

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 – 710 of 2022

Smt. Sumita Murmu (Hembram) - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order <u>7</u> 04.04.2024	For the Applicant	: Mr. G.P. Banerjee, Mr. R.K. Mondal, Advocates
	For the Respondents	: Mrs. S. Agarwal, Advocate
	For the Pr. A.G. (A & E), West Bengal	: Mr. B. Mitra, (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 23rd 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 applicant has prayed for setting aside the compliance report filed by the Principal Accountant General (A & E). In terms of the direction of this Tribunal in O.A. 656 of 2019 and CCP 22 of 2021, Principal Accountant General (A & E) passed the reasoned order. The mother of this applicant, Nirmala Hembram had died while in service working as a Health Assistant under Block Medical Officer of Health, Nalhati – I, Block Health Primary Centre, Birbhum on 24th May, 2011. The primary issue in this application and the earlier application revolves around the question of whether the applicant Sumita Murmu and her father Jogesh Chandra Murmu are entitled to receive the death benefits arising out of Nirmala's death. While examining the records for such claim, the respondent authorities found the following two issues which have come before this Tribunal for adjudication,

- (i) Whether the marriage of Jogesh Chandra Murmu with Nirmala Hembram subsistence of the first marriage valid or invalid.
- (ii) Whether the applicant Sumita's marriage with Thomas Hansdak occurred before or after the death of Nirmala Hembram on 24.05.2011.

Although the reasoned order passed by the Principal Accountant General (A & E)

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covered all aspects of this matter but a clear conclusion could not be arrived due to lack of sufficient documents. However, the main issue of considering the entitlement of the applicant and her father was left for decision by the respondent authorities that is Block Medical Officer of Health, Nalhati after observing of relevant rules in this regard.

After hearing the submissions and examining the records, the Tribunal finds four issues involved in the instant case, which are :-

First issue is whether the marriage between Jogesh Chondra Murmu and Late Nirmala Hembrom is a legally valid marriage?

Second issue is if the marriage between Jogesh Chandra Murmu and Late Nirmala Hembrom is not a valid marriage, then whether the applicant Smt. Sumita Murmu (Hembram) being the daughter is the only legal heir to Late Nirmala Murmu.

Third issue is whether both Smt. Sumita Murmu (Hembram) and Late Nirmala Hembrom are practicing Hindu or Christian?

Fourth issue is whether Smt. Sumita Murmu got married before or after the death of Late Nirmala Hembrom being the deceased Government employee.

Now to answer the first issue, it is noted that, in the said Original Application the applicant clearly states that Jogesh Chandra Murmu contracted second marriage with her mother namely, late Nirmala Hembrom (the deceased government employee) during subsistence of the first marriage. The said factual position is also made clear by the respondents at page no. 19 of the said Original Application, wherein in the BMOH, Nalhati, BPHC, Birbhum being the respondent no. 4 in no uncertain terms states that Jogesh Chandra Murmu contracted 2nd marriage with Late Nirmala Hembrom.

It is also to be noted that, the statement made in paragraph 4 (iii) in the Original Application by the applicant to the extent that her father contracted second marriage with her mother, namely Late Nirmala Hembrom is not controverted by the respondents

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and as such assumption is that the statement made in Paragraph 4 (iii) is said to be true.

It is not clear with regard to the practicing faith of Jogesh Chandra Murmu. There is also some discrepancies with regard practicing faith of to both Late Nirmala Hembrom and the applicant Sumita Murmu (Hembram). As there are contradiction in page nos. 50 and 51 of the Original Application wherein the Chairman Nalhati Municipality declares that both Late Nirmala Hembrom and Sumita Murmu (Hembram) are practicing Christian since their birth in one hand and on the other hand at page no. 55 of the Original Application the applicant swear in an Affidavit before the 1st Class Judicial Magistrate, wherein she identifies herself as Hindu. Not only that, the Verification filed with the present Original Application at page no. 13 as well as Affidavit filed in the Contempt Application being CCP No. 22 of 2021 at page 46 no. and the Affidavit filed in connection with the Supplementary Application to the Contempt Application at page no. 68 of the instant Original Application, she identifies herself as Hindu.

Be that as it may, if I assume that both Jogesh Chandra Murmu and Late Nirmala Hembrom were practicing Christian then as per Section 4 and Section 60 of the Indian Christian Marriage Act 1872, the 2nd marriage contracted between Jogesh Chandra Murmu and Nirmala Hembrom is void in the eye of law, Section 60 of the Indian Christian Marriage act is re-produced below:-

Section 4. Marriages to be solemnized according to Act.—Every marriage between persons, one or both of whom is [or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section, and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

Section 60. On what conditions marriages of [Indian Christians] may be certified. – Every marriage between [Indian Christians] applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise :-

- (1) the age of the man intending to be a married [shall not be under twenty-one years], and the age of the woman intending to be married [shall not be under 5 [eighteen years]];

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- (2) neither of the persons intending to be married shall have a wife or husband still living;
- (3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—“I call upon these persons here present to witness that, I, A.B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife [or husband]” or words to the like effect;

Now, if, both Jogesh Chandra Murmu and Late Nirmala Hembram were practicing Hindu then also Section 5 read with Section 11 of the Hindu Marriage Act, 1955 makes the same void. Both Section 5 and Section 11 of the Hindu Marriage Act, 1955 are reproduced below:-

Section 5. Conditions for a Hindu marriage. – A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled namely –

- (i) neither party has a spouse living at the time of marriage;
- (ii) at the time of the marriage, neither party – (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (c) has been subject to recurrent attacks of insanity,
- (iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

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Section 11. Void marriages – Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

Now, if, either one of them is a practicing Hindu and other practicing Christian then, the marriage has to be solemnized under the Provision of Special Marriage Act, 1954. Section 4 read with Section 24 of the special Marriage Act, 1954 makes the same void. Both Section 4 and Section 24 of the Special Marriage Act, 1955 are reproduced below:-

Section 4. Conditions relating to solemnization of special marriages. – Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:-

- (a) neither party has a spouse living;
- (b) neither party – (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children, or (iii) has been subject to recurrent attacks of insanity
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;
- (d) the parties are not within the degrees of prohibited relationship. Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized notwithstanding that they are within the degrees of prohibited relationship; and

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- (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends].

Explanation – In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family. Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied –

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.

Section 24. Void marriages. – (1) Any marriage solemnized under this Act shall be null and void [and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—

- (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or
- (ii) the respondent was important at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration

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was in contravention of any of the conditions specified in clauses (a) to (e) of section 15;

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

So, in every possible way the second marriage that took place between Jogesh Chandra Murmu and Late Nirmala Hembram is void marriage and as such, the claim of Jogesh Chandra Murmu as legally married husband is not tenable in the eye of law.

Now to answer the second issue, as explained herein above the marriage between Jogesh Chandra Murmu and Late Nirmala Hembram is void marriage, but offspring arising out of such marriage are legitimate child as pronounced by the Hon'ble Supreme Court of India and the issue is no more res integra. And as such the applicant is an only lawful heir of Late Nirmala Hembram.

Now to answer the third issue, it is seen from the instant Original Application that, the faith of the applicant is questionable as in page nos. 50 and 51 of the Original Application wherein the Chairman Nalhati Municipality declares that both Late Nirmala Hembram and Sumita Murmu (Hembram) are practicing Christian since their birth in one hand and on the other hand at page no. 55 of the Original application the applicant swear in an Affidavit before the 1st Class Judicial Magistrate, wherein she identifies herself as Hindu. Not only that, the Verification filed with the present Original Application at page no. 13 as well as Affidavit filed in the Contempt Application being CCP No. 22 of 2021 at page no. 46 and the Affidavit filed in connection with the Supplementary Application to the Contempt Application at page no. 68 of the instant Original Application, she identifies herself as Hindu.

But, the faith of the applicant has little or no value in the instant case, as the claim of the applicant is governed by West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 with regard to Death Gratuity. General Provident Fund (West Bengal Services) Rules with regard to GPF amount. In terms of Rule 168(2) of the WBSR Part – 1 reads with finance department Order No. 4625-F dated 26/5/1999 with regard to

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Leave Salary and West Bengal State Government Employees' Group-insurance-cum-Saving Scheme, 1987 with regard to G.I.S.

Now coming to the fourth issue, this is the very vital issue, which is to be determined by me in the instant case for grant of death benefits to the applicant, being the only lawful legal heir of the deceased government employee namely late Nirmala Hembram. The office of the Principal Accountant General (A & E) rightly observed in their compliance report regarding the claim of the applicant. So, the question of quashing the compliance report is would be absolutely inappropriate given the complication involved in the present case. It is to be noted that, the fourth issue is of vital importance. In deciding the entire claim of the applicant. In the forgoing paragraphs, while deciding the first issue, it is my observation that, the marriage between Jogesh Chandra Murmu and Late Nirmala Hembram is a void marriage, accordingly, Jogesh Chandra Murmu is not entitled to receive any death benefit of Late Nirmala Hembram as a member of the family as defined under any Acts of Rules, and as there is no dispute with regard to the applicant being the daughter of Late Nirmala Hembram, she is entitled to be the only legal heir of the deceased government employee.

Now the only question that remains to be decided that, whether or not the applicant was married at the time of death of her mother, the deceased government employee, namely late Nirmala Hembram. In paragraph 4, (xiii) of the Original Application the applicant states that, her marriage took place with Thomas Hansdak on 18.07.2011, the same is corroborated from page no. 72 of the instant Original Application, wherein the 'Diocese of Dumka' certifies that the marriage between Sumita Murmu and Thomal Hansdak took place on 18.07.2011. It is to be noted that, as these are not controverted by the respondents the assumption is the document as appearing at page no. 72 and the statements made in paragraph 4 (xiii) are said to be true. It is needless to mention herein that late Nirmala Hembram died on 24.05.2011, then corollary would be at the time of death of late Nirmala Hembram, the applicant, Smt Sumita Murmu (Hembram) was unmarried.

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In the above mentioned facts and circumstances, it is decided that, the applicant being the only legal heir and also of the fact was unmarried at the time of death of late Nirmala Hembrom is entitled to all the death benefits under the rules, as she fulfils the criteria of being the only legal heir and member of late Nirmala Hembrom's family.

Accordingly, this application is disposed of.

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

A.K.P