

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-167 of 2023

Marjina Bibi. -- **VERSUS** – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant : None.

For the State Respondents : Mr. M. N. Roy,
Learned counsel.

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21.03.2025

For the Principal Accountant : Mr. B. Mitra,
General (A&E), 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 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The applicant is filed this application praying for a direction to the respondent authorities to pay her half share of the family pension vide P.P.O. No. 111438060. Marjina Bibi, the applicant has filed this application claiming to be the wife of the deceased employee, Abul Kashem who had served as a Special Inspector under Kolkata Police. The person superannuated on 31.10.2014 and died on 11.12.2020 leaving behind Abeda Bibi and Marjina Bibi as surviving widows. The applicant does admit that she is the second wife and her marriage solemnised under Islamic Law on 05.10.1993. Alamgir Hossain and Anowar Hossain are the two children born of such marriage. Further, the applicant also informs that such marriage with Abul Kashem was with the consent of the first wife, Abeda Bibi. Although, she is legally entitled to receive half share of the family pension but only Abeda Bibi is receiving the full pension.

In support of her claim to be the wife of the deceased employee, Abul Kashem. The applicant has annexed copy of 'NIKAHNAMA' bearing no. 1534 dated 05.10.1993. Also, it was in this application is a copy of affidavit affirmed before the Court of the Learned Judicial Magistrate, 1st Class, Alipur in which the deceased husband Abul Kashem dated

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27.07.2015 has expressed his wish that the family pension be divided half of the pension be sanctioned in favour of his second wife, Marjina Bibi. Appearing at Part – II of the P.P.O. No. 111438060 for pension of the deceased employee, it is the name of Abeda Bibi has been recorded for 100% share in the event of death of the employee.

From the submissions of the learned counsels and the records in this application, the Tribunal has observed that it is not in dispute this applicant Marjina Bibi is the second wife of the deceased employee, Abul Kashem. The applicant has herself admitted of this fact which had not been controverted and disputed by the Abeda Bibi the first wife and recipient of 100% family pension.

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.

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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 24th 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

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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.

The Hon’ble High Court passed an order 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 25th 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 2nd wife of the deceased employee under Mohammadan Law and being the 2nd wife claimed share of family pension along with the respondent No. 7.

Since the 2nd 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 2nd wife.

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

Being the 2nd 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 2nd wife of the deceased employee can get 50% of the family pension.

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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 1st wife or from the respondent authorities.”

In view of the above findings, the Tribunal directs the respondent no. 2, the Deputy Commissioner of Police, Reserve Force to divide the family pension amongst the two widows, Abeda Bibi and Marjina Bibi in equal shares. Revised proposal for sanction of such family pension equally amongst the two widows be submitted before the Principal Accountant General (A&E), West Bengal within a period of three months from the date of communication of this order.

With the above direction, this application is disposed of.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.