

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 353 of 2023

Aditya Narayan Mallick - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. G.P. Banerjee,
and Mr. H. Ghosh,
Date of order Advocates

7
12.06.2024

For the Respondents : Mr. S. Ghosh,
Advocate

For the Pvt. Respondent : Mr. M.N. Roy,
No. 8 Mr. G. Halder,
Advocates

For the Pr. A.G. (A & E),
West Bengal : None

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The deceased Dr. Anjan Kumar Mallick had died on 09.06.2021 while serving as a Dy. CMOH-II in Alipurduar district. During his lifetime, he had not nominated anyone as receiver of his Death-cum-Retirement-Benefits. It is also noted that during the subsistence of his first marriage with Sonali Mollick nee Sarkar, Dr. Mollick had contracted another marriage with one Pallabi Mandal. This applicant Aditya Narayan Mollick is the minor son from the second marriage with Pallabi Mandal. In this application, representing her minor son, Pallabi Mandal has prayed for a direction to the respondent authorities to sanction Death-cum-Retirement-Benefits accruing from the death of Dr. Mallick. On the other hand, Sonali Mollick nee Sarkar, private respondent has opposed such a prayer.

Mr. G.P. Banerjee, learned counsel for the applicant relies on the judgement of the Hon'ble Supreme Court passed in (2000) 2 SCC 431 (Rameshwari Devi Vs. State of Bihar and Others) upholding the Order passed by the learned Single Judge as noted in the following paragraph of the judgement –

“Learned Single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their

children would be legitimate and thus would be entitled to share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned Single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attained majority but nothing would be payable to Yogmaya Devi.

In another case – (2015) 14 Supreme Court Cases 511, Raj Kumari and Another Vs. Krishna and Others, the Hon'ble Supreme Court affirmed the order passed by the Learned Civil Judge, Junior Division, Sonapat (Haryana), in which it was decreed that "Pension and other retirement benefits should be given to all the legal heirs that is defendants, namely, (i) Smt Shanti Devi, mother of the deceased, (ii) Smt Raj Kumari, his first wife, (iii) Nishoo, his daughter and (iv) his daughter Payal, Plaintiff 2, in accordance with provisions of the Hindu Succession Act." Payal, Plaintiff 2 in the case was the daughter of the deceased employee with the second wife, Smt Krishna."

Disagreeing that the judgement on Rameshwari Devi is relevant in this matter, Mr. M.N. Roy, learned counsel argues that in this particular case referred by Mr. Banerjee, the Hon'ble Court had interpreted the service rules of the State of Bihar, whereas, service rules of this State are different. Mr. Banerjee also relies on an order of this Tribunal in O.A. 27 of 2024 and submits that, similar to this case, the Tribunal had passed a direction to consider such prayer in the light of judgement in Rameshwari Devi case. However, this is also disagreed by Mr. Roy on the ground that in the case referred to by Mr. Banerjee, division of family pension was for Muslim family, different from the rules governing a Hindu family.

The Tribunal has examined a specific rules governing family pension and death gratuity for the purpose of family pension, the rules 7(2) of West Bengal Services (Death-cum-Retirement-Benefit) Rules, 1971 includes –

- (i) Wife in the case of male officer
- (iii) Minor sons including adopted sons.

Rule 7(e)(1) relates to the death gratuity and includes

- (i) Wife in the case of male officer
- (iii) Sons including step sons.

Form No.

Aditya Narayan Mallick

Case No. **OA – 353 of 2023**

Vs.
THE STATE OF WEST BENGAL & ORS.

Further definition of family pension given under the same rules, being rule 105, the relevant lines are as follows –

“Pension payable to one member of the family – subject to the provisions contained in the note under rule 104, the pension awarded under this Scheme shall not be payable to more than one member of the government service family at the same time. It shall first be admissible to the widow / widower and then to the minor children and thereafter to mother and lastly to father.”

To bring better clarity in the rules, the Finance Department published a Notification No. 8252-F dated 29th July, 1988, which directly addressed the issue relating to children born out of second marriage of a government employee. The relevant clarifications given in the Notification are as follows –

“(i) A question has now been under consideration of the government as to whether the children born out of the second marriage will be entitled to such benefit. Under section 16(1) of the said Act (Hindu Marriage Act, 1955), though the second marriage is null and void, any children of such marriage shall be legitimate.

(ii) In view of the provision of the Hindu Marriage Act, 1955, the Governor has been pleased to decide that the children born of such marriage are to be accepted as members of the family / legal heirs within the meaning of rule 7 (1) (e) (1) and (2) and rule 170 of the West Bengal Services (Death-cum-Retirement-Benefit) Rules 1971.

By another Notification, 54-F(Pen) published on 13th January, 1997 of the Finance Department, few amendments were made to Rule 104 of West Bengal Services (DCRB) Rules 1971 was made, most relevant amendments are as follows:

“Note--(ii) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children by another wife who is not alive, the eligible child or children shall be entitled to the share of the family pension which the mother would have received if she had been alive at the time of the death of the government servant or pensioner.”

(iii) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children by other wife or wives since divorced, the eligible child or children shall be entitled to the share of the family pension which the

ORDER SHEET

Form No.

Aditya Narayan Mallick

Vs.

Case No. **OA – 353 of 2023**

THE STATE OF WEST BENGAL & ORS.

mother would have received at the time of the death of the Government servant or pensioner had she not been divorced.”

After close examination of the rules cited above including the amendments and judgements in the Rameshwari Devi and Raj Kumari cases, it leaves a strong impression in the minds of this Tribunal that along with the legal wife, a minor child born out of the second marriage is also entitled to receive his / her share of pension and other death benefits.

By the relevant rules referred to in the foregoing paragraphs and the judgements of the Hon'ble Apex Court, it is very clear that, though the second marriage may not be legal but the children born out of such marriage have equal rights similar to the children from the first wife. Therefore, it can be safely stated that children from the second wife cannot be discriminated and their fundamental rights cannot be breached when it comes to granting their share of family pension and other similar benefits. Therefore, in this application, the Tribunal is satisfied that not only the death gratuity but the family pension should also be allowed for the applicant, Aditya Narayan Mallick, the minor son from the marriage of the deceased employee Dr. Mallick with Pallabi Mandal. Therefore, this application is disposed of with the direction to the respondent no. 2, Director of Health Services and respondent no. 5, Principal Accountant General (A & E), to sanction and disburse gratuity and family pension to respondent no. 8 Sonali Mollick nee Sarkar and Aditya Narayan Mallick in equal share within three months from the date of communication of this order.

Accordingly, this application is disposed of.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P