

**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 – 563 of 2023**

**Rousanara Bibi - VERSUS - THE STATE OF WEST BENGAL & ORS.**

For the Applicant : None

Serial No.

and

Date of order

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04.04.2024

For the Respondent No. : Ms. R. Sarkar,  
1,5 & 6 Mr. S. Deb Ray,  
(Departmental Representatives)  
Land & Land Reforms Department

For the Pr. A.G. (A & E), : Mr. B. Mitra,  
West Bengal (Departmental Representative)

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

On consent of the learned counsels, the case is taken up for consideration sitting singly.

The prayer in this application is for a direction to the respondent authority to grant family pension to the applicant on account of death of her husband. It appears from the submissions and the records that the applicant is the second wife of the deceased employee. In this regard, the Office of the Principal Accountant General (A & E) West Bengal on 20.06.2023 had communicated to the Sub-Divisional Land & Land Reforms Officer, Rampurhat, the proposal for family pension to the applicant has to be considered under Memo. No. 285-F(Pen) dated 24.03.2023.

Mr. Raziuddin, learned counsel submits that it is an accepted fact before the respondent authorities that the applicant is the widow of the deceased employee. Such admission of the fact was also noted in the P.P.O., in which name of the applicant, Rousanara Bibi has been recorded as the second wife for being a nominee to the family pension and other similar benefits. Further submission is that the claim of the applicant for family pension is also relied on an order of the Hon'ble High Court in WPST 378 of 2013, by which family pension has been given in favour of the second wife. The relevant part of the order relied on by the applicant is as under:

*“The writ petition has been filed challenging the order dated 25<sup>th</sup> July, 2013 passed by the learned Tribunal in case No. O.A. 97 of 2013 whereby the application filed by the*

*petitioner herein before the learned Tribunal was dismissed.*

*From the records, we find that the petitioner herein claimed herself as the 2<sup>nd</sup> wife of the deceased employee under Mohammadan Law and being the 2<sup>nd</sup> wife claimed share of family pension along with the respondent No. 7.*

*Since the 2<sup>nd</sup> Marriage was never disclosed by the deceased employee, there was no occasion for the respondent authorities to grant any share of family pension to the said 2<sup>nd</sup> wife.*

*The learned Advocate representing the first wife, however, admits that the petitioner herein is the 2<sup>nd</sup> wife of the deceased employee. The deceased employee is governed by the Mohammadan Law and under the Mohammadan Law 2<sup>nd</sup> marriage is permissible.*

*Being the 2<sup>nd</sup> wife is entitled to claim the share of the family pension.*

*Therefore, we direct the respondent authorities to divide the family pension amongst the widows in equal share so that the petitioner being the 2<sup>nd</sup> wife of the deceased employee can get 50% of the family pension.*

*The respondent authorities will give effect to this order immediately although the petitioner herein will not be entitled to claim any amount towards arrears either from the 1<sup>st</sup> wife or from the respondent authorities.*

*With the aforesaid observations and directions, we set aside the impugned order passed by the learned Tribunal and dispose of the writ petition without awarding any costs.”*

*In response to the submissions from the applicant side, Ms. Sarkar and Mr. Deb Ray, Departmental Representatives refers to Memo. No. 285-F(Pen)/N/F-1P-280/2022 issued by the Finance Department on 24<sup>th</sup> March, 2023. A copy of this Memo. has been filed before this Tribunal. On close examination of this Memo., it is seen that Rule 5(4) of West Bengal Service (Duties, Rights and Obligations) Rules, 1980 has been quoted. This Rule states, “no Government employee who has a wife / husband living shall contract another marriage without obtaining previously the dissolution of the first marriage in accordance with any law for the time being in force notwithstanding such second marriage is permissible under any personal law of the community to which he or she belongs.”*

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Submission is that by contracting the second marriage with the applicant, the deceased employee had violated this Rule. And since the second marriage was not in conformity with the Rules, therefore, her claim for family pension is not admissible.

Having heard the submissions and considering the facts and circumstances of this case, the Tribunal observes the following:-

The legal entitlement of second wife for family pension depends upon the deceased employee's faith. In case of a Hindu, Section 5 put the condition for valid marriage, Sub-Section (i) of Section 5 makes it amply clear that, neither party has a spouse living at the time of the marriage as one primary condition for marriage of a Hindu. So, Section 5 Sub-Section (i) of the Hindu Marriage Act, 1955 without any ambiguity makes it clear that, during subsistence of first marriage, a Hindu cannot marry for the second time and according to the Act itself, the said second marriage is void-ab-initio. But the offsprings out of the said second marriage are entitled to receive his/her parent's pensionary benefits (save and except family pension) in-terms of Rule 7 (1) (2) of the WBS (DCRB) Rules, 1971. The said rule makes it clear that the first wife is entitled to receive the family pension, as long she lives and thereafter, sons and daughter till attain a specific age or they become dependent on their own. The same is more defined in the Note to Rule 104 of the WBS (DCRB) Rules, 1971.

In case of Muslims, on the other hand, Mohammedan Law allows a Muslim to marry more than one during subsistence of the earlier marriage. Although, there is a bar in-terms of Rule 30 of the West Bengal Government Servants' Conduct Rules, 1959 and Rule 5 (4) of The West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980, but that by itself does not make the second marriage to be illegal in the eye of law. In both the Rules of 1959 and 1980, unambiguously makes it clear that the same is to be treated as a misconduct in terms of the service rules, whichever is applicable to the deceased government employee. It should be borne in mind, that during the life time of the Government Employee the authorities are free to take cognizance and consequently, could punish the deceased employee for such misconduct, but after his demise, the said misconduct of marrying for the second time abets. It is well settled principles of law, any proceeding under any service can continue till the charged officer is living, the moment he dies, all the

proceedings which were in motion, comes to an end.

The clarification given by the Finance Department to the Government of West Bengal vide No. 285-F(Pen)/N/F-1p-280/2022 dated 24<sup>th</sup> March, 2023 runs counter to the well settled principles of law. The Hon'ble Supreme Court of India in the matter of Rameshwari Devi –Versus- State of Bihar and Others reported in (2000) 2 SCC 431 made it abundantly clear that, the proceeding under the relevant rules for misconduct of marrying for the second time during subsistence of the first marriage has to be initiated during the life time of the husband being the deceased government employee and accordingly, negated the argument put forward by the respondents therein.

Note to Rule 104 of the WBS (DCRB) Rules, 1971 without any ambiguity makes it clear that, “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.” From the plain reading it could be ascertained that, when there are more than one legally married wife leaving at the time of death of the husband, they would share the family pension equally.

It is also needless to mention herein that, when the WBS (DCRB) Rules, 1971 came into effect, there might be some cases, where a Hindu before coming into force of the Hindu Marriage Act, 1955 may have contracted more than one marriage (which was permissible under Old Hindu Laws) and as such the Note to Rule 104 is silent to the religious belief of the deceased Government employees.

In the above conspectus, it can be presumably said that, when the authorities did not take the pain of initiating proceedings under the 1959 or 1980 rules (whichever is applicable) and thereafter punishing the said Government servant for his misconduct of contracting a second marriage during the subsistence of the first marriage without permission, then, the authorities are now barred to take such plea for disallowing family pension to the second wife, after the demise of the said Government servant.

In view of above findings, this Tribunal quashes and sets aside the impugned memo 408056 dated 20.06.2023 and directs the respondent No. 1, A.C.S. / Secretary, Land & Land Reforms Department to initiate the process of sanctioning family pension

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and other death benefits to the applicant, Rousanara Bibi within 12 weeks from the date of communication of this order.

This application is disposed of.

**SAYEED AHMED BABA  
OFFICIATING CHAIRPERSON & MEMBER(A)**

A.K.P