



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2269 of 2024
Date of Decision: 17.09.2025

Mahesh RamPetitioner
Versus
State of Himachal Pradesh and OthersRespondents

Coram:

Hon’ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Vijay Bir Singh, Advocate.
For the Respondents: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for State.
Mr. Karun Negi and Mr. Somesh Sharma, Advocates, for respondent No.5.

Sandeep Sharma, Judge (Oral):

By way of instant petition, petitioner has prayed for following reliefs:

- “i) Issue a writ of certiorari to quash Annexure P-5 issued by the respondent No.5.
 - ii) Issue a writ of mandamus directing the Respondent authorities to enter the name of the second wife of the petitioner in the pension record.”
2. In the year 1973, petitioner came to be appointed as Carpenter/Foreman on regular basis with the respondent-department. In the year 1994, petitioner solemnised marriage with Ms. Kamlesh Devi, daughter of Mr. Ghoundlu Ram, but since no child was born out of their wedlock, Ms. Kamlesh Devi and her parents insisted upon petitioner to

¹Whether the reporters of the local papers may be allowed to see the judgment? Yes.

solemnise second marriage and as such, during subsistence of his first marriage with Ms. Kamlesh Devi, petitioner solemnised second marriage in accordance with Hindu rites and customs with Ms. Jawala Devi i.e. younger sister of Ms. Kamlesh Devi.

3. Petitioner retired in the year 2003 and since then, he has been drawing pension under PPO No.62182/HP, Case No.P-2/62182/M-11/2003-04/183. On 20.04.2020, first wife of the petitioner i.e. Ms. Kamlesh Devi expired. After death of his first wife, named hereinabove, petitioner filed representation dated 31.01.2021, praying therein respondent-department for change of nominee in the pension record and enter the name of Ms. Jawala Devi instead of Ms. Kamlesh Devi.

4. On 29.04.2021, petitioner again made a representation/reminder to the respondent-department with the prayer to enter the name of Ms. Jawala Devi, instead of Ms. Kamlesh Devi, but fact remains that such representation of him was rejected vide letter dated nil (Annexure P-5) on the ground that second wife of the petitioner is not eligible for family pension. In the afore background, petitioner has approached this Court in the instant proceedings praying therein to set aside aforesaid order (Annexure P-5) and issue directions to the respondents to enter the name of his second wife in the service record, in place of Ms. Kamlesh Devi, who expired on 20.04.2020.

5. Respondents No.1 to 4 as well as respondent No.5 have filed replies, wherein facts, as have been noticed hereinabove, have not

been disputed, rather, attempt has been made to refute the claim of the petitioner on the ground that since petitioner had solemnised second marriage during the subsistence of his earlier marriage and in the service record, name of earlier wife i.e. Ms. Kamlesh Devi stood recorded, there was no occasion, if any, for respondents to enter the name of the second wife. While placing reliance upon Section 5 of the Hindu Marriage Act, i.e. condition for a Hindu marriage, it has been submitted at the behest of respondents that second marriage of the petitioner with Ms. Jawala Devi during subsistence of his first marriage with Ms. Kamlesh Devi was otherwise illegal and as such, his prayer for entering the name of the second wife in the service record is not tenable.

6. I have heard the parties and gone through the record of the case.

7. It is not in dispute that in the year 1994, petitioner had solemnised marriage with Ms. Kamlesh Devi, as a result thereof, name of Ms. Kamlesh Devi was recorded as nominee of the petitioner in the service record. As per averments contained in the petition, which have not been rebutted, petitioner herein solemnised second marriage with the younger sister of his first wife, that too on the insistence of Ms. Kamlesh Devi, as no issue had born out of the wedlock of petitioner and Ms. Kamlesh Devi.

8. Though petitioner had retired in the year 2003 and since then, he has been drawing the pension under the PPO, detailed

hereinabove. Till 20.04.2020, when first wife of the petitioner passed away, no request ever came to be made at the behest of the petitioner for change of name of the nominee. It is only after the death of Ms. Kamlesh Devi, who otherwise had been living with petitioner and his sister Ms. Jawala Devi i.e. second wife of the petitioner in her matrimonial house since year 1994, petitioner made representation praying therein to change the name of his first wife as a nominee in the pension record and to enter the name of Ms. Jawala Devi.

9. True it is that in terms of Section 5 of the Hindu Marriage Act, marriage of the petitioner with Ms. Jawala Devi i.e. second wife, during subsistence of his first marriage with Ms. Kamlesh Devi can be said to be illegal, but in peculiar facts and circumstances of the case, as have been taken note hereinabove, coupled with the fact that petitioner stands retired in the year 2003, respondents ought not have rejected the case of the petitioner, while placing reliance upon Rule 54 of CCS Pension Rules, 1972, which provides that in case second marriage is solemnised during the subsistence of first marriage, second wife is not eligible for pension. Since all the legal representatives of petitioner have become major and they have no objection, whatsoever, in change of name of the nominee, coupled with the fact that Ms. Jawala Devi is the legally wedded wife of the petitioner, no prejudice, if any, shall be caused to either of the parties in case prayer made on behalf of the petitioner for change of name of his nominee in the service record is accepted.

10. Hon'ble Apex Court in case titled as ***Shiramabai and Others Vs. The Captain Record Officer and Another***, Civil Appeal No.5262 of 2023, decided on 18.08.2023, in similar circumstances observed that if a man and woman cohabited continuously for a long spell, one can draw a presumption in favour of a valid marriage. Hon'ble Apex Court in afore case further held that this presumption is rebuttable, though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place.

11. Since in the instant case, there is no dispute qua the factum of marriage *inter se* petitioner and Ms. Jawala Devi, rather such fact stands admitted by the respondents, objection being raised by the respondents with regard to second marriage of petitioner during subsistence of earlier marriage deserves to be overruled on account of the fact that petitioner and Ms. Jawala Devi had been cohabiting with each other since the year 1994. Moreover, as has been taken note hereinabove, Ms. Jawala Devi is the real sister of Ms. Kamlesh Devi. Marriage was solemnised *inter se* petitioner and Ms. Jawala Devi on 10.04.1994 i.e. within the same year, when first marriage of the petitioner was solemnised with Ms. Kamlesh Devi and since then, petitioner, his first wife Ms. Kamlesh Devi and second wife Ms. Jawala Devi had been living together till the death of Ms. Kamlesh Devi i.e. on 20.04.2020.

12. There is another exceptional circumstance that there is none, except the petitioner, who shall be claiming the family pension, in

the event of his demise. In similar facts and circumstances, Coordinate Bench of this Court in CWP No.7055 of 2024, titled as ***Kusum Lata Vs. State of H.P. and Others***, decided on 17.12.2024, directed the respondents to grant family pension to the petitioner in afore case, who had also solemnised marriage during the subsistence of first marriage of the employee concerned. Relevant Para of afore judgment reads as under:

“5. It is a matter of record that the petitioner happens to be the second wife of Shri Ramu Ram. Shri Ramu Ram was married to Smt. Satya Devi before his marriage with the petitioner in the year 1989. It is also borne out from the reply that Smt. Satya Devi died on 19.06.1999. It is also borne out from the reply that not only Smt. Satya Devi pre-deceased her husband, she also died issueless. The Court stands informed that though children were born out of the wedlock between the petitioner and Shri Ramu Ram but all the children are now major. In the present case, there is none as successor-in-interest through Smt. Satya Devi, who is claiming any right over the family pension due to the family of late Shri Ramu Ram. As the children born out of the wedlock of Ramu Ram and the petitioner have become major, therefore, they also are not entitled for family pension as they are duly earning their livelihood.

6. In a recent judgment, Hon'ble Supreme Court of India in Smt. Shiramabai and others vs. The Captain Record Officer and another (Civil Appeal No. 5262 of 2023), decided on 18.08.2023, in similar circumstances has been pleased to observe that if a man and woman cohabited continuously for a long spell, one can draw a presumption in favour of a valid marriage. Hon'ble Supreme Court also held that this presumption is rebuttable, though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place.

7. Be that as it may, here is a case wherein there is none except the petitioner who is claiming the family pension, which is due after the death of Shri Ramu Ram. Though the petitioner is not the first wife of

Ramu Ram and she contracted marriage with Ramu Ram during the subsistence of first wife of Ramu Ram but taking into consideration the fact that none is claiming the family pension except the petitioner, this writ petition is allowed in light of the facts involved therein and a direction is hereby issued to the respondents to grant family pension to the petitioner from the due date. Arrears, as are due to the petitioner, be paid within a period of three months from today. No interest thereupon shall be payable but if arrears are not paid within three months from today, then it shall entail simple interest @ 6% per annum as from the date of passing of this judgment. Regular monthly family pension be also paid to the petitioner, starting from the month of January, 2025."

13. Recently, Hon'ble Apex Court in case titled as **Radha Devi Vs. Chief General Manager and Others**, Special Leave Petition (Civil) Diary No.2365 of 2022, while exercising power under Article 142 of the Constitution of India, directed respondents to pay the family pension to second wife, who admittedly had solemnised marriage with the employee concerned during subsistence of first marriage. Though this Court is fully conscious of the fact that afore judgment has been passed by the Hon'ble Apex Court while exercising power under Article 142 and as such, same cannot be used as a precedent, but yet same has been taken note in the instant judgment because in the case before the Hon'ble Apex Court, petitioner who was seeking family pension, after the death of his husband, had also solemnised marriage during subsistence of earlier marriage and Hon'ble Apex Court taking note of long cohabitation *inter se* petitioner and her husband in that case observed that on account of long cohabitation, they have attained the status of

spouse, which entitles petitioner in that case to seek family pension.

Relevant Para of afore judgment reads as under:

“The facts of the case, as noted above, are rather peculiar, for it is not disputed that Radha Devi had continued to live as a spouse with Jay Narayan Maharaj, after the death of his first wife, Ram Sawari Devi @ Sawari Devi, in 1984.

Position of Radha Devi as a ‘spouse’ is not really disputed as such by the respondent, SECL, except on the ground that her marriage was solemnized with Jay Narayan Maharaj during the subsistence of his first marriage.

We would, in these circumstances, having regard to the peculiar facts of the case and in order to do complete justice, observe that Jay Narayan Maharaj and Radha Devi had lived and cared for each other, post the death of Ram Sawari Devi @ Sawari Devi on 20.04.1984. Radha Devi at the old age should not be denied the ‘status of spouse’, which entitles her to receive family pension. This would help her live with dignity and help her financially. In view of the aforesaid position, we exercise our power under Article 142 of the Constitution of India and direct that Radha Devi shall be paid family pension with effect from 01.01.2010 till today on or before 31.12.2024. She will receive family pension till her death.

Radha Devi will furnish all details and particulars to the Manager, SECL, and complete formalities within a period of eight weeks from today.

In case the payment of arrears is not made within the said period, the respondent, SECL, will be liable to pay interest at the rate of 8% per annum from the date of this order till the date of actual payment.

Recording the aforesaid, the appeal is allowed and disposed of.”

14. In the instant case, as has been noticed hereinabove, though petitioner had solemnised first marriage with Ms. Kamlesh Devi in the year 1994, but since no issue was born from their wedlock, petitioner solemnised second marriage on the insistence of his first wife Ms.

Kamlesh Devi with her younger sister Ms. Jawala Devi in the year 1994 itself and since then, petitioner, Ms. Kamlesh Devi and Ms. Jawala Devi had been living together till 20.04.2020, when Ms. Kamlesh Devi passed away. Though rules, as have been taken note hereinabove, do provide that second marriage during the subsistence of earlier marriage is not valid, but in peculiar facts and circumstances of the present case, prayer made on behalf of the petitioner inasmuch as issuing directions to change the name of nominee in the service record of the petitioner deserves to be allowed.

15. Consequently, in view of the above, present petition is allowed and impugned order (Annexure P-5) is quashed and set aside. Respondents are directed to enter the name of second wife of the petitioner i.e. Ms. Jawala Devi in the service record of the petitioner, in place of Ms. Kamlesh Devi, who has expired in the year 2020. Since petitioner has been litigating since the year 2024, this Court hopes and trusts that needful, in terms of directions contained in the instant judgment, shall be done expeditiously, preferably, within a period of two months.

The present petition is disposed in the above terms, so also the pending miscellaneous application(s), if any.

**(Sandeep Sharma),
Judge**

September 17, 2025
(Rajeev Raturi)