

WP(C) No. 326 of 2014

Date of Order: 31 - 05 - 2018

Ms. Dhan Maya Vs. Union of India & Ors.

**Coram:**

**Hon'ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice**

**Appearance:**

For the Petitioner : Mr. S.U. Upadhaya, Adv.  
For the Respondent(s) : Mr. R. Debnath, CGC

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| i)  | Whether approved for reporting in Law journals etc.: | Yes |
| ii) | Whether approved for publication in press:           | Yes |

1. Instant case has its own peculiar features. In essence, the petitioner, an illiterate widow, has been clamouring for grant of pensionary and other benefits as were due to be received on the death of her husband.

2. The husband of the petitioner was enrolled in Assam Rifles on 15.10.1968 and was discharged on voluntary retirement w.e.f. 31.03.1991. His age at the time of discharge was 42 years 5 months 16 days. He had been decorated during his service with the following medals:

- (i) Sainya Seva Medal,
- (ii) Sena Medal,
- (iii) 25<sup>th</sup> Independence Anniversary Medal
- and,
- (iv) Police Duty (Special) Medal.

3. Her husband and his second wife namely, Mon Maya Newar, both died on 09.03.1993.

3. After the death of her husband, the pension and other benefits were not given to the petitioner by the respondents creating an impression that same shall not be allowable.

4. In pursuance to a resolution passed by the Board of Editors of 'Sudha' dated 25.08.2013, (an Assamese Literary Magazine), Mr. Jitu Kumar Nath, Editor along with his team with the object of helping the illiterate old aged men and women of Assam in the legal field, during the session of discussion with

the public at the premises of Dimow Primary School situated at Dimow on 29.11.2014 were informed by the people that Smt. Dhan Maya (petitioner herein) is not getting any pensionary benefits. Petitioner informed the team that her husband was an employee of Assam Rifles and had rendered 22 years 5 months and 16 days of service. She was informed by many employees of Assam Rifles that she is not entitled to pension as same was not granted to her husband.

5. Said Executive Editor, Mr. Jitu Kumar Nath, noticing that she is an illiterate woman, suffering from several ailments and acute financial hardship, unaware of her right to family pension and then noticing lack of assistance and ignorance about the right to pension shall not be a bar for exercising her right, submitted a detailed representation to the Director General, Assam Rifles, Mahanideshalaya, Meghalaya, Shillong under his No. Sudha / WFPP / 2014 / F.No. 39 /Sl.No.10 dated 08.04.2014 mentioning therein the details of husband of the petitioner and finally requested the said Director General to grant family pension to the petitioner without driving her to litigation. In response whereof, the said Editor was informed by the Record Officer vide his No. 112827/11 AR/PGC-2014/2376 dated 05.05.2014 that on scrutiny of service record of No. 112827 Ex Lnk (GD) Prem Kumar Chhetri, it is found that Smt. Dhan Maya (petitioner), first wife eloped with someone on 01.01.1985 during active service of the Rifleman. The Rifleman got re-married to Smt. Mon Maya on 22.01.1987 so she was the next of kin of the deceased. As per existing Central Civil Services (Pension) Rules, 1972 Smt. Dhan Maya is not entitled to grant of family pension.

6. Again, vide communication No. 112827/11 AR/UPAO/PGC/2014 168 dated 23.06.2014 the said Mr. Jitu Kumar Nath was informed by Lieutenant Colonel, Directorate General Assam Rifles that Smt. Dhan Maya (first wife of Prem Kumar Chhetri) had eloped with someone, then Prem Kumar Chhetri had remarried, so Smt. Dhan Maya is not entitled to grant of family pension. Both the two communications dated 05.05.2014 and 23.06.2014 are sought to be quashed.

7. It is pertinent to notice that the Editor of 'Sudha' had informed All Asom Gorkha Mohila Samitee about the stand taken by the Assam Rifles. The President, All Asom Gorkha Mohila Samitee submitted a representation on

09.07.2014 to the Director General Assam Rifles mentioning therein that they had enquired the matter and noticed the following facts:

(1) Late LNK (GD) 112827 Prem Kumar Chhetri retired from service w.e.f. 31/03/1991 (AN) and after that came to Sodiya, Sapakhua with her 1<sup>st</sup> and 2<sup>nd</sup> wife and after few months all are shifted to Silapathar.

(2) Late LNK (GD) 112827 Prem Kumar Chhetri to marry Man Maya compelled her 1<sup>st</sup> wife Dhan Maya placing her in an awkward situation.

(3) After his retirement he started conjugal life with 1<sup>st</sup> and 2<sup>nd</sup> wife peacefully.

(4) Dhan Maya is an illiterate women (only she know how to put her signature).

(5) The word 'elope' is used in the aforesaid letter and 'Blacks Law Dictionary' Page 598, 1<sup>st</sup> Column defines the said word as follows:

- "elope" vb 17(c)
1. Archaic, To run away; escape.
  2. Archaic, To abandon one's husband and run away with a lover.
  3. To run away secretly for the purpose getting married, often without parental consent- elopement, N".

The said word is used by one special officer of DGAR against the Indian Womanhood.

The word eloped is not sufficient to prove that Dhan Maya is not legal wife of No. Late LNK(GD) 112827 Prem Kumar Chhetri.

(6) No decree of Divorce or decree judicial of separation is obtained by No. LNK(GD) 112827 Prem Kumar Chhetri from the competent Court of law against his 1<sup>st</sup> wife and same was also not submitted before the authority of Assam Rifles.

(7) No legal action was taken by the authority of Assam Rifles against No. LNK(GD)112828 Prem Kumat Chhetri as per CCS Rules and RR for getting remarried without submitting decree of divorce or decree of judicial separation but indulged 'Mr.Drama Boy' i.e., No.LNK(GD)112827 Prem Kumar Chhetri to get

remarried and authority of Assam Rifles failed to understand his 'drama'.

(8) As there is no decree of divorce Ms. Dhan Maya is legal wife of the Late LNK(GD)112827 Prem Kumar Chhetri and she is entitled to pension.

(9) After the death of Late LNK(GD)112827 Prem Kumar Chhetri all religious formalities (Sardha Ceremony) was observed by Dhan Maya and local people witnessed us about all above fact.

The President, All Asom Gorkha Mohila Samitee, finally requested the Director General Assam Rifles to settle the pension case of the petitioner without driving her to litigation. Same did not happen hence, the instant petition.

8. It is an admitted fact that Prem Kumar Chhetri was enrolled in Assam Rifles on 15.10.1968, retired on 31.03.1991 after rendering 22 years 5 months 16 days of service and during his service he was decorated with Sainya Seva Medal, Sena Medal, 25<sup>th</sup> Independence Anniversary Medal and Police Duty (Special) Medal. It is also an admittedly fact that he had two wives, petitioner was the first wife and Mon Maya Newar was the second wife. It is also an admitted fact that both Prem Kumar Chhetri and his second wife Mon Maya Newar died on 09.03.1993. It is also an admitted fact that Prem Kumar Chhetri was not paid pensionary and other consequential retiral benefits.

9. In the reply affidavit filed by respondents No. 1 to 3, it is stated that PPO (Pension Payment Order) was sent on the address of Prem Kumar Chhetri but same was returned un-served. Thereafter no one came forward to claim the next of kin for claiming pensionary benefits. It is also stated that the first wife, Smti. Dhan Maya (petitioner) had eloped with someone, it is only then the deceased had contracted the second marriage. It is further stated that the first wife (petitioner) and the deceased had made a joint declaration which is available on records and quoted in para 10 of the reply affidavit suggesting that they had mutually undertaken to divorce each other. That being so, petitioner has no right to claim any pension. It is the said situation which has constrained the petitioner not to come forward to claim pensionary benefits.

10. Learned counsel for the respondents with all vehemence at his command firstly contended that the petition is hit by latches as the petitioner is claiming

pension after a gap of nearly two decades. The said contention is repelled by the learned counsel for the petitioner by highlighting that the petitioner being an illiterate lady belonging to a remote area has made it clear that when her husband was not receiving the pension, she got an impression that perhaps pension was not allowable, she did not know anything about her legal right to family pension and even the remedy to enforce her right. In fact, it was obligatory upon the respondents to ensure that the pension is paid to the next of kin of the deceased. In support of his submission, he placed reliance on judgment rendered by the Hon'ble Apex Court in the case of ***"S.K.Mastan Bee v. General Manager, South Central Railway and Another"*** reported in (2003) 1 SCC 184.

11. In the reported judgment, the factual position was almost similar i.e., widow of a Railway employee, who had died in harness on 21.11.1969, was entitled to family pension but because of ignorance and lack of legal assistance, she could not stake her claim till 12.03.1991. She filed the writ petition before the High Court of Judicature, Andhra Pradesh at Hyderabad in the year 1992. Same was allowed directing the respondents therein to fix and pay the family pension with arrears with effect from the date of death of her husband i.e., 21.11.1969. In appeal, the Division Bench modified the order providing that the benefits be given not with effect from the date of death of husband of the widow but from the date of legal notice dated 01.04.1992. The Hon'ble Apex Court while allowing the Civil Appeal has set aside the judgment of the Division Bench to the extent it restricted the right of the appellant (widow) to receive family pension only from 01.04.1992, restored the direction i.e., the right to receive pension with effect from 21.11.1969. The respondent department was directed to take steps and compute arrears of pension payable with effect from 21.11.1969 and to pay the entire arrears within three months.

12. In the reported judgment also there was delay of 22 years which, in the peculiar facts, was ignored and not treated as a bar for claiming the family pension.

13. On facts, the said judgment squarely covers the case of the petitioner. Petitioner too is an illiterate woman belonging to a remote area, her cause was

espoused by the Executive Editor of Sudha Magazine when he along with his team, in order to help the sick and old aged men and women, visited the village of the deceased and then, filed the representation before the Director General of Assam Rifles. The contention of the learned counsel for the respondents that the petition is hit by latches shall accordingly stand answered in negative.

14. Next contention of learned counsel for the respondents is that the petitioner during the lifetime of her husband had eloped with someone is totally ridiculous. To say simply that she had eloped with someone has got no meaning or logic. Same position has been clarified by the All Asom Gorkha Mahila Samitee as referred to above. Therefore, on such vague ground, petitioner could not have been deprived of her right to family pension.

15. Next contention of learned counsel for the respondents that the deceased and the petitioner had mutually divorced each other is without any substance. Admittedly, the deceased and the petitioner were governed by Hindu Marriage Act, 1955. The position of divorce is governed by Section 13 of the Act. There has to be a decree for divorce. None of the parties had approached any Court under Section 13 of the Hindu Marriage Act, 1955. In absence whereof, the marriage between the two could not be said to have been dissolved, in fact, the deceased had been living along with his two wives, maybe while facing an action for having contracted second marriage, he must have motivated the petitioner to make a statement before the Assam Rifles Authorities which has been referred to in the reply but that by itself would not absolve the respondents from paying the family pension. Mutual divorce as referred to in the reply affidavit has no legal sanctity as not being in consonance with Section 13 of the Hindu Marriage Act, 1955. The marriage between the petitioner and the deceased subsisted till the death of the deceased. Same position has been further supported by the certificate issued from the Office of the Deputy Commissioner, Dhemaji on 24.04.2015 wherein, it has been certified that the petitioner, aged 59 years old, and two sons of the deceased, namely, Shri Am Kumar Chetry, 36 years old and Shri Subhash Kumar Chetry, 36 years old and 32 years old, are the next of kin of the deceased. Same has been issued on 24.04.2015 by the Additional Deputy Commissioner, Dhemaji with the condition that same shall be valid in connection with the benefits of

pension, Gratuity, GIS and other allowances pertaining to salary and bank deposit only.

16. The two sons, one aged 36 years and another aged 32 years, in terms of sub-Rule (6) of Rule 54 of Central Civil Services Pension Rules being above 25 years of age are not now entitled to pension. The second wife has already died therefore, the first wife (petitioner), in terms of Rule 7 of Central Civil Services Pension Rules is entitled to the family pension.

17. Petition is allowed. The two impugned communications dated 05.05.2014 and 23.06.2014, being unsustainable, are quashed. Respondents are directed to release all unpaid retiral benefits as were due on the death of Ex. No. LNK (GD) 112827 Late Prem Kumar Chhetri and also to issue PPO (Pension Payment Order) in favour of the petitioner with effect from the date it has become due to her. The exercise shall be undertaken and completed within a period of eight weeks from the date copy of this judgment is served upon the respondents.

18. While parting I record my appreciation to a very good work done by the Executive Editor of 'Sudha' and his team who in real sense espoused the cause of an illiterate woman. The social work done in pursuance to the resolution of the Board of Editors of Sudha Magazine aimed at helping the poor, illiterate and old aged men and women indeed is laudable.

**(Mohammad Yaqoob Mir)**  
**Chief Justice**

Meghalaya  
31-05-2018  
"Sylvana PS"