14. Hence, it is clear that marriage covered by Section 11 of the Act of 1955 are void from inception and a Hindu woman, who married a Hindu male during subsistence of his marriage, has not been included in the definition of 'family' under the Rules of 1996. The word 'widow' has been kept under Rule 67 for getting family pension and the word "widows" is not included in this Rule. Thus, the second marriage of anyone, without dissolution of first marriage cannot be treated as a valid marriage and such second wife cannot be treated as a 'widow' of the deceased Government Servant in terms of Rule 66 & 67 of the Rules of 1996.

15. It is a settled proposition that amongst Hindus, monogamy is not only ideal but a legal mandate and therefore marriage contracted when first wife is alive, is not cognizable by law. Recognizing such relation, arising from second marriage during the subsistence of the first one, is detrimental to public interest inasmuch as that would facilitate directly and indirectly the employees contracting the second marriage, which is legally impermissible. Statutorily, as per Section 17 of the Act of 1955, any marriage between two hindus solemnized after commencement of this Act is void if at the date of such



marriage either party had a husband or wife living and provisions of Section 494 and 495 of the Indian Penal Code (for short "IPC") shall apply in such cases accordingly.

16. Thus, family pension is payable to the "wife" and not to those whose marriage is 'no marriage' in the eye of law. As for the status of legitimacy of children begotten from such void marriages, by virtue of Section 16 of the Act of 1955, any child born of such marriage shall be legitimate.

17. In the case of **Raj Kumari vs. Krishan** reported in **2015 (14) SCC 511** the Hon'ble Apex Court in para 13 has observed as under:-

"13. 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 at 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."

18. Recently, the Karnataka High Court in the case of **Smt. Mahalakshamma v. The Secretary, Department of Rural Development reported in WA No. 256 of 2023, decided on 17.11.2023**, while relying on Raj Kumari (supra), denied the relief to second wife on the





ground that she was not the legally wedded wife for the purpose of grant of Family Pension. It noted:

“3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of the learned Single Judge that the appellant was not the legally wedded wife for the purpose of grant of Family Pension. It hardly needs to be stated that amongst Hindus monogamy is not only ideal but a legal prescription and therefore marriage contracted when the first wife is alive, cannot be taken cognizance of by law, subject to all just exceptions into which the argued case of the appellant does not fit.

4. Recognizing such relations arising from second marriage during the subsistence of first one is detrimental to public interest inasmuch as that would facilitate directly or indirectly the employees contracting the second marriage, which is legally impermissible. Statutorily bigamy is an offence punishable u/s. 17 of the Hindu Marriage Act, 1955. The provisions of Rule 294 of the Karnataka Civil Services Rules provide for the sanctioning of Family Pension to the family of a Government servant, after his demise in harness or post-retirement. Clause (i) of this Rule reads as under:

“(i) A family pension not exceeding the amount specified in sub-rule (ii) may be granted to the family of a Government servant who dies whether while still in service or after retirement, after completion of not less than 20 years qualifying service, for a period of ten years”.

Rule 302(i) reads:

“Family’ for the purpose of this rule will include the following relatives of the Government Servant: (a) Wife,....”



Thus Family Pension is payable to the "wife", and not to those whose marriage is 'no marriage' in the eye of law, the limited status of legitimacy of children begotten therefrom, by virtue of Sec.16 1955 Act, notwithstanding.

.....

5. The Committee constituted under the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) reaffirms paragraph 14 of its General Recommendation No.21 which reads: "polygamous marriage contravenes a woman's right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited"... The Committee's view is consistent with the African Union's position in the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), that 'monogamy is encouraged as the preferred form of marriage...' . India being a party State ratified CEDAW on 09.07.1993 expressing its commitment to the General Resolution which needs to be read into our Domestic Law, in the absence of contra statute, in view of Article 51(c) of the Constitution of India vide N.D.JAYAL vs. UOI, (2004) 9 SCC 362.

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly dismissed."

(emphasis supplied)

19. The Madras High Court, in the case of **Santhi v. Secretary to Government & Ors in WP No. 32556 of 2014, decided on 15.07.2022**, also clarified that the second wife, whose marriage was solemnized during the life time of the first wife of an employee, would not be eligible for family pension. It went on to observe that only if the



second marriage is valid under the Law, then alone, the pension is payable, which can be shared between two widows, but not otherwise. The relevant paras are reproduced hereunder:



"9. Question of 'payability' would arise only if the applicant is the widow. The question of widow would arise only if the marriage is the valid marriage. Based on an invalid marriage, the second wife cannot claim the status as "widow". When admittedly, the applicant is the second wife of the deceased employee and she is not a widow, then the family pension is not payable, and the question of invoking Rule 49 (7) (a) (i) would not arise at all.

10. Further question arises, why such a rule has been incorporated in the Tamil Nadu Pension Rules. It is obvious that at the time of framing the rules, the employees, who have solemnized second marriage prior to the year 1955, i.e., before the Hindu Marriage Act, was considered as a valid marriage. In those circumstances, when the second marriage was a valid marriage, the rule contemplates sharing of the family pension. Therefore, only if the second marriage is valid under the Law, then alone, the pension is payable, which can be shared between two widows, but not otherwise. When the pension rule was enacted, there were many such cases, where, employees had two wives and the marriage with the second wife was solemnized prior to the Hindu Marriage Act before the year 1955 and thus, this Court is of the considered opinion that those circumstances cannot be taken undue advantage by the second wife, whose marriage was solemnized after the Hindu Marriage Act and became invalid. Thus, the second marriage solemnized during the lifetime of the first wife is an invalid marriage and an invalid marriage would not provide the



second wife status as "widow". When she is not holding the status as 'widow', the family pension is not payable and consequently, the family pension cannot be shared or paid."

(emphasis supplied)

20. Similarly, the Gauhati High Court in a similar factual scenario, as of the present case, in **Pratima Deka v. State of Assam & Ors, reported in WP(C) No. 849 of 2019 and decided on 18.05.2022**, directed the payment of pension to the first wife. It noted:

"3. The claim of the petitioner has been contested by the respondents including the respondent no. 6 by filing affidavit. The said respondent no. 6 represented by Shri P. Mahanta, the learned counsel submits that the claim of the petitioner appears to be a misconceived one inasmuch as it is the respondent no. 6, who is first wife of the deceased employee and as per law, it is the respondent no. 6, who is entitled to the family pension. The aforesaid stand of the respondent no. 6 is also endorsed by Shri N. Upadhyay, the learned Standing Counsel, Irrigation Department as well as Shri A. Hassan, the learned Standing Counsel, AG, Assam.

4. After hearing the parties and on perusal of the records, this Court has noticed that the parties are Hindu by religion and as per the Hindu Marriage Act there is no concept of bigamy and rather the same is an offence under the Indian Penal Code and also a ground for divorce. Shri Hazarika, the learned counsel for the petitioner fairly submits that the children are also major and therefore, though some relief could have been given to the children in case they were minor, that situation is also not there.

5. In that view of the matter, this Court has no other option but to dismiss this petition inasmuch as a second wife is not entitled to



family pension in existence of the first wife in this case of which the facts are admitted and the parties are Hindus by religion.

6. The writ petition accordingly stands dismissed.”

(emphasis supplied)



21. No document has been placed on the record by the said Janak Agarwal, inspite of adopting the mode of substituted service of notice by this Court, that she is a legally wedded wife of the deceased. Only one document, submitted by the husband of the petitioner before the respondents by entering her name as nominee, is available on record and the same cannot be a ground for denial of family pension to the petitioner, who is the legally wedded wife of the deceased. If at all, Smt. Janak Agarwal is claiming herself as wife of the deceased, her marriage cannot be treated as valid, in terms of the provisions contained under Sections 5, 7 and 12 of the Act of 1955, unless she proves her status as a legally wedded wife of the retired pensioner (now deceased).

22. From the aforementioned discussion, it is clear that both the Supreme Court and various High Courts have consistently held that pension benefits should go to the legally wedded wife. The second wife, if the marriage was not legally valid, would typically be ineligible to claim such benefits. Thus, it can be concluded that pension and other post-retirement benefits are generally granted to the legally recognized spouse. In cases where the deceased employee



had a second wife without legally divorcing the first wife, only the first wife would be entitled to the pension benefits.

23. The petitioner is the legally wedded wife of the deceased pensioner but the respondents are insisting her to get 'Succession Certificate' from the Competent Court of Law to get the benefits of family pension.

24. Now the next question which arises for determination of this Court is "whether for getting the benefit of family pension, the widow of the deceased Government employee can be directed to get Succession Certificate from the Court of Law?"

25. As per the provisions of the Indian Succession Act, 1925 (for short "the Act of 1925"), a Succession Certificate is granted for recovery of debt or security. And family pension does not fall within the purview of debt or security.

26. Part 10 of the Act of 1925, starting from Section 370 to 390, deals with Succession Certificate. Sub-section 1 of the Section 370 reads thus:-

"Section 370 (1) in The Indian Succession Act, 1925:-(1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate: Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right



thereto can be established by letters of administration under this Act.”

27. Bare reading of Section 370 and 372 of the Act of 1925, particularly clause (f) of Sub-section 1 of Section 372 of the Act would show that a Succession Certificate can be applied only in respect of debts and securities.

28. The expression “debt” has not been defined under the Act of 1925. The said expression has not been defined under the General Clauses Act as well. The ordinary meaning of the word “debt” means any pecuniary liability whether payable in present or in future to another in return for money, services, goods or any other obligation. In the case of securities, sub-section 2 of Section 370 of the Act of 1925 enumerates the various securities envisaged by the section, which includes:

- “(a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament (of the United Kingdom) on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the (State Government) may, by notification in the official Gazette, declare to be a security for the purposes of this part.”

29. Section 381 of the Act of 1925 deals with the effect of Certificate and it reads as under:



"381. Effect of certificate.—Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted."



30. Bare perusal of the above provisions clearly indicates that an application for certificate may be made in respect of debt or debts, due to the deceased creditor, or in respect of a proportion thereof.

31. The provisions of the Act of 1925 are silent with regard to issuance of Succession Certificate for getting the benefits of family pension.

32. Thus, family pension payable to the legal representative of the deceased does not need a Succession Certificate, even if it were a debt belonging to the deceased. However, Section 214 of the Act of 1925 provides that no Court shall;

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the estate of the deceased person or to any part thereof, or

(b) proceed upon an application by a person claiming to be entitled to execute such debtor a decree or order for payment of his debt except on production by the person so claiming, of

....

(iii) a succession certificate granted under part-X and having the debts specified therein.



Sub-section (2) of Section 214 says that the word 'debt' in Sub-section (1) includes any debt except rent, revenue or profits, payable in respect of the land used for agricultural purpose.

33. Thus, family pension is an independent claim and cannot be claimed through a deceased employee. Pension is not a debt, rather now it has been held to be property.

34. The Patna High Court in the case of **Ganga Ram v. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna, in Civil Writ Jurisdiction Case No.154 of 2018 decided on 18.04.2023**, noted that pension is not in the nature of debt, rather it is a property and that there is no requirement of succession certificate for receiving family pension. It noted:

"20. In Dhirjo Kumar Sengar (Supra) the Apex Court has limited the scope of Succession certificate. The preamble of succession certificate (Act VII of 1889) gives an idea about the object of such certificate. The Preamble states, "whereas it is expedient to facilitate the collection of debt on succession and afford protection to parties paying debts to representatives of the deceased person."

21. The object in reenacting Part X of the Act, is to facilitate collection of debts and not to enable the parties to litigate question of disputed title. The grant of succession certificate does not determine question of title or what privilege does or does not belong to estate of deceased; it merely enables the party to whom a certificate is granted to collect any debts or securities belonging to deceased. (See PARUCK Indian Succession Act, 8th Edition page 782). The



Succession Certificate under Part X can only be granted in following cases:-

(a) When grant of probate or letters of administration is not compulsory under Sections 212 and 213.

(b) When deceased is an Indian Christian.

(c) When deceased is a Mohommadan.

(d) When deceased is a Hindu and has left a will and probate of such will is not compulsory. In case of joint Family property under Hindu Law etc.

22. Thus, family pension payable to the legal representative of the deceased does not need a Succession Certificate, even if it were a debt belonging to the deceased. However, Section 214 of the Act provides that no Court shall; (a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the estate of the deceased person or to any part thereof, or (b) proceed upon an application by a person claiming to be entitled to execute such debtor a decree or order for payment of his debt except on production by the person so claiming, or (c) a succession certificate granted under part-X and having the debts specified therein. Sub-section (2) of Section 214 says that the word 'debt' in Sub-section (1) includes any debt except rent, revenue or profits, payable in respect of the land used for agricultural purpose.

23. Thus, family pension is an independent claim and cannot be claimed through a deceased employee. Pension is not a debt, rather now it has been held to be property."

(emphasis supplied)

35. The Kerela High Court in **Lalithambika v. NIL, reported in 2014 SCC OnLine Ker 12607**, observed that the main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of deceased persons. Family pension is not a debt and thus, there is no



requirement of a succession certificate to receive family pension. It observed:

"5. A Succession Certificate under the Indian Succession Act, 1952 can be granted only in respect of 'debts' or 'securities' to which the deceased was entitled. The main object of a Succession Certificate is to facilitate collection of debts on succession and afford protection to the parties paying debts to the representatives of deceased persons. A Succession Certificate merely authorises its holder to collect the debt due to the deceased as a trustee and does not however decide its title. A decision in such proceedings under Section 372 of the India Succession Act, 1925 would not also operate as resjudicata in any subsequent suit.

6. Family Pension envisaged under Part III of the Kerala Service Rules, 1959 is payable to the relatives of the employee on his death only. Family Pension is not a debt due to the deceased employee which could be encashed by him during his life time. The right to receive Family Pension accrues only on the death of the employee and of course subject to his nomination. The Family Pension is independent and not claimed through the deceased employee. [See: Smt. Nirupama Sarkar v. Life Insurance Corporation of India (AIR 1996 Kolkata 417)]. Therefore the Succession Certificate cannot take in the Family Pension payable to the nominee or the legal heirs.

7. I am fortified in this view by the decision in Pabitra Mohan Pradhan v. Damayanthi Pradhan [AIR 2003 Odisha 1] wherein it is held as follows:-

"Though Section 370 of the Act does not apply, a representative of the deceased cannot maintain a suit or proceeding against an employer of the deceased without obtaining Succession Certificate under Section 214 provided it is a debt or security sought to be collected. Thus, to receive Family Pension, a Succession



Certificate is not necessary as it is neither a debt nor security.” (emphasis supplied)

The court below was well justified in disallowing the application filed for amendment of the Succession Certificate to include also the Family Pension. It would suffice if a legal heirship certificate is obtained to receive Family Pension in the absence of any nomination.

The Original Petition fails. Dismissed. No costs.”

(emphasis supplied)

36. The Gujarat HC in **Bharati Ramrangila Mor v. UOI, in R/Special Civil Application No. 21702 of 2019 decided by Gujarat HC on 31.03.2021**, further re-affirmed the view by holding that the pension would neither get covered under the debt nor security and is governed by the service rules. It noted:

“6. In the instant case, when the relationship of the petitioner with the retired employee cannot be questioned in wake of pedigree prepared by Talati-cum Mantri and the employee who was retired in the year 2003 may not be an occasion to introduce his daughter as dependent and the nomination was already in the name of his wife, the rejection on the part of the trial court for grant of succession certificate was based not on the absence of any relationship of the petitioner with the deceased employee, but, such application for grant of pension, according to the court, as mentioned hereinabove is not fitting into the scheme of the Act. The pension, according to the court, would neither get covered under the debt and security and pension is governed by the service rules.”

(emphasis supplied)



37. Relying on the aforementioned judgments, it can be concluded that a succession certificate is primarily required for managing and claiming the deceased person's assets, such as debts and securities, and is not necessary for claiming family pension benefits. Instead, the claimant must provide documents such as the death certificate of the deceased, proof of identity, marriage certificate (if applicable), etc to claim pensionary benefits.

38. Family pension envisaged under Chapter V-C of the Rajasthan Civil Services (Pension) Rules, 1996 is payable to the family of the employee after his death. Family pension is not a debt due to the deceased employee which would be encashed by him during his life time. The right to receive family pension accrues only after death of the employee. Hence, it is clear that a Succession Certificate is needed only for managing the deceased person's assets like debts and securities, and it is not required for claiming benefits of family pension. Thus, to receive family pension, a Succession Certificate is not necessary as it is neither a 'debt' nor 'security'.

39. Here in this case, the marriage of the petitioner with the deceased Government employee is not disputed as she is his legally wedded wife. The second marriage with Janak Agarwal is valid or not that is required to be proved by her before the Competent Court of Law after getting declaration in this regard.



40. Since this fact has been established on the record that the petitioner is the legally wedded wife of the deceased, she is entitled to get the benefit of family pension.

41. Accordingly, the instant petition stands allowed. The respondents are directed to release family pension of the petitioner and legitimate children of the deceased pensioner as per provisions of Rules of 1996, with all arrears of pension with interest @9% per annum w.e.f. the date it became due till its payment, without pressing upon furnishing of succession certificate.

42. It goes without saying that needful exercise would be done by the respondents within a period of two months from the date of receipt of certified copy of this order.

43. Before parting with this order, it is observed by this Court that the deceased retired pensioner had made nomination in favour of his second wife and two children. Though marriage with second wife is illegal, the children born out of the marriage are legitimate and are entitled to terminal benefits of the deceased as per the provisions of the Pension Rules, 1996, if they are still eligible to get the same. The respondents are directed to make the payment of their share of the terminal benefits of the deceased pensioner.

44. Needless to observe that this Court has not gone into the entitlement of the second wife and children of the deceased retired pensioner in the moveable and immoveable



properties which can be decided only before the appropriate forum in accordance with law. It should not be understood from above that this case, in any way, decided the status of the second wife. She and her children may still pursue their own remedies for establishing their status and rights independent of these proceedings.

45. With the above observations and directions, the instant petition stands disposed of. The stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/79