



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 12663/2016

Smt. Anand Kanwar W/o Late Shri Mool Singh Dewal, aged 68 years by caste Charan, resident of Plot No. 5, Jain Colony, Gali No. 3, New Bhupalpura, Udaipur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through Home Secretary, Secretariat, Jaipur
2. Rajasthan State Road Transport Corporation, Through Its Chairman Cum Managing Director, Parivahan Marg, C-Scheme, Jaipur
3. Smt. Sayar Kanwar, aged around 69 years, resident of Post Chak Charanvas, Tehsil Jamva Ramgadh, District Jaipur (Raj.)

-----Respondents

For Petitioner(s) : Mr. Arpit Bhoot
For Respondent(s) : Mr. Sunil Purohit
For Respondent No.3 : Mr. Prashant Tatia

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

ORDER RESERVED ON ::: **27/10/2025**
ORDER PRONOUNCED ON ::: **04/12/2025**

BY THE COURT:-

1. The present writ petition, under Article 226 of the Constitution of India, has been instituted by the petitioner, who stands aggrieved by the unjust and arbitrary withholding of family pension by the respondents, despite her being the legally entitled



beneficiary of the late employee, who had retired from the post of Assistant Zonal Manager.

2. Briefly stating the facts of the case are that the petitioner claims to be legally wedded wife of Late Shri Mool Singh Dewal, who served in the Rajasthan State Road Transport Corporation (RSRTC) and superannuated from the post of Assistant Zonal Manager on 30.09.2000. During his lifetime, Late Shri Mool Singh Dewal was receiving pension through his Pension Payment Order (hereinafter to be referred as "PPO") dated 28.10.2000. He passed away on 10.12.2013, whereafter the petitioner, being the nominated wife under the PPO records, submitted an application dated 01.01.2014 before the RSRTC seeking release of family pension in her favour. However, an objection was raised by one Smt. Sayar Kanwar, who claimed herself to be the wife of the deceased as her name appears in the nomination form, leading the RSRTC to direct her to obtain a succession certificate, vide letter dated 12.02.2014. Pursuant thereto, Smt. Sayar Kanwar filed a Civil Misc. Application No. 63A/2014 before the District Court, Jodhpur Metro, which came to be dismissed on 28.04.2016. Despite this, the respondents have failed to release the family pension to the petitioner, forcing her to invoke the extraordinary writ jurisdiction of this Court on account of the continued inaction on part of the respondents.

3. Learned counsel for the petitioner submitted that the petitioner is the legally wedded spouse and duly nominated beneficiary of Late Shri Mool Singh Dewal, as reflected in the Pension Payment Order and all statutory nomination documents



furnished to the respondents in accordance with Rule 74 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter to be referred as "The Rules of 1996"). It is further submitted that after the death of the employee, the petitioner alone stands entitled to receive the family pension, particularly in view of the dismissal of Civil Misc. Application No. 63A/2014 preferred by a third party claiming pensionary rights, thereby settling the dispute conclusively. Despite such clarity of entitlement, the respondents have arbitrarily withheld the family pension for an inordinate and unjustified period, thereby infringing the petitioner's fundamental right to livelihood guaranteed under Article 21 of the Constitution of India.

3.1 Learned counsel further submitted that family pension is a beneficial and welfare-oriented scheme meant to safeguard the financial security of a widow, and its denial is contrary to the principles of equity, justice, fair play, and the law laid down by the Hon'ble Supreme Court and this Court. Once the Pension Payment Order is issued, after requisite verification, the respondents should act upon it, and their persistent inaction is wholly arbitrary and illegal. Hence, it is prayed that a writ of mandamus be issued directing the respondents to forthwith release the family pension to the petitioner along with all consequential benefits.

4. Learned counsel appearing on behalf of the respondents no.1 and 2 submitted a reply in response to the show-cause notice. The foundational facts of late Shri Mool Singh Dewal's service and retirement are admitted. The remaining averments are denied to the extent they are inconsistent with the record. It is stated that



although the petitioner was shown as nominee for family pension, Smt. Sayar Kanwar also lodged a competing claim, relying on the CPF nomination wherein she was described as the wife of the deceased. Faced with two rival claims, both applicants were directed to obtain a succession certificate. The application of Smt. Sayar Kanwar was rejected by the Trial Court on maintainability; her subsequent writ petition was disposed of by this Court with a direction to pass a speaking order, which resulted in rejection dated 10.08.2017 on the ground that claimant had not produced a succession certificate and that the matter was sub judice. In view of the subsisting dispute, competing nominations, and pendency of the present proceedings, the respondents submit that family pension cannot be released at this stage. The writ petition, being devoid of merit, warrants dismissal.

5. The counsel appearing on behalf of respondent no.3 has also submitted a reply and submitted that the petitioner is not the legally wedded wife of late Shri Mool Singh. The answering respondent married the deceased in 1962, the marriage subsisted until his death, and official records including the ration card and CPF nomination acknowledge her as the lawful spouse. The petitioner's application for family pension carries no legal sanctity, for nomination cannot override statutory entitlement. The Corporation rightly objected to her claim, while the answering respondent, though not required for this purpose, even sought a succession certificate, which came to be dismissed. Her writ petition in this Court was disposed of with appropriate directions. The petitioner's demand is contrary to service jurisprudence and



the Hindu Marriage Act. The writ petition is thus devoid of merit and deserves rejection.

6. A rejoinder to the reply given by the counsel of respondent No. 1 and 2 has been filed by the counsel of the petitioner. It is submitted that the petitioner was duly nominated for family pension and a PPO was issued in 2000, which has attained finality. Despite this, the respondents have illegally insisted on a succession certificate, contrary to the Pension Regulations of 1989 and the directions of this Court dated 11.01.2017 in S.B. Civil Writ Petition No. 239/2017. The act of repeatedly directing the parties to obtain a succession certificate amounts to avoiding their statutory duty, especially when the material relied upon by respondent No. 3 is merely corroborative and insufficient to establish her claim. The respondents were duty-bound to decide the applications by a speaking order on the basis of service records, which they have failed to do.

6.1 Further, another rejoinder has been filed by the counsel of the petitioner replying to the reply filed by respondent No. 3, in which it is stated that respondent No. 3 has raised irrelevant and frivolous averments only to divert the scope of the present writ petition. It is submitted that the petitioner alone was nominated by Late Shri Mool Singh Dewal, as evident from the service record, pension forms, PPO dated 28.10.2000, and the registered Will dated 23.07.2007, all of which have attained finality. The documents relied upon by respondent No. 3, namely an old CPF form of 1972 and a ration card, are merely corroborative and do not establish her marital status. It is, therefore, submitted that



respondent No. 3's claim is untenable and her application for family pension deserves rejection.

7. Heard learned counsel appearing on behalf of the parties and perused the material annexed with the writ petition.

8. After a careful and anxious consideration of the material placed on record, it emerges that Shri Mool Singh passed away in the year 2013, leaving behind two women, each asserting herself to be the legally wedded wife of the deceased. Both claim the status of a widow, yet the record is conspicuously silent and bereft of any conclusive document that may decisively establish which of the two, if any, is the lawful spouse of the deceased. It is borne out from the record that in the year 1972, the employee had furnished the name of Smt. Sayar Kanwar (respondent no.3) as his nominee. However, much later, in the PPO, the name of Smt. Anand Kanwar (petitioner) came to be mentioned as his wife. This subsequent disclosure, inconsistent with the earlier nomination, has given rise to a serious dispute as to who, in fact, is the lawful spouse of the deceased employee. In such a scenario, the pivotal question that surfaces for adjudication before this Court is, who, in the eyes of law, shall be entitled to the family pension when competing claims are set up by two individuals professing matrimonial ties with the deceased?

8.1 This Court considers it important to clarify, at the very outset, that neither under Hindu personal law nor under the service jurisprudence applicable to government employees is there any concept recognising the status of a "first wife" or "second wife" during the subsistence of a valid marriage. The Hindu law,





whether as expounded under the Mitakshara school or the Dayabhaga school, does not countenance the existence of two legally wedded wives of a man at the same point in time. Consequently, when adjudicating rights in determining entitlement to family pension, the foundational requirement is to ascertain who, in the eyes of law, was the legally wedded spouse at the time of his demise. The claimants are required to establish that their marriage is lawful and valid in the eyes of law. Absent this essential conditions, no person can lay a lawful claim to the pensionary benefits flowing from the service of the deceased employee. In the present matter, the record presents a conflicting picture wherein the names of both claimants find mention at different stages, creating a cloud of uncertainty. Such discrepancies render it arduous for the Court to determine, with precision, the individual who rightfully stands in the position of a widow entitled to family pension.

8.2 At the outset, it is deemed apposite to advert to the statutory framework governing the field. Without a proper appreciation of the relevant rules, the legality and legitimacy of the competing claims cannot be understood in their correct perspective. For ready reference and to fortify the discussion, the pertinent Rules of the Rules of 1996, which bear directly upon the adjudication of the present lis, are extracted hereinbelow:-

"59. Nominations

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or Form 2 as the case may be, conferring on one or more persons the right to receive the



retirement gratuity/death gratuity payable under rule 55.

Provided that if at the time of making the nomination -

- (i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family; or**
(ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

(2) If a Government servant nominates more than one person under sub rule (1), he shall specify in the nomination the amount of share payable to each of the nominees, in such manner as to cover the entire amount of gratuity.

(3) A Government servant may provide in the nomination -

- (i) that in respect of any specified nominee who predeceases the Government servant, or who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination:

Provided that if at the time of making the nomination the Government servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family:

Provided further that where a Government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

- (ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to clause (i) of sub rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be.





(5) A Government servant may, at any time, cancel a nomination by sending a notice in writing to the Head of Office:

Provided that he shall, along with such notice, send a fresh nomination made in accordance with these rules.

(6) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (i) of sub rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub rule, the Government servant shall send to the Head of Office a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

(7) (a) Every nomination made including every notice of cancellation, if any, given by a Government servant under this rule, shall be sent to the Head of Office.

(b) The Head of Office shall, immediately on receipt of such nomination countersign it indicating the date of receipt and keep it under his custody:

Provided that the Head of Office may authorise his subordinate Gazetted Officers to countersign nomination forms of non-gazetted Government servants.

(c) Suitable entry regarding receipt of nomination shall be made in the service book of the Government servant concerned.

(8) Every nomination made, and every notice of cancellation given, by a Government servant shall, to the extent that it is valid, take effect from the date on which it is received by the Head of Office.

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."

(2) 'Emoluments' means emoluments as defined in Rule 45 of Rajasthan Civil Services (Pension) Rules, 1996, which the deceased Government servant was drawing on the date of his death while in service or immediately before his retirement; if on the date of his death while in service or immediately before his retirement such Government servanthas been absent from duty on leave (including extraordinary leave) or suspension, emoluments means the emoluments which he drew immediately before proceeding on such leave or suspension.

74. Communication of Details of family by the Govt. servant

(a) (i) As soon as a Government servant enters Government service, he shall give details of his family in Form 3 to the Head of Office.

(ii) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.

(b) The Government servant shall communicate to the Head of Office any subsequent change in the size of his family, including the fact of marriage of his female child.

(c) As and when the disability referred to in proviso to Rule 67 manifests itself in a child which makes him/her unable to earn his/her living, the fact should be brought to the notice of the Head of Office duly supported by a Medical Certificate from a Medical Officer, not below the rank of a Civil Surgeon. This may be indicated in Form 3 by the Head of Office. As and when the claim for family pension arises, the legal guardian of the child should make an application supported by a fresh medical certificate from a Medical Officer, not below the rank of Civil Surgeon, that the child still suffers from the disability.

(d) (i) The Head of Office shall, on receipt of the said Form 3, countersign the same and get it pasted on the service book of the Governmentservant concerned and acknowledge receipt of the said Form 3 and all further communications received from the Government servant in this behalf.

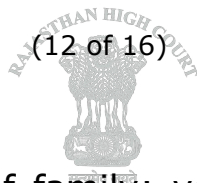




(ii) The Head of Office on receipt of communication from the Government servant regarding any change in the size of family shall have such a change incorporated in Form 3."

8.3 From a bare perusal of Rule 59, it becomes manifest that a Government servant is required to nominate a person who shall be entitled to receive the retirement gratuity or death gratuity. Such nomination must ordinarily be made in favour of a family member; only in the absence of a family may the nomination be made in favour of any person, persons, or even a body of individuals, whether incorporated or not. The Rule further mandates that where more than one nominee is proposed, the Government servant shall clearly specify the share payable to each of them.

8.4 For the purpose of understanding the expression "family", Rule 66 provides an exhaustive definition. It includes the wife in the case of a male Government servant and the husband in the case of a female Government servant; a judicially separated spouse, provided such separation was not granted on the ground of adultery; sons and daughters, including widowed or divorced daughters, until they attain the age of 25 years or begin to earn above the prescribed limit of ₹2550 per month, or until their marriage or re-marriage, whichever is earlier. The definition further takes within its fold a legally adopted child or even a posthumous child of the Government servant. It also includes parents who are 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. Thus, even at this stage, the term wife stands



included in the definition of family; yet, who is to be treated as the legally wedded wife of the deceased is a disputed question of fact which cannot be determined in the exercise of writ jurisdiction. A writ court is ill-equipped to embark upon such an inquiry. As regards to both sets of children irrespective of the marital disputes inter se their mothers are children of the deceased employee. Their entitlement to the family pension of their father cannot be extinguished whereas the share of the wife shall remain subject to the outcome of the civil proceedings.

8.5 Coming to Rule 74, it essentially contemplates alterations in the size of the family. When a man is young, he may marry and subsequently have children or grandchildren. If his marriage stands lawfully dissolved by a competent decree of divorce and he then enters into a fresh wedlock, the new spouse may lawfully be added to the family. This is the underlying purport of Rule 74.

8.6 Section 5 of the Hindu Marriage Act clearly stipulates that a marriage can be solemnised only if neither party has a spouse living at the time of marriage. The factual matrix here unmistakably shows that the deceased employee was married earlier and, during the subsistence of that marital bond, purported to marry another woman. Wherever law or service rules refer to dissolution of marriage, the ordinary and accepted meaning is the existence of a decree of divorce passed by a competent court. In exceptional cases where a valid and legally recognised custom of dissolution is established, the matter must be adjudicated in a regular civil suit. In the present case, the term divorce or dissolution of marriage can only be understood to mean a decree



of divorce or any other legally admissible form of dissolution of marriage which admittedly is not in existence in this case.

8.7 In service jurisprudence, wherever the expression wife appears in the context of pensionary benefits, it denotes only a legally wedded wife, one whose marriage is recognised under the Hindu Marriage Act, governed by the Mitakshara or Dayabhaga schools, and valid in the eyes of law. The plea that the employee dissolved his earlier marriage by some customary practice is a highly disputed factual assertion. Whether such a custom exists, whether it is prevalent, whether it has been professed or practiced since time immemorial, and whether it has received legal recognition, these are issues that can be adjudicated only in a properly instituted civil suit, not in a writ petition.

9. Coming to the question of nomination, it is evident that a nominee does not step into the shoes of a legal heir. A nomination, in its true legal character, does not confer proprietary rights; it merely identifies a person who shall act as a trustee for the limited purpose of receiving the amount. The law nowhere contemplates that the nominee becomes the absolute owner to the exclusion of the natural heirs. The beneficial interest in the estate of a deceased must devolve strictly in accordance with the law of natural succession. In the opinion of this Court, the right of succession inheres in the lawful heirs of the deceased, irrespective of in whose favour the nomination stands. The question as to who qualifies as the legal successor, more particularly in cases where the validity of the marriage itself is under challenge is a seriously disputed question of fact. Such an issue cannot be adjudicated in



writ jurisdiction, the writ court cannot embark upon a fact-finding enquiry of this magnitude. Equally, this controversy cannot be resolved through the summary procedure of a succession certificate, for even that jurisdiction is not designed to conclusively determine intricate civil rights. The proper course available to the contesting parties is to approach the competent civil court and institute a regular civil suit seeking a declaration of their status as lawful successors and a determination of their proprietary entitlements in the estate of the deceased who died intestate.

10. The petitioner has invoked the extraordinary jurisdiction of this Court by seeking a writ of mandamus. It is well-settled that a writ of mandamus lies only to command the performance of a statutory duty. Its canvas does not extend to adjudicating intricate and disputed questions of personal status, such as whether the employee's first marriage subsisted, whether the relationship was marred by acrimony, whether the parties had mutually separated, or whether he thereafter lived as a bachelor so as to contract a subsequent marriage. This Court is equally uncertain as to the timeline or the circumstances in which the marriages in question were solemnised. The deceased, during his lifetime, merely furnished the names of nominees. Whether the nominees were his lawfully wedded spouses is a matter that falls outside the present knowledge of the Court and clearly beyond the permissible scope of writ adjudication. It must be underscored that in a civil suit, the Court undertakes a meticulous fact-finding exercise, recording oral and documentary evidence, weighing and measuring each material fact, and thereafter arriving at a reasoned conclusion. A



writ of mandamus derived from the *Latin* expression "we command" is confined strictly to ensuring that a public authority performs a statutory or public duty. It does not permit this Court, while exercising its original writ jurisdiction, to embark upon an inquiry into disputed questions of fact, particularly those touching upon marital status, legitimacy, succession, or personal relationships. The writ jurisdiction is neither designed nor intended to substitute the elaborate evidentiary mechanisms of a civil forum. The questions as delicate and complex as the validity of marriages, the subsistence of prior matrimonial ties, or the legal character of a nominee can only be adjudicated after a full-fledged trial, something wholly foreign to the supervisory and corrective nature of this jurisdiction. In view of the foregoing, and mindful of the limitations that circumscribe the constitutional remedy sought, this Court finds no reason to exercise its writ jurisdiction in the present matter.

11. Accordingly, the parties are left at liberty to avail the remedy of a civil suit before the competent court for establishing their rights of succession and seeking appropriate relief concerning the estate of the deceased which may include the pensionary and other retiral benefits.

12. It is also noted with concern that the employee has passed away long ago, the parties themselves have grown old, and only one of them now stands entitled to family pension. Given the peculiarity of the circumstances, the appropriate remedy for both sides is to institute a civil suit seeking declaration of their respective rights and a consequential injunction. If such a suit be



filed, the learned Trial Court is expected to list the matter on a weekly basis, bearing in mind the age of the parties, and to make every endeavour to decide it expeditiously, preferably within one year of its institution.

13. Before parting, this Court observes that the pension rules may require appropriate amendments so that provisions relating to nomination, dissolution of marriage, and entitlement are couched in transparent and unambiguous terms, leaving no room for interpretational confusion. Learned Advocate General is expected to bring the above in the notice of the State authority.

14. In view of the foregoing discussion, the writ petition stands dismissed.

15. Pending applications, if any, are also dismissed.

(FARJAND ALI),J

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