

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.873 of 2023

In

Civil Writ Jurisdiction Case No.16821 of 2021

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Lt. Col. Sandeep Kumar (IC-6179M) S/o Late Ramchandra Prasad, resident of House No. -455, Ward No. 03, New Colony, Deoria, P.S.-Deoria, Distt.- Deoria (U.P.) at present posted at H.Q. 26, Artillery Brigade (A), PIN-908026, C/o 56 APO presently residing at House No. 455, Ward No. 03, New Colony, Deoria, P.S. Deoria, District Deoria (U.P.).

... .. Appellant/s

Versus

1. The Union of India through the Secretary, Ministry of Defense, Govt. of India, South Block, New Delhi.
2. The Additional Directorate-General, Discipline and Vigilance DV-4 (A), Adjutant Generals Branch, Integrated Head-Quarters, Ministry of Defense (Army), DHQPO, New Delhi-110105.
3. The General Officer Commanding-in-Chief, Chandimandir, PIN-908543, C/o 56 A.P.O.
4. The Brigadier, Staff Officer (Discipline and Vigilance) for General Officer Commanding-in-Chief, Western Command, PIN-908543, C/o 56 A.P.O.
5. The Colonel, Staff Officer/Officiating Colonel A (Human Rights) For General Officer Commanding-in-Chief, Western Command, PIN-908543, C/o 56 A.P.O.
6. Smriti Verma, W/o Lt. Col. Sandeep Kumar, D/o Tarkeshwar Prasad, resident of Village-Alisarai, Post Office-Machhahi, P.S. Sakra, Distt. Muzaffarpur.

... .. Respondent/s

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with

Letters Patent Appeal No. 1114 of 2023

In

Civil Writ Jurisdiction Case No.16821 of 2021

=====

1. The Union of India through the Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. The Additional Directorate-General, Discipline and Vigilance DV- 4 (A), Adjutant General's Branch, Integrated Head-Quarters, Ministry of Defence (Army), DHQPO, New Delhi-110105.
3. The General Officer Commanding-in-Chief, Chandimandir, PIN - 908543, C/o 56 A.P.O.
4. The Brigadier, Staff Officer (Discipline and Vigilance) For General Officer Commanding-in-Chief, Western Command, PIN- 908543, C/o 56 APO.
5. The Colonel, Staff Officer/Officiating Colonel A (Human Rights) For General Officer Commanding-in- Chief, Western Command, PIN-908543, C/o 56 APO.

... .. Appellant/s

Versus

1. Smriti Verma W/o Lt. Col. Sandeep Kumar, D/o Tarkeshwar Prasad, Resident of Village- Alisarai, Post Office - Machhahi, P.S.- Sakra, Distt.- Muzaffarpur.
2. Lt. Col. Sandeep Kumar (IC-61794M) son of Late Ramchandra Prasad, Resident of House No. 455, Ward No. 03, New Colony, Deoria, P.S. Deoria, District Deoria (U.P.).

... .. Respondent/s

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Letters Patent of the Patna High Court --- Clause 10---Army Act 1950---sec. 90, 91--- Army Rules, 1954—Rule 193---Matrimonial dispute---Maintenance to wife of Army personnel—in the year 2015, the Commanding Officer gave order for deduction of 22 percent of the salary of the appellant per month towards payment as maintenance allowance to his wife, respondent no. 6-petitioner— vide Army order dated 17.07.2020 it was decided by the Army that maintenance allowance will be extended for a finite period of three years extendable by two years----subsequently in 2021 decision was taken to discontinue the maintenance allowance as respondent no. 6-petitioner had already crossed the five year period i.e the maximum period the Army can extend the maintenance allowance—writ court set aside the discontinuance of the maintenance allowance—hence the present appeals.

Held: encouraging the wife to seek alternate remedy and discontinuance of maintenance allowance after a period of five years in view of the subsequent guidelines cannot be squarely applied in present case as order of 2015 in favour of the estranged wife was to subsist till a subsequent marriage or death of herself—wife was informed about the new guidelines by letter dated 10.11.2020, for the first time and decision to discontinue the maintenance allowance was taken within one year, i.e. 10.11.2021-- care should have been taken to provide sufficient time to approach a Court of Law and obtain orders— Appellants directed to resume payment of maintenance allowance--- respondent no. 6-petitioner directed to approach proper civil court within a period of 4 weeks---no judgment was passed on changed guidelines/advisory of the Army relating to the grant of maintenance allowance— Appeals disposed of. **(Para 6, 11, 16, 42, 46, 47, 50)**

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.873 of 2023
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Lt. Col. Sandeep Kumar (IC-6179M) S/o Late Ramchandra Prasad, resident of House No. -455, Ward No. 03, New Colony, Deoria, P.S.-Deoria, Distt.-Deoria (U.P.) at present posted at H.Q. 26, Artillery Brigade (A), PIN-908026, C/o 56 APO presently residing at House No. 455, Ward No. 03, New Colony, Deoria, P.S. Deoria, District Deoria (U.P.).

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Versus

1. The Union of India through the Secretary, Ministry of Defense, Govt. of India, South Block, New Delhi.
2. The Additional Directorate-General, Discipline and Vigilance DV-4 (A), Adjutant Generals Branch, Integrated Head-Quarters, Ministry of Defense (Army), DHQPO, New Delhi-110105.
3. The General Officer Commanding-in-Chief, Western Command, Chandimandir, PIN-908543, C/o 56 A.P.O.
4. The Brigadier, Staff Officer (Discipline and Vigilance) for General Officer Commanding-in-Chief, Western Command, PIN-908543, C/o 56 A.P.O.
5. The Colonel, Staff Officer/Officiating Colonel A (Human Rights) For General Officer Commanding-in-Chief, Western Command, PIN-908543, C/o 56 A.P.O.
6. Smriti Verma, W/o Lt. Col. Sandeep Kumar, D/o Tarkeshwar Prasad, resident of Village-Alisarai, Post Office-Machhahi, P.S. Sakra, Distt. Muzaffarpur.

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Letters Patent Appeal No. 1114 of 2023
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5. The Colonel, Staff Officer/Officiating Colonel A (Human Rights) For General Officer Commanding-in- Chief, Western Command, PIN-908543,



C/o 56 APO.

... .. Appellant/s

Versus

- 1. Smriti Verma W/o Lt. Col. Sandeep Kumar, D/o Tarkeshwar Prasad, Resident of Village- Alisarai, Post Office - Machhahi, P.S.- Sakra, Distt. - Muzaffarpur.
- 2. Lt. Col. Sandeep Kumar (IC-61794M) son of Late Ramchandra Prasad, Resident of House No. 455, Ward No. 03, New Colony, Deoria, P.S. Deoria, District Deoria (U.P.).

... .. Respondent/s

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Appearance :

(In Letters Patent Appeal No. 873 of 2023)

For the Appellant/s : Mr.Mohit Agarwal, Advocate

For the Respondent/s : Mr.Additional Solicitor General, Advocate

(In Letters Patent Appeal No. 1114 of 2023)

For the Appellant/s : Mr. Kanak Verma, Advocate

For the Respondent/s : Mr. Shashank Chandra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 18-01-2024

Heard the parties.

2. The two appeals, one filed by the Union of India (LPA No. 1114 of 2023) and the other by Lt. Col. Sandeep Kumar (LPA No. 873 of 2023) arises out of the judgment and order dated 08.05.2023 passed in C.W.J.C. No. 16821 of 2021 by which the learned Single Judge has been pleased to allow the writ petition preferred by the respondent-writ petitioner, Smriti Verma.

3. The matrix of facts giving rise to the present appeals is/are as follows:-



4. The respondent no.6-petitioner (in LPA No. 873 of 2023), Smriti Verma tied her nuptial knots with the appellant herein (Lt. Col. Sandeep Kumar), then a Major serving with the Indian Army on 19.11.2013. She claims to have been subsequently ousted from her matrimonial house by her husband/in-laws within a year, on 19.06.2014.

5 As she had no other source of income, her parents being contractual Panchayat Teachers, she approached the Commanding Officer, 196 Field Regiment, C/o- 56 APO for grant of maintenance. Subsequently, on 13.07.2015, the respondents issued show cause notice on the appellant (Lt. Col. Sandeep Kumar).

6. The General Officer, Commanding in Chief, Western Command thereafter exercising his power conferred under Section 90 (1) of the Army Act (hereinafter referred to as 'the 1950 Act') read with Rule 193 of the Army Rules, 1954 (henceforth for short 'the 1954 Rules), gave direction for deduction of 22 percent of the salary of the appellant per month towards payment as maintenance allowance to the respondent no. 6-petitioner. The paragraph 2 of the letter dated 20.11.2015 read as follows:

***“The deduction of maintenance allowance
in respect of the wife will continue till the***



marriage of the lady with the officer subsists or till her death whichever is earlier.”

7. The respondent no. 6-petitioner also lodged Sakra P.S. Case No. 25 of 2015 on 20.01.2015 under sections 341, 323, 379, 504, 498A and 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against her husband (Lt. Col. Sandeep Kumar).

8. As the story moves on, the appellant (Lt. Col. Sandeep Kumar) preferred Matrimonial Case (Divorce) vide Divorce Suit No. 402 of 2016 before the Court of Learned Principal Judge, Family Court, Deoria in the State of Uttar Pradesh under section 13(1-a) of the Hindu Marriage Act, 1955 (henceforth for short ‘the 1955 Act’).

9. The respondent no. 6-petitioner considering the difficult condition in defending the case filed at Uttar Pradesh preferred petition before the Hon’ble Supreme Court for transfer of the said matrimonial case from Deoria, (Uttar Pradesh) to Muzaffarpur, (Bihar) where she was staying with her parents.

10. The said **Transfer Petition (C-7/2018)** was allowed by the Hon’ble Apex Court on 30.08.2019 after which the **Divorce Petition No. 402/2016** was transferred to the Court of Family Court within the jurisdiction of the District and



Sessions Judge, Muzaffarpur, Bihar and re-numbered as **Matrimonial Case No. 523 of 2019.**

11. It was in the year 2020 that vide letter dated 10.11.2020, the respondent no. 6-petitioner was informed by the Colonel, Staff Officer (Human Rights), Western Command, C/o- 56 APO that as per the subsequent decision dated 29.11.2018 approved by the Ministry of Defence, New Delhi, the maintenance allowance to the spouse of serving Army Personnel will be provided for a finite period of three years further extendable by two more years. As such, she was asked to submit an affidavit whether any petition for maintenance allowance has been preferred by her before the appropriate civil/criminal Court or not, before a decision is taken in the matter. It was further informed that on failure to do so, the maintenance allowance shall be discontinued automatically on 10.01.2021. The respondent no.-6-petitioner claimed that this letter was not received by her.

12. Subsequently, on 28.04.2021, another letter was sent to her by the said Officer in which it was informed that the period of discontinuance of the maintenance allowance has been modified *inasmuch* as the same shall be discontinued automatically on 10.11.2021. According to the respondent no. 6-



petitioner, this letter too was initially not delivered to her.

13. The letter dated 28.04.2021 read as follows:-

*“Mrs Smriti Verma
w/o Lt Col Sandeep Kumar
D/o Sh Tarkeshwar Prasad
VII-Alisarai
PO-Machhahi
PS-Sakra, Via-Dholl
Distt-Muzaffarpur
State-Bihar
Pin Code-843105*

**NOTICE FOR DISCONTINUATION OF
MAINTENANCE ALLOWANCE TO MRS SMRITI VERMA W/O IC-
61794M LT COL SANDEEP KUMAR OF HQ 26 ARTY BDE,
SANCTIONED BY GENERAL OFFICER IN COMMANDING,
WESTERN COMMAND ON 20 NOVEMBER 2015**

*1. Refer HQ Western Command letter No 0420/01/DV-3 dt 10
November 2020*

*2. The following amendments be made in para 4 of above
mentioned letter*

FOR

*In case the Affidavit is not received within three months
from date of receipt of this notice, it will be assumed that you
have no inputs to forward. Maintenance allowance to you shall
be discontinued automatically on 10 January 2021.*

READ

*In case the Affidavit is not received within three months
from date of receipt of this notice, it will be assumed that you
have no inputs to forward. Maintenance allowance to you shall
be discontinued automatically on 10 November 2021.*

3 Rest no change.

*(RS Mangat) Colonel
Colonel A (Human Rights)
For GOC-in-C”*

14. This followed another letter dated 24.06.2021



by the respondent no. 5 stating that the maintenance allowance will be discontinued effective 10.11.2021. This was reiterated in another letter of the respondent no. 5 dated 26.07.2021 in which at paragraph-2, it was stated that there was no provision for grant of maintenance allowance after completion of three years extendable by two years which she has already availed.

15. The respondent no. 6-petitioner claimed that the letter dated 24.06.2021 was the letter received by her. Aggrieved, the writ petition (CWJC 16821 of 2021) was preferred.

16. Subsequently, the respondent no. 5 issued the order dated 25.08.2021 (Annexure-11 to the writ petition) by which after taking note of the Expert Committee letter dated 29.11.2018 as also the Ministry of Defence letter dated 29.07.2020, the order dated 20.11.2015 (granting maintenance allowance) and the representation of the respondent-petitioner, informed her about the decision taken regarding discontinuance of the maintenance allowance w.e.f. 10.11.2021. The said order was brought on record by the respondent no. 6 – writ petitioner by way of Interlocutory Application.

17. The official respondent nos. 1 to 5 (in the writ petition) as also the appellant-respondent no. 6 (Lt. Col.



Sandeep Kumar) preferred their respective replies.

18. The stand of the official respondent (appellants herein) was/were that:

(i) earlier in a routine manner, the maintenance allowances were extended under sections 90 and 91 of 'the 1950 Act' which resulted into grave consequences as the same was not based on actual facts;

(ii) it was flagged before the Expert Committee constituted by the Ministry of Defence, Government of India, New Delhi;

(iii) accordingly, the decision was taken for grant of maintenance allowance for a maximum period of five years, the purpose behind the same is/was to encourage the estranged wife to take recourse to Civil Court, since in case of individual personnel taking premature retirement, the wife will be rendered helpless.

(iv) as the said period had already elapsed and the respondent no. 6- petitioner had not taken any steps for getting an order from the civil/criminal Court, the same was discontinued effective 10.11.2021;

(v) the order in question was perfectly justified and the writ petition has to be dismissed.



19. According to the reply of the appellant-respondent (Lt. Col. Sandeep Kumar):

(i) sections 90 and 91 of the Army Act, 1950 cannot be used in a routine manner for grant of maintenance allowances;

(ii) the respondent no. 6-petitioner had alternate remedy under 'the 1955 Act'; which was not availed and as such the official respondents rightly took a decision for discontinuance of maintenance allowance effective 10.11.2021.

20. Learned Single Judge took up the matter and vide an order dated 08.05.2023 held that:

(i) the letter dated 20.11.2015 issued by the respondents clearly incorporated that it will continue till the marriage with the Officer subsists or till her death;

(ii) there was no averment on the withdrawal of the maintenance allowance after five years;

(iii) the July, 2020 advisory talks about those who have been granted maintenance allowance prior to 29.11.2018 asking them to be informed that this will have to approach the Civil Court but it does not state that failure to do so, will result in discontinuance of maintenance allowance;

(iv) sections 90 and 91 of the 'the 1950 Act'



which talks about the penal deduction is a statutory deduction for maintenance of wife and child and there was purpose behind the incorporation of said sections for the grant of relief.

21. The learned Single Judge thus held that the decision taken by the respondent-authorities for discontinuance of the maintenance allowance has to go and accordingly vide an order dated 08.05.2023 was pleased to set aside the letter dated 24.06.2021 (Annexure-7 to the writ petition) as also the consequential letters.

22. Aggrieved, the present appeals have been preferred both by the official respondents (LPA No. 1114 of 2023) as well as the husband, Lt. Col. Sandeep Kumar (LPA No 873 of 2023).

23. Dr. K.N. Singh, learned Additional Solicitor General led the arguments in the two appeals and according to him, considering the petition of the respondent no. 6– petitioner, after issuance of show cause to the appellant (Lt. Col. Sandeep Kuma), a decision was taken on 20.11.2015 for deduction @ 22 percent per month from his pay and allowances to be paid to the respondent no. 6- petitioner. Further, she got the Divorce Suit no. 402/2016 transferred from the Court of Principal Judge, Family Court, Deoria, (Uttar Pradesh) to the Court of Principal



Judge, Family Court, Muzaffarpur, (Bihar) following filing of the Transfer Petition (s) (Civil) No.(s) 7/2018 before the Hon'ble Apex Court which was re-numbered as Matrimonial Case No. 523 of 2019.

24. According to him, pursuant to the Expert Committee's report and subsequent approval by the Ministry of Defence, Govt. of India, New Delhi, it was decided that the maintenance allowance will be extended for a finite period of three years extendable by two years and in that backdrop, those who were granted maintenance allowance prior to 29.11.2018 were noticed on the point whether they have preferred any application for grant of maintenance allowance before the Civil/Criminal Court or not.

25. He further submits that the respondent no. 6-petitioner was issued multiple letters on the said point and after the evasive reply filed by her on 03.07.2021 to the letter dated 24.06.2021, the decision was finally taken to discontinue the maintenance allowance as she had already crossed the five year period i.e the maximum period the Army can extend the maintenance allowance. He reiterates that the purpose behind limiting the maintenance allowance by the Army is that, the Army Officers are not experts in such matters and further it is



for the betterment of the spouse that she can be encouraged to get an order from a competent civil/criminal as the Officer/person concerned leaving the job will render her helpless.

26. Learned A.S.G. submits that the respondent no.6-petitioner despite a matrimonial suit pending before the court of Principal Judge, Family Court, Muzaffarpur chose not to prefer any petition. The Army, hence, was well within its right to discontinue the same effective 10.11.2021 in view of the changed guidelines. It is his submission that the learned Single Judge failed to look into these aspects while passing the order in question setting aside the orders and thus needs interference.

27. Learned counsel appearing for the appellant Mr. Mohit Agarwal in LPA No. 873 of 2023 has adopted the arguments put forward by Dr. K.N. Singh, learned Senior Counsel and it is his further submission that as the lady has not preferred any petition before the concerned family Court for her maintenance allowance, in the said backdrop, the learned Single Judge definitely erred in setting aside the orders of discontinuance of maintenance allowance as after the changed guidelines, the lady cannot force the Army to continue with the maintenance allowance by deliberately not filing any petition



before the family Court. According to him, the lady has still not preferred any petition before the Family Court for the grant of maintenance allowance.

28. Learned counsel appearing for the respondent no. 6-petitioner, Mr. Shashank Chandra on the other hand justified the decision taken by the learned Single Judge submitting that the 2015 order of the respondents clearly states that the maintenance allowance will continue till the marriage subsists with the Officer or her death whichever is earlier. It is his submission that midway, the respondent cannot be allowed to change the goal post.

29. To the submission of the learned counsel appearing for the appellant (Lt. Col. Sandeep Kumar) that till date, she has not filed any maintenance allowance, learned Counsel for the respondent no. 6-petitioner had submitted on the earlier hearing on 08.01.2024 that to his knowledge, a petition has been filed before the Family Court, Muzaffarpur.

30. In view of the contradictory statements made by the learned Counsels for the appellant (Lt. Col. Sandeep Kumar) and the respondent no. 6-petitioner, Smriti Verma on the point of filing of application for grant of maintenance allowance in the Matrimonial Case No. 523 of 2019, this Court vide an



order dated 08.01.2024 sought report from the Court of Principal Judge, Family Court, Muzaffarpur in Matrimonial Case No. 523 of 2019.

31. Though when the matter was taken up on 18.01.2024, no report of the Family Court, Muzaffarpur is/was on record, on fresh instruction, learned counsel for the respondent- Smriti Verma submits that till date she has not filed any petition for grant of maintenance allowance.

32. The stand/attitude of the respondent no. 6- writ petitioner in not filing the proper petition for maintenance allowance before the Principal Judge, Family Court, Muzaffarpur, despite passage of so many years and providing wrong instruction to her counsel is clearly deprecable.

33. Having gone through the facts of the case as also the submissions put forward by the parties and the order dated 08.05.2023 passed by the learned Single Judge, this Court has to first take into account the order dated 20.11.2015. It read as follows: *the maintenance allowance in respect of the wife will continue to the respondent no. 6- writ petitioner, till the marriage of the lady with the officer subsists or her death whichever is earlier.*

34. The aforesaid decision dated 20.11.2015 was



taken up under Sections 90 and 91 of 'the Army Act 1950'
which read as follows:

“90. Deductions from pay and allowances of officers - the following penal deductions may be made from the pay and allowances of an officer, that is to say -

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a Criminal Court or a Court-Martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the Court-Martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;

(e) all pay and allowances ordered by a Court-Martial 24[* *] to be forfeited or stopped;*

(f) any sum required to pay a fine awarded by a Criminal Court or a Court-Martial exercising jurisdiction under section 69,

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation appears to the Central have been occasioned by the wrongful act or negligence on the part of the



officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a Court of inquiry constituted by [the Chief of the Army Staff] in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy, through want of due precaution or through disobedience of orders or wilful neglect of duty, , or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government [or any prescribed officer] to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

91. Deductions from pay and allowances of persons other than officer – Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,-

*(a) all pay and allowances for every day of absence either on desertion or or as a prisoner of war, and for every day of transportation or Criminal Court, a Court-Martial or an officer imprisonment rcising authority under section 80, [***];*

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a Criminal Courtge Court-Martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment 28[* *] by an officer exercising authority under section 80;*



(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on his to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;

(e) all pay and allowances ordered by a Court-Martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a Criminal Court, a Court- Martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 89;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.”



35. Subsequently, certain development took place *inasmuch* as on 29.11.2018, an advisory was issued by the Office of Additional Director General (Discipline and Vigilance), Ministry of Defence (Army) New Delhi relating to the grant of maintenance allowance and Clause 8 (a) of the said advisory read as follows:-

“(a) Wife. With a view to encourage the wile to seek simultaneous redress through a Court of Law, the maintenance allowance will be granted for a finite duration i.e initially for a period of three years. while duly advising her to get the matter adjudicated through Civil Court. This period may be further extended by two years in case of non finality of the judicial process for which the husband will be asked to submit proof at the end of three years. The practice of ensuring maintenance allowances through a Court of Law should be encouraged and the rationale of a wife being rendered helpless in case an individual proceeds on premature retirement be advised to the lady”.

36. The aforesaid clause shows that the framers of the advisory wanted the wife to take the route to Civil Court for grant of maintenance allowance so that in case, an individual proceeds on premature retirement, she is not rendered helpless. This provision was as an abundant caution, to ensure that the estranged helpless wife is not rendered remedy-less with passage of time and change in circumstances. Sufficient care



was also taken to ensure maintenance, from the salary of the husband, in the interregnum, initially for three years and then two more; reckoning laws delays.

37. This followed the Army order dated 17.07.2020 relating to payment of maintenance allowance to wives and children army personnel under the Army Act.

38. Paragraph -5 of the said order dealing with the maintenance allowances read as follows:

“With a view to encourage the wife to seek simultaneous redress through a Court of Law, the maintenance allowance will be initially granted the finite duration of a period of three years, while duly advising her to get the matter adjudicated through Civil Court. This period may be further extended by two years in case of non finality of the judicial process for which the applicant will be asked to submit proof at the end of three years. The practice of ensuring maintenance allowance through a Court of Law should be encouraged and the rationale of a wife being rendered helpless in case an individual proceeds on premature retirement be advised to the lady.”

39. Further Para-8 (c), (d) & (e) read as follows:

(c) In cases where maintenance is payable until dissolution of marriage, they shall inform their Commanding Officer as soon as a petition on this behalf is made in a court of law. After the final decree of divorce is passed or after dissolution of marriage has been affected under customary law, the fact and the date of such



dissolution shall be communicated immediately to the Commanding Officer. The original decree of dissolution signed by a Gazetted Officer of the Government or a Municipal Commissioner will also be forwarded to the Commanding Officer.

(d) In cases where the divorce has been granted by an ex parte decree of Court, it is incumbent on the Commanding Officer to ascertain that the lady is aware of said order or if an appeal is pending against it, prior to intimating PCDA) (O)/ PAO with respect to stoppage of maintenance allowance. In case in the appeal filed by the lady, the decree of divorce has been stayed, the maintenance allowance should not be discontinued

(e) case of death of any of the recipients of maintenance allowance, it should be informed immediately on occurrence to the Commanding Officer of the individual.

40. Further, the cases where the maintenance allowance have been sanctioned and needs alteration, para -12 deals with according to which an alteration can be made only after following the procedure set out in paragraph-8.

“ It is clarified that in cases where the maintenance allowance had been sanctioned by the Central Government and an alteration is now warranted, the GOC-in-C Command will be competent to effect such an alteration after following the procedure set out in Para -8 above, A copy of Ministry of Defence ID No. 71902/1/AG/DV-4(PC)/92/S/D(AG) dated 22 Mar 1994.”



41. Thus, the advisory/order shows that its framers wanted that a proper order by the Civil Court is obtained, so that the wife is not at a disadvantageous position in case the official takes premature retirement and thus it has been repeatedly recorded that they be encouraged to take recourse to the courts of law.

42. However, in the present case, encouraging the wife to seek alternate remedy and discontinuance of maintenance allowance after a period of five years in view of the subsequent guidelines issued in the year 2015, cannot be squarely applied. The orders of 2015 in favour of the estranged wife was to subsist till a subsequent marriage or death of herself. The wife who had obtained the order in 2015, who was also being paid maintenance, was informed about the new guidelines by letter dated 10.11.2020, for the first time. The decision was also to discontinue the maintenance allowance within one year, i.e. 10.11.2021. This is not in tune with the care and caution reflected from and the spirit of the new guidelines; which reckoned laws-delays and provided interim relief to the wife. Hence care should have been taken to provide sufficient time to approach a Court of Law and obtain orders.

43. This Court has also noted that the maintenance



allowance was granted to the respondent no. 6, Smriti Verma effective 08.10.2014. Admittedly, five years period ended on 08.10.2019. Despite the coming of new guidelines/advisory, the Official respondents not only extended it for a further period upto 10.01.2021, (i.e. beyond five years), later vide letter dated 28.04.2021 they on their own again extended it till 10.11.2021. The new guidelines were informed to the wife only in 2020.

44. So far as the appellant, Lt. Col. Sandeep Kumar is concerned, despite his knowledge that the lady is living with her parents in Muzaffarpur, he preferred Matrimonial case in Deoria (U.P. where he was not even posted) and it was only after the respondent no.6, Smriti Verma took steps and preferred Transfer Petition (s) (Civil) No (s) 7/2018 before the Hon'ble Apex that on 30.08.2019, the same was transferred to the court of Principal Judge, Family Court, Muzaffarpur (Bihar) and re-numbered as Matrimonial Case NO. 523 of 2019.

45. While we appreciate the stand taken by the Army that the estranged wife, should be encouraged to take recourse to the Civil Court for grant of maintenance allowance, we completely differ with their observation in this particular case that the maintenance allowance granted to her cannot be extended beyond five years when they on their own extended



twice. The five year period; the Army asserts, was also prior to the guidelines of 2018, which was intimated to the wife only in 2020.

46. Having observed so, we cannot turn a blind eye to the fact that the lady has still chosen not to file any petition before a proper Court for payment of maintenance allowance. Learned counsel appearing for the lady on instruction undertakes that she will be filing an appropriate petition before the Family Court, Muzaffarpur in the Matrimonial Case No. 523 of 2019 within a period of four weeks from today. We also notice her personal presence and record the above as her own undertaking.

47. It is on the said undertaking given by the respondent no. 6-petitioner that, this Court proceeds to pass the following order:-

(i) the appellant nos. 3 to 5 (In LPA No. 1114 of 2023) shall ensure that the 22 percent maintenance allowance granted to the respondent no. 6-petitioner (vide an order dated 20.11.2015) resumes with effect from February, 2024;

(ii) the Family Court, Muzaffarpur shall pass an appropriate order on the petition preferred by the



respondent no. 6 for grant of maintenance allowance after hearing the appellant (Lt. Col. Sandeep Kumar) herein within a period of six months from the filing of the petition;

(iii) the maintenance allowance granted to the respondent no. 6-petitioner by the Family Court, Muzaffarpur shall also have bearing on the arrears that she is/was entitled to but was stopped in the year, 2021 *inasmuch* as the quantum fixed by the Family Court, Muzaffarpur shall be payable to her after deduction of the same from the salary of the petitioner (Lt. Col. Sandeep Kumar).

48. There cannot be any refund from the respondent wife, if any amounts paid by the Army, as per its earlier order; if the maintenance fixed by the Court is lesser. If the maintenance fixed by the Court is higher it shall be payable to the petitioner only for the future and the period in which the Army has stopped her payment from 10.11.2021 to February, 2022; since the respondent-wife did not take appropriate proceedings earlier, for maintenance.

49. We also make it clear that the amount of maintenance itself, and the quantum, the wife is found entitled, shall be at the discretion of the Court and it shall not be governed by this judgment or the order of 2015 passed by



the Army.

50. It is made clear that the present order has been passed in the particular facts and circumstances of the case and this Court has not passed any judgment on the changed guidelines/advisory of the Army relating to the grant of maintenance allowance.

51. Both the appeals stand disposed of with the aforesaid observations.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.01.2024
Transmission Date	

