

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. - OA 144 OF 2023

BINAPANI JANA - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Ms. Ananya Mondal,
and Learned Advocate
Date of

order

For the State Respondents : Mr. Gautam Pathak Banerjee,
Learned Advocate

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29.01.2025

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

Since none has been appearing in this matter on behalf of the State respondents, the Tribunal during the last hearing of the matter on 21.08.2024, had requested Mr. Gautam Pathak Banerjee, learned counsel, who normally appears on behalf of the State respondents to appear and represent the respondent authorities. Today, Mr. Banerjee has appeared on behalf of the State respondents. The learned Legal Remembrancer is directed to regularize the appointment of Mr. Banerjee as State counsel appearing in this application.

The issue in this application pertains to sanction of family pension to the applicant. It appears that based on records and hearings, the family pension was sanctioned in favour of Shyamali Jana, the respondent No.9. This matter was earlier heard by the Tribunal in OA 808 of 2021 and by an order dated 29.07.2022, the respondent No.3, CMOH, Nadia was directed to decide the rightful claimant for the family pension as per law. Accordingly, the CMOH, Nadia called for a hearing of the parties on 03.02.2023 in which it is noted that the applicant, Binapani Jana did not appear before the Committee. Satisfied with the examination of the documents presented by the respondent No.9, the Committee headed by the CMOH, Nadia decided the issue of family pension in favour of Shyamali Jana. Aggrieved, the applicant, Binapani Jana has filed this application.

Nandadulal Jana, the deceased employee had superannuated on 31.12.2008 as Store Keeper attached to the District Hospital, Nadia and expired on 25.07.2020. Both Binapani Jana and Shyamali Jana claim to be the wives of the deceased employee. Both have submitted copies of secondary but relevant documents like Aadhar Card, Ration Card, Bank Pass Book in which, besides their names, name of Nandadulal Jana as husband appears.

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Though having furnished similar set of documents before the CMOH, Nadia during the hearing on 13.10.2022 and 09.01.2023, the opinion given by the Superintendent of District Hospital, Nadia weighed in favour of Shyamali Jana. It is not clear on what basis the Superintendent of District Hospital, Nadia had given such an opinion which eventually led to sanction of family pension in favour of Shyamali Jana. Both sides have submitted similar documents and both have contested being wives of the deceased husband.

From memo No. 5852 dated 15.10.220, issued by the CMOH, Nadia, it appears that “*Mr. Nandadulal Jana who was lastly attached to District Hospital, Nadia as a store keeper, had remarried while his first wife (Binapani Jana) was alive*”. Though the first marriage was performed in the year 1970 according to the customary law and practice prevalent under the Hindu Religion, there is no record to show that the deceased employee, Nandadulal Jana divorced his first wife, Binapani Jana. It is also evident from the documents that Nandadulal Jana married Shyamali Jana during the subsistence of the first marriage with Binapani Jana. Though representations had been submitted by the applicant before the respondents the same had not been considered in her favour.

The Tribunal, in its order dated 06.05.2024 had questioned on what basis the opinion given by the Superintendent of District Hospital, Nadia had given such an opinion in favour of Shyamali Jana. Such opinion eventually led to the sanction of family pension and other benefits in favour of the second wife. The Tribunal was not presented copy of such opinion given by the Superintendent of District Hospital, Nadia to enable it to understand the reason why only Shyamali Jana, the second wife was favoured with such benefits in complete disregard to the claim of the first wife, Binapani Jana.

Having noted the above observations, the Tribunal is satisfied that both Binapani Jana and Shyamali Jana were the wives of the deceased employee. Now, the Tribunal has to consider the issue of the Death-cum-retirement benefits of the deceased employee. The second marriage with Shyamali Jana during the subsistence of the first marriage with Binapani Jana, is a void marriage in terms of section 11 of Hindu Marriage Act, 1955. The Tribunal in all fairness and equity and justice is of the opinion that mere legitimacy of a marriage per-se does not take away the right so accrued by the first wife. The applicant may not have been aware of the marriage that took place between the private respondent and the deceased employee during subsistence of their marriage. Therefore, as per Note 2 of Rule 104 of WBS (DCRB) Rules, 1971, it would be fair enough to disburse the retiral benefits of

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the deceased employee in equal shares as the said Rule quoted below enables the authorities for such disbursement.

Finance Department Memo No. 1097-F(Pen) dated 18.06.1991 states the following:-

#Note – Where a Government servant is survived by more than one widow, the family pension shall be paid to them in equal shares. On the death of a widow her share of the pension shall become payable to her eligible minor children. If at the time of her death a widow leaves no eligible minor child the payment of her share of the pension shall cease.

(In case, the minor children are twins, the family pension shall, if the twins are of the same sex, be divided between them in equal shares. If the twins are of different sexes, the family pension shall be paid to them in accordance with the provisions of this rules)

[Provided that where the deceased government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of 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].

In view of the above observations and the Rules, the Respondent No. 3, the CMOH, Nadia is thus directed to sanction family pension and other retiral benefits like GPF, GISS, Leave Salary and Gratuity with arrears to both Binapani Jana and Shyamali Jana in equal shares within a period of four months from the date of communication of this order.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.