



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 3rd OF SEPTEMBER, 2025

WRIT PETITION No. 11328 of 2021

SMT. SABEEYA KHAN AND OTHERS

Versus

VAHIDA BEE AND OTHERS

Appearance:

Shri Aditya Pandey – Advocate for the petitioners.

None for the respondents No.1 to 6, though served.

Shri V.P. Tiwari – Government Advocate for the respondents No.7 and 8.

ORDER

By way of this petition, the petitioners have sought the following reliefs:-

“1. To issue a writ in the appropriate nature to command the respondent no.7 and 8 to modify the impugned order relates to family pension to the extent that petitioner no.1 and respondent no.1 are entitled to get family pension equally at the ratio of 50-50.

2. Any other relief which this Hon'ble Court deems fit and proper may kindly be passed.”

2. The present case relates to the dispute between two claimants claiming them to be wives of the deceased-employee, who expired on 16.01.2017 while in service of the respondents No.7 and 8.



3. The dispute in the present matter emanates from the position that in the service records, the deceased-employee namely Abdul Jabbar Khan had disclosed only the name of respondent No.1 as his wife and names of respondents No.2, 3 and 4 as his children. A copy of the nomination form filled up by the deceased-employee in the year 1992 is placed on record Annexure R/1 mentioning the names of respondent No.1 as wife and respondents No.2, 3 and 4 as children. After the death of Abdul Jabbar Khan in the year 2017, the dispute arose between petitioner No.1 on one side and the respondent No.1 on the other side. The petitioner No.1 claims to have two children out of marriage with deceased-employee, who are also petitioners No.2 and 3 before this Court while the respondent No.1 claims to have five children out of her marriage with the deceased employee who have been impleaded as respondents No.2 to 6 in the present petition.

4. The respondents No.1 to 6 have duly been served and they have also engaged a counsel, but since last many dates of hearing, nobody is appearing to represent respondents No.1 to 6 and today also none has appeared to represent respondents No.1 to 6. Therefore, this Court has taken up the case for hearing in view of the position that by an interim order dated 10.02.2022, this Court had stayed disbursement of family pension to any of the parties and admittedly neither the petitioners nor the respondents No.1 to 6 are in receipt of any family pension.

5. The learned counsel for the petitioners has argued that the petitioner No.1 was legally wedded wife of the deceased-employee because the parties were subjected to Muslim Personal Law, as per which second marriage of a female is not an invalid marriage and it is a legal and valid marriage. The deceased-employee being a Muslim male had married the



petitioner No.1 and out of that wedlock, petitioners No.2 and 3 were born. His contention is that there was a litigation in the matter of succession between the petitioners on one side and respondents No.1 to 6 on the other side which was registered as Succession Case No.3 of 2017 and in which better sense prevailed between the parties and they entered into compromise. The compromise application is part of Annexure P/1 as per which it has been admitted by all the private parties i.e. petitioners on one side and respondents No.1 to 6 on the other side, that the petitioner No.1 as well as respondent No.1 are the legally wedded wives of the deceased employee and it was decided between the two sides that the petitioners on one side and private respondents on other side will get 50% share each in the assets/securities left by the deceased-employee. Therefore, the petitioner No.1 is also entitled to get 50% of family pension, because in the compromise application it was duly mentioned under signatures of all the contesting private parties that the petitioner No.1 would get 50% family pension.

6. *Per Contra*, the learned counsel for respondents No.7 and 8 has opposed the petition on the ground that the employer cannot be forced to pay 50% pension to petitioner No.1 because the deceased employee had never disclosed the name of petitioner No.1 as his wife in the service record. So far as the succession order is concerned, it is argued that the said order is based on compromise between the parties and would not bind the respondents No.7 and 8. It is further argued that the Succession Court could not have issued directions in the matter of family pension and compassionate appointment and rightly so, the Succession Court in the compromise order Annexure P/1 has categorically recorded that it is



refraining from commenting anything on the entitlement of pension and compassionate appointment. Therefore, it is prayed to dismiss the petition.

7. Upon hearing rival parties and examining the rule position, as per Rule 47(7)(a)(i) of the Madhya Pradesh Civil Services (Pension) Rules, 1976, it is provided as under:-

“47. Contributory family pension.

(7)(a)(i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.”

8. As per this substantive and enabling provision where a deceased employee leaves more than one widows then the family pension shall be paid to the widows in equal shares. The only rider is that pension should be payable to more than one widow. In view of Muslim Personal Laws, as second marriage is not void marriage, therefore, the second widow is also entitled to pension and if the petitioner No.1 was a wedded wife of deceased-employee then she would be entitled to 50% of pension in view of categorical provision in the M.P. Civil Services (Pension) Rules, 1976 as quoted above. If the parties were Hindus, then different conclusion would have arisen. But since the parties are Muslims and second marriage is not void marriage, therefore, petitioner No.1 would get a right to receive 50% pension upon she being wedded wife of the deceased employee.

9. So far as the question of petitioner No.1 being duly and legally wedded wife of deceased-employee is concerned, before the Succession Court, the compromise application was filed and in paragraph 2 of the compromise applications filed by petitioner No.1 as well as respondent



No.1 and signed by these two persons as well as all their children, it was categorically asserted that the petitioner No.1 and respondent No.1 are legally wedded wives of deceased-employee Abdul Jabbar Khan. It was agreed between these private parties that each of the two widows will get half share in each of retiral and other benefits left by the deceased employee.

10. The respondents No.7 and 8 though were not signatories to the compromise but have admittedly complied with the said order to the extent of gratuity, leave encashment and admittedly all other service benefits except family pension have been paid in half the portion to petitioner No.1 and respondent No.1 by the respondents No.7 and 8 in compliance of the compromise order Annexure P/3 which is succession certificate granted by compromise. This was because no extra burden fell on the respondents No. 7 and 8 in doing so, and no independent right against the respondents No. 7 and 8 was created for all such other dues by the compromise order.

11. The trial court refrained from commenting anything on the question of family pension because family pension does not devolve only upon succession, but it is given only to a specific categories of successors and not to all successors. Therefore, the Succession Court has rightly refrained from commenting on the right to receive pension in favour or against any of the parties. The respondent No.7 and 8 have admittedly complied the succession certificate issued by compromise, but as rightly stated by learned counsel for the respondents No.7 and 8, that so far as apportionment of the dues is concerned, once the liability was there on the respondents No.7 and 8 to pay certain amount, then by way of compromise, if the parties had decided to apportion the said amount,



therefore, respondents No.7 and 8 have complied the succession certificate because no new liability is cast on the respondents No.7 and 8 by complying succession certificate issued by compromise. However, so far as family pension is concerned, a new liability may be cast upon the respondents No.7 and 8 by paying family pension to the petitioner No.1 and the respondents No.7 and 8 not being signatories to the compromise cannot be forced to honour this liability thrust upon them.

12. Considered this argument. Undisputedly, compromise decree does not bind non-signatories to the compromise. The Hon'ble Apex Court in the case of ***Sneh Gupta Vs. Devi Sarup, (2009) 6 SCC 194***, has held as under :-

“24. Order 23 Rule 3 of the Code of Civil Procedure provides that a compromise decree is not binding on such defendants who are not parties thereto. As the appeal has been allowed by the High Court, the same would not be binding upon the appellant and, thus, by reason thereof, the suit in its entirety could not have been disposed of.

25. [Ed.: Para 20 corrected vide Official Corrigendum No. F.3/Ed.B.J./75/2009 dated 4-7-2009.]. The court has also a duty to prevent injustice to any of the parties to the litigation. It cannot exercise its jurisdiction to allow the proceedings to be used to work as substantial injustice.

26. A consent decree, as is well known, is merely an agreement between the parties with the seal of the court superadded to it. [See *Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd. [(1969) 2 SCC 201]* and *Parayya Allayya Hittalamani v. Parayya Gurulingayya Poojari [(2007) 14 SCC 318 : JT (2007) 12 SC 352 .]*

27. If a compromise is to be held to be binding, as is well known, it must be signed either by the parties or by their counsel or both, failing which Order 23 Rule 3 of the Code of Civil Procedure would not be applicable. (See *Gurpreet Singh v. Chatur Bhuj Goel [(1988) 1 SCC 270] .)*



28. *In Dwarka Prasad Agarwal v. B.D. Agarwal [(2003) 6 SCC 230] this Court held: (SCC pp. 243-44, paras 32 and 35)*

“32. The High Court also failed and/or neglected to take into consideration the fact that the compromise having been entered into by and between the three out of four partners could not have been termed as settlement of all disputes and in that view of the matter no compromise could have been recorded by it. The effect of the order dated 29-6-1992 recording the settlement was brought to the notice of the High Court, still it failed to rectify the mistake committed by it. The effect of the said order was grave. It was found to be enforceable. It was construed to be an order of the High Court, required to be implemented by the courts and the statutory authorities.

35. ... Even if the provisions of Order 23 Rule 3 of the Code of Civil Procedure and/or principles analogous thereto are held to be applicable in a writ proceeding, the Court cannot be permitted to record a purported compromise in a casual manner. It was suomotu required to address itself to the issue as to whether the compromise was a lawful one and, thus, had any jurisdiction to entertain the same.”

13. So far as apportionment of pension in equal proportion among the widows is concerned, the said succession order and succession certificate issued by compromise duly contains assertion of both the two ladies that they are wives of the deceased-employee. Therefore, the family pension which the respondents No.7 and 8 state to be rightful dues of the respondent No.1, in terms of the compromise application and compromise order can be paid to the petitioner No.1 in equal proportion in view of the assertions made in the compromise application, because the 50% share that will be paid to the petitioner No.1 would be the remaining 50% portion which was to be paid to respondent No.1. Therefore, respondents No.7 and 8 would not be under any independent obligation in paying 50% pension to the petitioner No.1. However, in case the respondent No.1 expires and then the respondents No.7 and 8 are made to pay family pension to the



petitioner No.1 then it may create some independent liability on the respondents No.7 and 8, for which necessary safeguards are required to be inserted in the order. This is because in terms of the compromise order, non-signatories cannot be put to any obligation.

14. Therefore, the present petition is **disposed of** with the following directions:-

(i) The respondents No.7 and 8 shall pay family pension in equal proportion to petitioner No.1 and respondent No.1 within 30 days from production of copy of this order.

(ii) This arrangement will continue only till to the time the respondent No.1 is alive. Upon death of the respondent No.1, the respondents No.7 and 8 would be at liberty to stop the payment of family pension to petitioner No.1.

(iii) In the meantime, if the petitioner No.1 files a declaratory suit by impleading respondent No.1, her children as well as the respondents No.7 and 8, and gets a declaration of status of being legally wedded wife of deceased-employee Abdul Jabbar Khan, then the respondents No.7 and 8 shall continue to pay family pension to the petitioner No.1 even after death of respondent No.1.

15. No order as to costs.

(VIVEK JAIN)
JUDGE

C.