

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

SWP No. 1821/2017

Sonika SharmaPetitioner(s)

Through: Mr. P. S. Pawar, Advocate

Vs

Union of India and othersRespondent(s)

Through: Mr. Ranjit Singh Jamwal, CGSC

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
16.03.2023

01. The moot point in this case is can a widow be denied sanction and grant of a family pension upon the demise of her husband just by reference to the fact that during the lifetime of her husband there was a marital litigation for divorce going on between the two but which on account of the demise of her husband came to abate.

02. In this case, Vinay Kumar Sharma, the husband of the petitioner was serving in the Boarder Security Force as Constable bearing no. 930045854, last posted in 182 Battalion C/o 56 APO from where he had retired in the year 2015. The parent-in-law of the petitioner i.e. parents of Mr. Vinay Kumar Sharma had predeceased him, leaving behind the petitioner as his sole legal heir as there was no issue born out of the said wedlock.

03. The death of the petitioner's husband came to take place on 17.05.2016. The petitioner made an application to the Commanding Officer 182 Battalion, BSF for sanctioning and releasing of the family pension and other benefits arising and accruing upon the death of her husband - Vinay Kumar Sharma to which the said Commanding Officer came to respond in terms of communication dated 15.02.2017 that as the petitioner's name was not found in the pension record of the deceased - Vinay Kumar Sharma and on account of the pendency of the petitioner's divorce petition, the case for process of family pension in favour of the petitioner was not to be taken up. It is this scenario, which brought the petitioner with the present writ petition filed in the year 2017. Learned counsel for the petitioner submits that the petitioner has not re-married.

04. In their objections to the writ petition, the respondents submit that Vinay Kumar Sharma was enrolled as a Constable no. 930045854 in the Border Security Force (BSF) on 10.08.1993. The respondents have further referred to the fact that the petitioner was earning monthly maintenance awarded by the Court out of maintenance proceedings against her deceased husband-Vinay Kumar Sharma during the course of his life. The petitioner's husband Vinay Kumar Sharma had come to seek voluntary retirement from service with effect from 01.01.2015.

05. Thus, purely on the fact that the name of the petitioner was not mentioned in the pension papers of and by Vinay Kumar Sharma,

the respondents are seeking to deny the petitioner her claim for family pension. There is not even a single provision of law quoted in the reply/objections by the respondents as to on what basis the respondents are enabling themselves to deny the petitioner her claim for sanction and grant of family pension. If read between the lines, the respondents are, at best, reading it to be a will of Vinay Kumar Sharma not to grant family pension after his demise in favour of the petitioner but that situation cannot be allowed to be used by the respondents. The matter of earning family pension is a law given right which can be deprived to a person only in case the law is enabling/permitting such disentitlement, which is not the present case. As such, the stand taken by the respondents is nothing but frivolous without any legal basis.

06. The writ petition is, therefore, *allowed*. The respondents are directed to sanction and grant family pension under the rules in favour of the petitioner along with all retrospective benefits. Let the needful compliance be carried out within a period of three months from the period a copy of this order is received by the respondents.

Disposed of accordingly.

(Rahul Bharti)
Judge

Jammu
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Muneesh