

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

D.B. Civil Writ Petition No. 4411/2020

CNR: RJHC010212012020

URN: CW / 10090U / 2020

1. Union Of India, Through The General Manager, North Western Railways, Head Quarters Office, Near Jawahar Circle, Jaipur- 342017.
2. The Senior Divisional Finance Manager, North West Railway, Jodhpur - 342001.

-----Petitioners

Versus

1. Kusumlata Chouhan D/o Late Shri Hukum Singh Chouhan Singh, R/o Dharamniwas, Plot No. 13, Shakti Colony, Street No. 1, Ratanada, Jodhpur.

-----Respondent

2. The Secretary, Ministry Of Personnel, Public Grievances And Pension, Department Of Pension And Pensioners Welfare, Government Of India, 3Rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi.

-----Proforma Respondent

For Petitioner(s) : Mr. Shashank Sharma
Mr. Harsh Purohit

For Respondent(s) : Mr. Avinash Acharya

HON'BLE MR. JUSTICE MUNNURI LAXMAN

HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

08/07/2026

1. The present writ petition has been filed challenging the order dated 31.10.2019 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (hereinafter referred as '**the CAT**') in O.A.No.290/00051/2017, titled as Kusumlata Chouhan Vs. Union of India and Others, wherein the claim of respondent No.1 for grant of family pension upon the death of her father (pensioner), who was a retired employee of the petitioner – department, was

allowed and the petitioners were directed to grant the pension to respondent No.1 in terms of Rule 75 - Family Pension Scheme for Railway Servants, 1964 of the Railway Services (Pension) Rules – 1993 (hereinafter referred as '**the Pension Rules, 1964**').

2. The case of the petitioners is that the father of respondent No.1 was a retired railway employee drawing pension from the petitioner-department and the respondent No.1, though married but was living with her father ever since February, 1993, as her husband had deserted her. The pensioner, i.e. the father of the respondent No.1 passed away on 12.09.2011, while the mother of the respondent No.1 had already passed away before the demise of the father.

3. Subsequently, after demise of the father of respondent No.1, she moved an application for grant of divorce from her husband on various grounds including the ground of desertion. The divorce decree was granted ex-parte on 03.10.2012 and placing reliance on the same and the fact that during her father's (pensioner's) lifetime, she was completely dependent on him as she had been deserted by her husband, respondent No.1 moved an application before the petitioners for grant of pension.

4. Originally, respondent No.1 was granted pension by the Office Order dated 21.05.2013, however, it was subsequently cancelled by the Office Order dated 13.05.2015 and the pension being granted to her was kept on hold.

5. Aggrieved by the same, the respondent No.1 moved an Original Application before CAT, wherein while passing the impugned order dated 31.10.2019, CAT set aside the order dated 13.05.2015 and consequently, directed the petitioner-department

to continue the grant of pension to respondent No.1. Aggrieved by the same, the present writ petition has been filed by the petitioners.

6. The contentions of learned counsel appearing for the petitioners are that initially, the authorities erroneously considered the claim of the respondent No.1 for grant of pension, treating her as a dependent on the pensioner and granted her pension, however, in terms of the applicable provisions of law, the respondent No.1 was not a dependent on her father, i.e. pensioner, on the date of his death. Respondent No.1 was married woman on the date of the death of her father and she was not legally divorced on the said date, and it is only after the death of her father that she was granted a divorce decree and became a divorcee. Therefore, she does not fall under the definition of 'family' so as to make her entitled for grant of family pension.

7. Subsequently, such erroneous order was rectified by passing the order dated 13.05.2015. However, the CAT without considering the fact that the respondent No.1 was not divorced on the date of the death of the pensioner and has only granted the divorce decree after the death of the pensioner, has held her as 'divorced daughter' dependent on the pensioner during his lifetime, so as to render her entitled for grant of family pension.

8. *Per contra*, Learned counsel appearing for the respondents submits that respondent No.1 was deserted by her husband and she was completely dependent on the pensioner i.e., her father, ever since 1993. After death of father of respondent No.1, when the claim was raised for pension, the authorities insisted for divorce decree and thereafter, she filed for divorce and was

granted the divorce decree on 03.10.2012 and on the basis of the same, the claim of pension was rightly granted by the authority as she was dependent on the pensioner during his lifetime. Thereafter, the authorities had wrongly put the pension of the respondent No.1 on hold vide order dated 13.05.2015, which was rightly interfered with by the CAT.

9. Learned counsel for the respondents has placed reliance upon judgments of Bombay High Court in the case ***UOI and Anr. Vs. Usha Eknath Patil (WP No.6884/16 dated 03.04.2018)*** and Gujarat High Court in the case of ***UOI Vs. Mayuriben Jani (R/SCA No.4792 of 2019 dated 10.02.2020)*** to contend that a divorce granted under customary law and practices is also a valid divorce even if the divorce decree has been granted subsequently.

10. Heard learned counsel for the petitioners and respondent.

11. Having gone through the facts, claims, counter claims and findings of the Tribunal, we find that the petitioners' case is that the respondent No.1 is a deserted daughter of pensioner, as her husband had deserted her. Being the deserted daughter, she was dependent on her deceased father. There was no legal divorce on the date of death of the pensioner. Respondent No.1 claims to be living with pensioner, i.e. her father as a dependent deserted daughter and not divorced daughter. The divorce decree was granted in favour of respondent No.1 only on 03.10.2012, whereas the pensioner died on 12.09.2011, which means that the divorce decree was granted subsequent to the death of the pensioner.

12. Rule 75(19)(b) of the Pension Rules, 1964 defines family for the purpose of grant of family pension, which reads as follows :-

"75.

.....

(19)

.....

(b) "family", in relation to railway servant, means -

(i) wife in the case of a male railway servant or husband in the case of a female railway servant;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;

(iii) unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and daughter adopted legally;

(iv) dependent parents;

(v) dependent disabled siblings (i.e. brother or sister) of a railway servants

(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9dated 23.09.13)"

13. The above mentioned definition of "family" includes "divorced daughter". The dependency which is claimed must exist during the lifetime of the pensioner and such dependency must be of the persons who are recognised and included in the definition of 'family'. The definition only includes a divorced daughter and not deserted daughter. She might be dependent on the pensioner during his lifetime as a deserted daughter. Only divorced daughter who is dependent is entitled for grant of pension under the Pension Rules, 1964.

14. The case of the petitioners is that the respondent No.1 became a divorcee only after grant of the divorce decree dated 03.10.2012, which is subsequent to the date of the death of the pensioner i.e., 12.09.2011. The dependency which respondent No.1 is claiming during lifetime of the pensioner was the

dependency in the capacity of a deserted daughter which has not been legally recognised for grant of pension. For grant of pension to respondent No.1, the dependency which is recognised is the one which exists during the lifetime of the pensioner as a legally divorced daughter. That time, the respondent No.1 was not a divorced daughter, but a deserted daughter. The authorities without considering the same had initially, erroneously granted pension to respondent No.1. Subsequently, when they realised that she does not fall under the category of 'family' as provided under the applicable rules and is not a dependent on the pensioner, the pension of the respondent No.1 was put on hold.

15. The CAT while passing the impugned order has laid more emphasis on the decisions of various High Courts which proceeded on the premise that a customary divorce is also considered as a valid divorce even if the divorce decree is granted subsequently. In the present case, there is no plea that the respondent No.1 was a divorcee during the lifetime of the pensioner claiming that such a divorce was a customary divorce. Therefore, the said judgments are not at all applicable in the present case. Thus, taking note of the facts obtained and the applicable rules, the impugned order cannot be sustained and interference by this Court is required.

16. As a result, the present writ petition is allowed and the order of the CAT dated 31.10.2019 is set aside in the circumstance, no order as to costs.

17. Pending application(s), if any, also stand disposed of.

(ANUROOP SINGHI),J

(MUNNURI LAXMAN),J