

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 336 OF 2019

Smt. Kalpana Das 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
04 18.11.2019	<p>For the Applicant : Mr. P. Sarkar, Learned Advocate.</p> <p>For the Respondent : Mr. M.N. Roy, Learned Advocate.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for payment of the amount accumulated in General Provident Fund (in short, GPF) of the deceased husband of the applicant and for grant of family pension in favour of the applicant.</p> <p>The contention of the applicant is that she was married to one Bholanath Das on Phalgun 26, 1384 BS corresponding to February 10, 1978 as per Hindu Rites and Religion. Bholanath Das worked as Driver under the respondent no. 6 and retired from service on July 31, 2011. He died on September 4, 2015 without receiving pension and other retirement benefits including the amount of GPF. The respondent no. 8, Padma Das claiming to be the legally married wife of the deceased Bholanath Das submitted application before the respondent no. 6 for release of the amount of GPF and family pension in her favour. The respondent no. 6 is unable to decide whether the applicant or</p>	

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the respondent 8 is entitled to get family pension and the amount of GPF, particularly when the deceased employee Bholanath Das nominated the respondent no. 8 for receiving the amount of GPF.

The admitted position is that the amount of GPF and pension was not released in favour of the deceased employee Bholanath Das till the date of his death. By placing on record a copy of the letter issued to the respondent no. 6 by the Senior Accounts Officer of the office of Accountant General (A&E), West Bengal, Mr. Mitra, the Departmental Representative of the respondent AG, West Bengal submits that the Pension Sanctioning Authority has not yet intimated as to how unauthorised absence of the deceased Bholanath Das during the period from July 10, 1995 to October 19, 2003 will be dealt with and as such the pension could not be sanctioned in favour of the said deceased employee.

Before taking up the issue as to how the long period of absence of the deceased employee Bholanath Das will be regularised in terms of the provisions of the rules by which he is governed, we have to decide whether the applicant or the respondent no. 8 is the legally married wife of the deceased Bholanath Das. The applicant Kalpana Das filed one maintenance proceeding against Bholanath Das in the year 1987 being Misc. Case no. 397 of 1987 before the Court of

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Learned Sub-Divisional Judicial Magistrate, Durgapur. The copy of the judgment passed by Learned Sub-Divisional Judicial Magistrate in the said Misc. Case no. 397 of 1987 indicates that Learned Magistrate directed Bholanath Das (the deceased employee) to pay maintenance to the applicant Kalpana Das @ Rs.400/- per month and to the minor son of the applicant (named Pappu) @ Rs.200/- per month. Nothing is on record to indicate that the said judgment and order passed by Learned Magistrate was set aside by any higher Court of law. The contents of the judgment indicate that Bholanath Das filed one Misc. Case no. 50 of 1979 against the father of the applicant Kalpana praying for issuance of search warrant on the ground that the father of Kalpana had illegally detained Kalpana who happens to be the legally married wife of Bholanath Das. Learned Magistrate relied on the said admission of Bholanath Das in order to negate the claim that Kalpana was not legally married wife of Bholanath Das. We are inclined to accept the said admission of Bholanath Das for coming to the conclusion that the applicant Kalpana was the legally married wife of the Bholanath Das and the said marriage took place in the month of February 1978. It cannot be denied that one son was also born from the said wedlock between Kalpana Das and Bholanath Das on April 4, 1983.

The respondent no. 8, Padma Das was not only impleaded as respondent in the original application but notice was issued to her calling upon her to appear before this Tribunal

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for proper adjudication of the dispute involved in the present application. However, the respondent no. 8 had chosen not to appear before this Tribunal in spite of service of notice as reflected from the affidavit of service filed on behalf of the applicant today. It appears from the judgment of Misc. Case No. 397 of 1987 that the applicant Kalpana started living in the house of her parents from the year 1985 due to torture inflicted on her by Bholanath Das. The marital tie between the applicant and the deceased Bholanath remained intact till the date of death of Bholanath. So the marriage, if any, took place between the respondent no. 8, Padma and Bholanath during subsistence of marital tie between the applicant Kalpana and Bholanath, is void in terms of the provisions of Sec. 5(i) read with Sec. 11 of the Hindu Marriage Act, 1955. Accordingly, the respondent no. 8 is not the legally married wife of Bholanath Das. We are constrained to hold that the applicant Kalpana Das is the legally married wife of the deceased Bholanath Das. The applicant Kalpana Das is, thus, entitled to get family pension, if applicant's husband Bholanath Das was eligible for pension in terms of the provisions of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules of 1971). Needless to mention that the applicant Kalpana Das is entitled to receive the amount accumulated in the GPF of her deceased husband Bholanath Das. It is relevant to point out that nomination of the respondent no. 8, Padma Das for receiving the amount of GPF by the deceased Bholanath Das has no legal validity and as

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such the respondents are directed not to act upon the nomination made by Bholanath Das for release of the GPF in favour of the respondent no. 8.

We have already observed that the Pension Sanctioning Authority has not yet decided how the period of unauthorised absence of Bholanath Das from July 10, 1995 to October 19, 2003 (more than eight years) will be dealt with for the purpose of release of retirement benefits of Bholanath Das since deceased. Since Bholanath Das retired from service in the year 2011 and retirement benefits have not yet been released by the Pension Sanctioning Authority, we are of the view that the respondent no. 1 should take a decision by passing an appropriate order about the unauthorised absence of Bholanath Das during the period from July 10, 1995 to October 19, 2003 while he was working as Driver under the respondent no. 6, Project Officer-cum-District Welfare Officer, Bankura. The respondent no. 1 is at liberty to regularise the absence of Bholanath Das by grant of leave of any kind, provided the leave is available to the credit of the said Bholanath Das or to treat the period of absence or any portion of the said period as dies-non in terms of the provisions of rules by which Bholanath Das is governed within specific period of time and to take a decision whether Bholanath Das was eligible to receive pension in terms of the provisions of the DCRB Rules of 1971.

In view of our above findings, the respondent no. 1,

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Principal Secretary to the Government of West Bengal, Department of Backward Classes and Welfare is directed to take a decision by passing an appropriate order with regard to absence of Bholanath Das during the period from July 10, 1995 to October 19, 2003 in terms of the provisions of West Bengal Service Rules, Part-I within a period of 12 (twelve) weeks from the date of communication of the order and also to take a decision whether the deceased Bholanath Das was eligible for pension in terms of the provisions of the DCRB Rules of 1971 within a period of 2 (two) weeks thereafter. If the respondent no. 1 decides that the deceased Bholanath Das was eligible for pension, he will refer the matter to the respondent no. 6, Project Officer-cum-District Welfare Officer, Bankura for processing the case of Bholanath Das for payment of retirement benefits including pension. If the deceased Bholanath Das was eligible for pension as per decision of the respondent no. 1, the respondent no. 6 will not only release the retirement benefits including pension of the deceased Bholanath Das but also take necessary action for release of family pension in favour of the applicant Kalpana Das after giving an opportunity for submission of necessary documents by her within a period of 8 (eight) weeks from the date of receiving direction from respondent no. 1. The respondent no. 6, Project Officer-cum-District Welfare Officer, Bankura is further directed to release the amount of GPF of the deceased Bholanath Das in favour of the applicant Kalpana Das within a period of 8 (eight) weeks from the date of

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Sanjib	<p>communication of the order.</p> <p>With the above directions, the original application is disposed of.</p> <p>Let a plain copy of this order be supplied to all the parties.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
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