

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No –OA 1964 OF 2006

RAJASHREE BISWAS Vs The State of West Bengal & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>13 20.07.2018</p>	<p>For the Applicant : Mr. D. Saha Learned Advocate</p> <p>For the Respondents: Mr. G.P. Banerjee Learned Advocate</p> <p>For the Respondent No.6 : Mr. Sankar Halder Learned Advocate</p> <p>For the A.G., West Bengal : Mr. B. Mitra Departmental Representative</p> <p>Let Vakalatnama filed by Mr. Sankar Halder, Learned Advocate on behalf of the private respondent No.6 be kept on record.</p> <p>Mr. Banerjee submits copy of the report. Let it be kept on record.</p> <p>In this application the applicant claiming to be the second wife of late Nishikanta Biswas, an Assistant Sub-Inspector of West Bengal Police, has challenged the letter dated 17th June, 2005 issued by the Senior Accounts Officer, Indian Audit and Accounts</p>	

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	<p>Department, Accountant General (A&E), West Bengal directing her to refund the whole amount of family pension of Rs. 1,396/- (Rupees one thousand three hundred and ninety six only) for the month of August, 2005. The applicant has also prayed for a direction upon the respondents to pay 50% of the family pension to her in terms of the will dated 8th July 1997 executed by her husband. Incidentally, Nishikanta Biswas expired on 20.06.2004.</p> <p>It appears from the report filed on behalf of the State respondents that late Nishikanta Biswas was first married to Sushila Bala Biswas on 30th November 1958. However, the said marriage was annulled on 1st January, 1963 by a Decree of divorce. Thereafter Nishikanta Biswas married Smritikana Biswas in the year 1964. This was his second marriage. In the instant application, Smritikana Biswas is the private respondent No. 6. During subsistence of the second marriage, late Nishikanta Biswas on 7th December 1978 married the applicant for the third time. Nishikanta Biswas retired on 30th June 1994 and had expired on 20th June, 2004.</p> <p>Learned Advocate appearing on behalf of the applicant submits that since the applicant is a legally married wife, the order issued by the Indian Audit and Accounts Department, Accountant General (A&E), West</p>	

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	<p>Bengal appearing at page 29 of the application, is arbitrary and illegal.</p> <p>Mr. G.P. Banerjee, Learned Advocate appearing on behalf of the State submits that the third marriage of late Nishikanta Biswas is illegal as the same is not permissible under the provisions of Hindu Marriage Act, 1955 and thus the claim of the applicant cannot be entertained. That apart, assuming the contention on the part of the application is correct, the will on the strength of which she claims 50% of the family pension, cannot be granted as no proceedings have been initiated for grant of probate.</p> <p>Mr. B. Mitra, Departmental Representative supports the stand taken by Mr. Banerjee. Mr. S. Halder, learned Advocate appearing on behalf of the private respondent No. 6 submits that as the claim of the applicant has no legal basis, it cannot be upheld. Moreover, since 2006 his client is getting family pension from 2006 in accordance with law. An order directing grant of family pension to the private respondent No.6 is furnished in Court. Let it be kept on the record.</p> <p>Heard Learned Advocate for the parties and the Departmental Representative. Since Hindu Marriage Act 1955 does not permit marriage during the subsistence of</p>	

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SCN.	<p>a marriage, the claim of the applicant cannot be upheld. Hence, the application has no merit and is, thus, dismissed.</p> <p style="text-align: center;">Urgent Photostat certified copy of this order, if applied for, be furnished to the parties on priority basis.</p> <p>(S.K. Das) MEMBER (A)</p> <p style="text-align: right;">(Soumitra Pal) CHAIRMAN</p>	