



2024:DHC:10038



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 8th October, 2024*
Pronounced on: 24th December, 2024

+ **C.R.P. 3/2022**

KUMKUM DANIA

w/o Mr. Kul Bhushan Dania
r/o H.No. 7, Daya Nand Block,
Shakar Pur (Extension),
Delhi-110092

.....Petitioner

Through: Mr. N.K Kantawala and Mr. Amaya
M Nair, Advocates.

versus

1. **SHRI KUL BHUSHAN DANIA**
s/o Late Shri Shyam Sunder Dania,
r/o H.No. 7, Daya Nand Block,
Shakar Pur (Extension),
Delhi-110092

Also at

A-96, Ground Floor, Radhe Krishna Lane,
Kaushambi, Ghaziabad, UP

.....Respondent No.1

2. **DEPUTY DIRECTOR OF EDUCATION**
(East District)
Department of Education,
Govt. of NCT of Delhi,
D-Block, Anand Vihar,
Delhi-110092

...Respondent No.2

3. **DIRECTOR (EDN)**
Director of Education,
Govt. of NCT of Delhi,
Old Secretariat,



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Near Vidhan Sabha,
Civil Lines,
New Delhi-110054

...Respondent No.3

Through: Mr. Naushad Ahmed Khan and Ms.
Supriya Malik, Advocates for R-2 and
R-3.

Mr. Sumit Kumar Khatri and Mr.
Parv Passi, Advocates.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T**

1. The Revision Petition under *Section 115* of the *Code of Civil Procedure, 1908* (hereinafter referred to as 'CPC') has been filed on behalf of the Petitioner (Defendant) for setting-aside the Order dated 27.09.2021 *vide* which the Application under Order 7 Rule 11 CPC, has been dismissed.
2. Briefly stated, the Respondent/Plaintiff filed a *Suit for Permanent and Mandatory Injunction* against the Petitioner/defendant, to direct the Defendant No. 1/Revisionist, for processing the due rights of Family Pension in favour of the Plaintiff, as per the *Civil Service (Pension), Rules 1944* and to direct the Deputy Director and Director of the Department of Education (*respectively Defendant Nos. 2 and 3*) for grant of family pension to the Plaintiff, as per the Complaints made in respect of concealment of the family members in Service Record by the Defendant No.1/Revisionist.
3. The *Respondent(plaintiff), Mr. Kulbhushan Dania* got married to Ms. Kumkum Dania(*defendant/Revisionist*) on 05.10.1990 and one son and daughter were born from their wedlock in 23.11.1992 and 05.08.1994 respectively. According to the Revisionist/Defendant No. 1, there were matrimonial disputes since the beginning of their marriage, which eventually led to their separation in the year 2008. The husband/Respondent in order to



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harass the Revisionist filed the Guardianship Petition to seek the custody of two children, though he lost and the custody of the children was handed over to the wife/revisionist with only visitation rights to the husband/Respondent. However, they arrived at a Settlement in the year 2012 and considering the best interest of the children, she shifted back with the Respondent/husband but the disputes still continued and the relationship continued to be as acrimonious as in the past.

4. The Revisionist (defendant), Ms. Kumkum Dania, was employed as a Music Teacher at Rajyakiya Sarvoday Kanya Vidyalaya, Chander Nagar, Delhi-110051, under the administrative control of Directorate of Education, Govt. of NCT of Delhi/Defendant Nos. 1 and 3. She superannuated from her post on 31.01.2018 and has taken re-employment in the same School.

5. The Plaintiff/Respondent in his Complaint has stated that Ms. Kumkum Dania intentionally did not disclose the correct facts in her Service Record and declared her status as unmarried. He made various Complaints to various Department and Authorities despite which she has intentionally concealed her married status and not disclosed his name as well as of the children, thereby depriving them from family pension.

6. The Plaintiff, Mr. Kulbhushan Dania himself was employed in Government service and had superannuated in the year 2012. He asserted had duly declared the name of his wife and children in his pension papers. It was claimed that there is an endeavour by the Defendant/wife, to deprive him from his right of Family Pension and thus, sought directions to be issued to the Pension Department, to enter his name so as to entitle him to the Family Pension.



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7. The *Respondent in her Written Statement* clarified that she had joined the Government employment prior to her marriage and had correctly declared her status as *unmarried* at the time of joining of her employment. Eventually, due to inadvertence, she did not change her marital status after marriage. This fact came to her knowledge only when the Plaintiff/husband made various complaints against her and created hurdles in getting the pension. She suffered tremendously on account of numerous complaints though eventually, they all have been closed. As soon as she came to know about her marital status, she has already corrected it as *married* in her Service Record as uploaded on the *employee portal*.

8. It is also asserted that the plaintiff/husband has been harassing her by not only making various complaints against her, but has also created difficulty in her getting the Pension Account. She had requested him for his photograph to be able to open the Joint Account for credit of her pension, but because he was not forth coming, she was compelled to open an Account in her single name where her pension is now being credited. It was claimed by her that the Suit has been filed only to harass her and is liable to be dismissed.

9. Thereafter, an *Application under Order 7 Rule 11 CPC* was filed by the Revisionist/Defendant wherein it was asserted that the Plaintiff does not disclose *any cause of action* as plaintiff is seeking relief for expediting the process of grant of Family Pension. His relief that the Defendant/Revisionist be refrained from tampering with the record is also without any cause of action. ***Therefore, the Suit of the Plaintiff is liable to be rejected.***

10. The learned ASCJ *vide impugned Order dated 27.09.2021, rejected an Application under Order VII Rule 11 CPC* by observing that the



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Defendant No. 1/wife had not furnished her correct details about her marital status, particularly about the marriage and the children born from their wedlock, in the relevant form at the time of retirement in the concerned Department. Thus, the Application under Order VII Rule 11 CPC has been dismissed.

11. Aggrieved, the present Revision has been preferred against the impugned Order.

12. **Submissions heard and the record perused.**

13. Pertinently, the relief sought by the Plaintiff, in his Suit, are as under:-

“(i) Pass the decree in favour of the plaintiff in the form of directions/mandatory injunction to the defendant No. 1 for processing the due Right of Family Pension to the plaintiff, as per her due obligation under Central Civil Service Pension Rules, 1972.

(ii) Pass the decree in favour of the plaintiff in the form or order/directions to the defendant No. 2 and 3 for expediting the process/grant of family pension of the plaintiff in the pension payment order of defendant No. 1 as per his requests/complaints in respect of the defendant No. 1 particulars of the family; and further initiate enquires against the defendant No. 1 for her concealment of her obligation towards the plaintiff.

(iii) Pass the decree in favour of the plaintiff in the form of issuing the necessary orders/directions for refraining the defendant(s) to manipulate/temper with the existing records of the defendant No. 1 pertaining to the family particulars in her service book records and pension papers filed by her for processing of her pension payment orders.



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(iv) *Pass the decree and order whereby direct the defendants to pay the compensation/damages for depriving the plaintiff from his legal Right:*

(v) *Pass any other order(s), which this Hon'ble Court may deem fit and proper, under the facts and circumstances of the case, in favour of the plaintiff and against the defendants."*

14. The *first aspect* which emerges from the rival pleadings of the parties is that after their marriage in 1990, their relationship had not been cordial which eventually led to the separation of the Revisionist along with her two children, in the year 2008. They however, eventually resolved their differences in 2012 when they entered into an Agreement and the Defendant along with the children, shifted back to her matrimonial home.

15. The Defendant No. 1, Ms. Kumkum Dania was in employment as a teacher in the Department of Education, Delhi, since prior to her marriage. She naturally gave her status as "*unmarried*". She may not have corrected her marital status after her marriage, but has explained that it was not modified inadvertently by her and as soon as this anomaly came to her notice from the complaints made by the Respondent/husband to various authorities and Government Departments, she immediately corrected her marital status in the Service Portal, in the year 2018.

16. The Revisionist superannuated from her service in 2018 and took a re-employment on the same post in the same School. On her superannuation, she became entitled to her pension, but because of the various complaints made by her husband, she had to face huge difficulties in eventually being able to settle all the complaints. She has opened her Pension Account in her own name. According to her, she had tried to open a joint Account with her husband but because of his non-cooperative attitude, she was compelled to



open the Account in her individual name. Pertinently, the Respondent/Plaintiff *herein* was also in a government employment, which superannuated in the year 2012 and since then, has been getting his pension.

17. Pension is a part of salary, which becomes due to a government employee on their retirement.

18. **Pension** has been defined under Rule 2(t) of the CCS Rules, and the same is as under:

““Pension” includes gratuity except when the term pension is used in contradistinction to gratuity, but does not include dearness relief”

19. It is evident from the definition itself that this is the amount which becomes payable to an individual on superannuation, which a person continues to enjoy during his/her lifetime.

20. *Rule 50 of the CCS Pension Rules, 2021* further make a provision of **Family Pension** which provides that when a Government servant dies, then from the date of his death, the family of the deceased shall be entitled to a Family Pension. *It is, therefore, evident from the definition itself that the right to claim Family Pension accrues only on demise of the retired Government employee and not before then.*

21. In the present case, the Defendant/Plaintiff is alive and is getting a pension after attaining the age of superannuation.

22. All the Claims of the Respondent-husband are in regard to the family pension. He has sought processing of the Family Pension expeditiously of the Revisionist-wife, as per the due obligations under the CCS Pension Rules, 1972 and that an enquiry be initiated against her for concealment of the obligations towards the Plaintiff.



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23. Pertinently, as per the CCS Pension Rules, the Family Pension shall be payable to the members of the family i.e. to a widow or a widower, children, dependent parents and dependents siblings, of the deceased pensioner. On satisfying the requisite qualifications on an Application filed by such person, the Family Pension is disbursable to such entitled persons. This right is not circumscribed by the declaration of the family members in the Service Book. There is no requirement under the law for the Government employee, to declare all the family members. Even if the names of the family members are not mentioned in the Service Book, then too, they can apply for Family Pension, as and when the situation arises, to which they would be entitled, if they are qualified as per the Pension Rules.

24. In the present case, the Revisionist-wife is still alive and the cause of action for claiming Family Pension has not arisen; during her lifetime, she is the only person entitled to her pension. Moreover, there is no impediment to the Respondent-husband, to seek pension if he is qualified on the date itf and when the cause of action arises. It may also be pointed out that there is no certainty of the happening of certain event in future; whether the Plaintiff would outlive the wife, is also not known.

25. This is a case where the Respondent-husband has chosen not only to harass the wife by making innumerable complaints against her, which created hurdles for her in getting the pension fixed on attaining superannuation, but is not even letting her live in peace even now by filing a Suit on some specious and contingent grounds, which do not disclose any cause of action.



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26. It is, therefore, concluded that the Plaint does not disclose any cause of action and the Application under Order VII Rule 11 CPC, is hereby allowed. The impugned Order is hereby set-aside, and the Suit is rejected.

27. The Revision Petition is allowed and disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2024/RS