

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

SWP no. 2511/2012
CMA no. 4114/2012

Date of order: 24.12.2012

Sarita Raina v. Union of India and ors

Coram:

**Hon'ble Mr. Justice M. M. Kumar, Chief Justice
Hon'ble Mr. Justice Hasnain Massodi, Judge**

Appearing counsel:

For the Petitioner(s) Mr. Amur Kotwal, Advocate.
For the respondent(s) Mr. Rajnesh Raina, CGSC vice Mr.
K. K. Pangotra, ASGL.

- i) Whether to be reported in
Press, Journal/Media : Yes/No
ii/ Whether to be reported in
Digest/ Journal : Yes/No
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M. M. Kumar, CJ

1. The instant petition under Article 226 of the Constitution of India read with Section 103 of the Constitution of Jammu and Kashmir is directed against judgment and order dated 18.05.2009 rendered by the Central Administrative Tribunal, Chandigarh Bench, Circuit at Jammu, (for brevity the Tribunal), whereby the claim of the writ petitioner for grant of family pension to her has been rejected on the ground that she has already secured divorce and had also remarried. The short order of the Tribunal is set out below for a ready reference:-

- "1. Even on the second call, there is no representation on behalf of the applicant.
2. The facts of the case indicate that on the death of Govt. servant notwithstanding the claim put in by

the wife, family pension was given to the daughter. The documents produced discloses that there was a situation, where, well before the death of the government servant, after securing a divorce, the applicant had re-married. In any case evidently, family pension benefits were given from 2000 onwards with full arrears to the elder daughter.

3. The beneficiary had got married in the year 2004 and as far as she was concerned, the pension was discontinued. We can presume that the other claimants being children are getting the pensionary benefits. The applicant has steered clear of such details.

4. The application is filed on the basis that the grant of family pension in the year 2004 was bad. Being wife and beneficiary, the matter should be settled in her favour.

5. We are of the view that the circumstances speak themselves. After keeping silence for more than a decade, the claim is highly belated. The applicant has not challenged the order of 2004 and also has not explained the delay. It cannot also be considered as a continuing claim. As far as the present facts of the case are seen, we do not find that applicant has made out a case for issuing notice. The OA is dismissed accordingly."

2. The case of the petitioner is that she has neither divorced her husband Shri B. L. Raina nor any question of re-marriage has ever arisen. In that regard learned counsel for the petitioner has argued that even before the Tribunal there was no document on record to reach any such conclusion. Our attention has been drawn to the letter dated 29.08.2012 issued by the Section Officer (Judicial) on the application sent by the petitioner. According to the aforesaid communication the file consisted of 18 pages as per the index supplied by the petitioner/her counsel and in addition there were three pages of the order of the Bench. The crucial words are that "*Except the*

finding of the Hon'ble bench ("The documents produced discloses that there was a situation where, well before the death of the Government servant, after securing a divorce, the applicant had remarried") in the O. A which was disposed of in limine, there is no document available in the file which supports the extracted findings.

It is not for the registry to look for documentation relatable to any finding given by the Hon'ble Bench. You may also like to either yourself or through your counsel inspect the file on any working day".

3. We have heard learned counsel for the parties and are inclined to accept that there was no record to sustain the finding of the Tribunal that the petitioner had secured divorce and after the divorce she had re-married. Ordinarily we would not have accepted such a situation which is created by the communication sent by the Section Officer because the Section Officer (Judicial) has no jurisdiction to comment on the findings recorded by the Tribunal. However, keeping in view the plight of the hapless widow and the assertion made by her learned counsel, we are inclined to believe that such a situation must be existing on the file. We also cannot help recording our displeasure on the conduct of the Section Officer (J) who has failed to maintain the judicial discipline. The Tribunal shall look

into this aspect and proceed to initiate action against the erring official as per law.

4. As a sequel to the above discussion we set aside the order of the Tribunal and remand the matter back to it. The Tribunal shall decide the issue at the earliest by keeping in view the fact that a hapless widow is hankering for pension for the last so many years. The Tribunal shall fix a date of hearing at Jammu and intimate the same to the parties and their counsel.

(Hasnain Massodi)
Judge

(M. M. Kumar)
Chief Justice

JAAMU:
24.12.2012
Anil Raina, Secy.