

*Before Rajbir Sehrawat, J.*

**SUMAN**—*Petitioner*

*versus*

**UNION OF INDIA THROUGH ITS SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI, OTHERS** —*Respondents*

**CWP No.29423 of 2018**

March 09, 2022

*Constitution of India, 1950—Arts. 226 and 227—Widow of deceased CISF Constable granted compassionate appointment as Lady Constable filed petition challenging order directing her to pay 25 % gross salary as maintenance to late husband's parents—Compassionate appointment granted on undertaking to maintain late husband's parents— Re-marriage of Petitioner, former in laws having landed property, another son to maintain them—Inconsequential factors—Petitioner's duty to maintain daughter from first marriage inconsequential as daughter drawing family pension—Maintenance of second husband and children from second marriage also irrelevant—Petition devoid of merit—Dismissed.*

*Held*, that the counsel for the petitioner has also submitted that the parents of the deceased-Kuldeep Singh are having other landed property and they are also having another son to maintain the parents. However, this can hardly be a ground to be pleaded by the petitioner to avoid her own liability to maintain the parents of the deceased-Kuldeep Singh. Although, the other son of the mother of Kuldeep Singh may be liable, independently, to maintain her if she is not having any other source to draw the maintenance, however, in the present case the employment of the petitioner is obtained on account of death of son of respondent No.5 and the petitioner is drawing a handsome salary from that employment; which itself was subject to the condition that the petitioner shall maintain the parents of the deceased husband Kuldeep Singh. Therefore, mere existence of another son of respondent No.5, or mere fact that she may be having some landed property; though there is nothing on record to show this fact, would not be relevant to deny respondent No.5 a reasonable amount from the salary of the petitioner so as to maintain herself at the level of the life which the petitioner herself is living.

(Para 8)

*Further held*, that it deserves special mention here that the

petitioner cannot take the plea of maintenance of her daughter from her earlier husband as a ground to pay less money to respondent No.5 because the daughter is getting family pension amount; independently. The maintenance of the children from the second husband and maintenance of the second husband, as such, are not the factors with which the mother of the deceased-Kuldeep Singh should bother herself. Therefore, anyone of these factors cannot stand in the way of respondent No.5 to seek reasonable maintenance from out of the salary of the petitioner.

(Para 9)

Rajeev Dev Sharma, Advocate, *for the petitioner.*

Shivoy Dhir, Sr. Panel Counsel, for respondents No.1 to 4-UI  
Neeraj Sheoran, Advocate, for respondents No.5.  
(respondent No.6, since deceased)

### **RAJBIR SEHRAWAT, J. (Oral)**

(1) This is the petition filed by petitioner under Articles 226 & 227 of the Constitution of India seeking issuance of writ in the nature of certiorari for quashing the show cause notice dated 14.09.2018 (Annexure P-8) and order dated 02.10.2018 (Annexure 10) passed by respondent No.4, whereby the petitioner was directed to pay 25% of gross salary as maintenance allowance to the private respondents.

(2) The brief facts giving rise to the present petition are that husband of the petitioner, Kuldeep Singh, who is the son of respondents No.5 and 6, was serving in CISF as Constable. However, he died in harness on 13.02.1998. The petitioner had only one daughter namely Priyanka Kumari out of the marriage with above said Kuldeep Singh, since deceased. Kuldeep Singh had nominated petitioner as recipient of the retiral benefits, therefore, the family pension was sanctioned in favour of the petitioner. Later on the petitioner applied for compassionate appointment on account of death of her husband-Kuldeep Singh. As per the policy, official respondents had asked the petitioner to furnish an undertaking that she would maintain the parents of deceased husband Kuldeep Singh. That undertaking was duly furnished by the petitioner on 24.05.2002. On condition of maintaining the parents of deceased husband, the petitioner was offered appointment as Lady Constable in CISF on 31.05.2002. Thereafter the petitioner got re-married on 12.03.2005. Since the petitioner had re-married; therefore, she applied for; and

accordingly the payment of family pension was started; in favour of daughter of the petitioner. Hence, the benefit of family pension was being released in favour of the daughter of the petitioner and the salary of the new appointment started coming to the petitioner. However, since the appointment was itself subject to the condition of the petitioner maintaining the parents of the deceased Kuldeep Singh, therefore, the petitioner started making payment of Rs.1,000/- per month only as maintenance. The parents of the deceased reluctantly accepted that amount for some time. However, finding the same to be insufficient, they approached the Rajasthan High Court with a prayer that they be granted 50% of the gross salary of the petitioner as maintenance of the parents. When the matter was under consideration before the High Court of Rajasthan, the petitioner furnished an undertaking that she will maintain the parents of late Kuldeep Singh properly. Accordingly, the writ petition No.17648 of 2012 (Dharma Devi & another Vs. Union of India & others) was dismissed as withdrawn vide order dated 07.09.2016 and the petitioners (respondents No.5 & 6 herein) were granted liberty to approach the official respondents with their grievance. Accordingly a comprehensive representation was made by the former parents-in-law of the petitioner. While the official respondents were considering the said representation, the petitioner furnished another undertaking on 10.11.2016 that she will pay an amount of Rs.5,000/- per month as maintenance to the parents of the deceased Ex-husband. Accordingly, the matter was disposed off at the level of official respondents and the petitioner started paying Rs.5,000/- as the maintenance amount. However, this amount was not found to be sufficient by the parents for their proper upkeep. They made a prayer to the official respondents to increase the maintenance amount to Rs.10,000/-. However, the said request was not accepted by the official respondents and no increase in the maintenance amount was made by the petitioner. Accordingly, the parents had to file second writ petition before the High Court of Rajasthan as CWP No.297 of 2018. The High Court of Rajasthan disposed off that writ petition vide order dated 09.04.2018 by directing the official respondents to consider and decide the claim of the parents of the deceased husband of the petitioner, by passing reasoned speaking order, as expeditiously as possible. Pursuant to that, the official respondents considered the issue of maintenance and decided that the petitioner be mandated to pay 25% of the gross salary towards the maintenance of the parents of the deceased husband-Kuldeep Singh. It is against that order that the petitioner has filed the present petition.

(3) Arguing the case, learned counsel for the petitioner has submitted that the petitioner has been regularly paying the amount of maintenance undertaken by her. It is further submitted that she is having children from the present husband as well, and therefore, she is in need of money. Counsel has further submitted that after filing of the present petition the father of earlier husband-Kuldeep Singh, i.e. respondent No.6 has expired. Hence, the amount of Rs.5,000/- itself was sufficient for maintaining the single parent of the deceased-Kuldeep Singh. Hence, the order of increasing the maintenance to the extent of 25% of the salary, is totally uncalled for. The counsel has further submitted that in their earlier representation made to the official respondents the parents themselves had demanded only Rs.10,000/- per month. It is also submitted that the parents of the deceased-Kuldeep Singh are hearing other landed property, as well as, another son to maintain them. Therefore, it is more than sufficient that the petitioner is contributing Rs.5,000/- for maintaining the parents of her earlier husband-Kuldeep Singh.

(4) On the other hand, the counsel for private respondents has submitted that respondent No.5 is the only surviving parent now. She is suffering from the problems of the old age. Hence the amount of Rs.5,000/- is insufficient. The petitioner was granted due opportunity of hearing and only after hearing her the official respondents have come to the conclusion that 25% of the gross salary would be the appropriate maintenance. It is further submitted that, in fact, the respondent No.5 had claimed the 50% of the gross salary as the maintenance in the writ petition filed before the Rajasthan High Court. However, since now she is alone, therefore, she would be satisfied with even 25% of the gross salary as maintenance.

(5) The counsel for the official respondents-UOI has submitted that the petitioner was under liability to maintain parents of the deceased-Kuldeep Singh. The amount of Rs.1,000/-, which was being paid by the petitioner, was insufficient; by any means. Therefore, the official respondents had accepted the undertaking of the petitioner of paying maintenance to the parents of the deceased-Kuldeep Singh to the extent of Rs.5,000/-. However, the respondent-parents had approached the High Court of Rajasthan with a prayer for 50% of the gross salary as maintenance. The High Court of Rajasthan had directed the official respondents to consider the entire aspect and to ensure that a proper amount is paid to the parents. Accordingly, pursuant to the direction of the High Court of Rajasthan only, the official respondents

had taken a decision and they had found that 25% of the gross salary would be the appropriate maintenance amount, keeping in view all the attending circumstances. Hence, after granting due opportunity of having to the petitioner the order in question was passed by the respondents. The counsel has reiterated that order has rightly been passed and the same is justified in view of the facts and circumstances of the case.

(6) Having heard the counsel for the parties and having gone through the record, this court does not find any substance in the arguments of counsel for the petitioner. Needless to say that as widow of the deceased-Kuldeep Singh, the petitioner had obtained family pension for about 4-5 years. It is not even the case of the petitioner that anything was paid to the parents at that time. Thereafter, the petitioner is getting another benefit on account of death of her then husband-Kuldeep Singh she obtained appointment in lieu of death of Kuldeep Singh. Since as per the policy, the petitioner could not have been appointed unless she had undertaken to maintain the family, therefore, to get the employment, she had furnished the undertaking to maintain the parents of deceased Kuldeep Singh. However, in the name of maintenance she was paying only Rs.1,000/- per month. By any means, Rs.1,000/- could not be said to be sufficient at the time when the said amount was being paid to the parents-in-law of the petitioner. Even the pension under the old-age social security scheme of the government would be the same or more than that. Therefore, the old age parents had to raise the issue of insufficiency of the maintenance amount. Despite best efforts by the parents, they were granted only Rs.5,000/- per month by the official respondents in the year 2017. In the year 2017, once again; it can hardly be said that Rs.5,000/- were enough for maintenance of old age parents of deceased husband of the petitioner. Therefore, parents were forced to approach the High Court of Rajasthan twice. Ultimately, the official respondents have fixed an amount in terms of percentage of the gross salary of the petitioner; so as to avoid any repeated uncertainty of the maintenance amount. Accordingly, 25% of the gross salary has been fixed by the official respondents. The amount of 25% of the salary, at present, comes about Rs.11,500/-. Therefore, at present even this amount cannot be said to be exorbitant amount, keeping in view the fact that old age mother of deceased Kuldeep Singh, is facing issues of survival. Hence, this court does not find anything wrong with the order passed by the respondents.

(7) Although the counsel for the petitioner has submitted that she has been regularly paying the amount of maintenance and she is not running away from her undertaking in that regard, however, the same is not an act of benevolence on the part of the petitioner. Having taken every benefit from the death of the deceased son of respondent No.5, it is the duty of the petitioner to maintain the mother of her deceased husband. Not only that, even under the policy, under which she has sought compassionate appointment, she is duty bound to maintain, otherwise; she is liable to lose the job as such. There is specific condition in her appointment letter as well, that if the petitioner fails to maintain parents of Kuldeep Singh then her service will be terminated. In view of this gamut of facts, the petitioner owes unfailing duty to maintain the surviving mother of deceased-Kuldeep Singh, without any ifs and buts. Needless to mention that mere remaining alive is not a same thing as proper maintenance of life. The maintenance includes, the maintenance of life of the mother of the deceased at par with the standards and level of the petitioner herself. Besides the standard of maintenance at par with the petitioner, the old mother of the deceased-Kuldeep Singh would also require additional facilities like medical care and the other attending amenities connected with the old-aged life. Since the petitioner had already left the house of Kuldeep Singh and she had started living with her new husband, therefore, it is none of the concerns of the mother of deceased-Kuldeep Singh to ensure that the petitioner enjoys life at the cost of her own maintenance. Therefore, the mother of the deceased- Kuldeep Singh is fully entitled to claim all necessary amenities as incidental to the reasonably good life. In view of this fact, as well, by any means, it cannot be said that 25% of the gross salary is anything exorbitant qua the maintenance of the old age mother of Kuldeep Singh. Rather, the same may deserve to be increased with the passage of the time.

(8) The counsel for the petitioner has also submitted that the parents of the deceased-Kuldeep Singh are having other landed property and they are also having another son to maintain the parents. However, this can hardly be a ground to be pleaded by the petitioner to avoid her own liability to maintain the parents of the deceased-Kuldeep Singh. Although, the other son of the mother of Kuldeep Singh may be liable, independently, to maintain her if she is not having any other source to draw the maintenance, however, in the present case the employment of the petitioner is obtained on account of death of son of respondent No.5 and the petitioner is drawing a handsome salary from

that employment; which itself was subject to the condition that the petitioner shall maintain the parents of the deceased husband Kuldeep Singh. Therefore, mere existence of another son of respondent No.5, or mere fact that she may be having some landed property; though there is nothing on record to show this fact, would not be relevant to deny respondent No.5 a reasonable amount from the salary of the petitioner so as to maintain herself at the level of the life which the petitioner herself is living.

(9) It deserves special mention here that the petitioner cannot take the plea of maintenance of her daughter from her earlier husband as a ground to pay less money to respondent No.5 because the daughter is getting family pension amount; independently. The maintenance of the children from the second husband and maintenance of the second husband, as such, are not the factors with which the mother of the deceased-Kuldeep Singh should bother herself. Therefore, any one of these factors cannot stand in the way of respondent No.5 to seek reasonable maintenance from out of the salary of the petitioner.

(10) In view of the above, finding no merit in the present petition, the same is dismissed.

(11) However, passing of this order would not be taken by the official respondents as any embargo against any future enhancement of maintenance in terms of increased percentage of the gross salary of the petitioner, if the situations so demand. Further, the official respondents are directed to take an upward review of the amount of maintenance in terms of percentage of the salary of the petitioner after a period of five years from the date of starting of amount of 25% of the salary; as has been presently ordered.

(12) All the pending applications, if any, also stand dismissed.

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*Shubreet Kaur*