

**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 : Md. Raziuddin,  
Advocate

Serial No.  
and

Date of order  
2  
31.01.2024

For the Respondent No. : Ms. R. Sarkar,  
1,5 & 6 : Mr. S. Deb Ray,  
Mrs. A. Bhattacharjee,  
(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 2<sup>nd</sup> 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 2<sup>nd</sup> wife. The relevant part of the order relied on by the applicant is as under:

Form No.

Rousanara Bibi

Case No. **OA – 563 of 2023**

Vs.  
THE STATE OF WEST BENGAL & ORS.

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*“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.”*

Mr. Raziuddin prays for liberty to file a copy of the Tribunal’s order in O.A. 97 of 2013 upheld by the Hon’ble High Court on the next date.

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

**ORDER SHEET**

Form No.

**Rousanara Bibi**

Case No. **OA – 563 of 2023**

**Vs.**

**THE STATE OF WEST BENGAL & ORS.**

*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.”*

Submission is that by contracting the 2<sup>nd</sup> marriage with the applicant, the deceased employee had violated this Rule. And since the 2<sup>nd</sup> marriage was not in conformity with the Rules, therefore, her claim for family pension is not admissible.

Both the sides have preferred an adjournment today so that on the next date of hearing, relevant judgements and orders of Hon’ble Supreme and High Court will be presented on their respective behalves.

Let the matter appear on 07.03.2024 under the heading ‘Hearing’.

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

A.K.P