

**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 268 of 2024**

**Sonehar Bibi Khan -- VERSUS -- The State of West Bengal & Others**

Serial No. and Date of order	For the Applicant	: None.
	For the State Respondents	: Mrs. S. Agarwal, Advocate.
<u>04</u> 10.01.2025	For the Principal Accountant (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 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The applicant has prayed for a direction to the respondent authority to sanction and release her family pension and other retiral benefits with arrears for being the wife of the deceased employee. The applicant tells in this application that her husband, Md. Farid Uddin Khan was a Khalasi of Salt Lake Reclamation Division under the Urban Development and Municipal Affairs.

From the submissions of the learned counsels and the statements in this application, it is understood that the deceased employee, besides the applicant as his wife, had also married one Nurjahan Bibi as per Mohammedan Law. The husband of the applicant, Md. Farid Uddin Khan died on 19.10.2014. The name of the applicant Sonehar Bibi Khan appears in the EPIC Electoral Roll and Aadhaar Card as wife of Md. Farid Uddin Khan. Copies of this identity proof are enclosed in this application. To ascertain the legal heirs of the deceased employee, the Executive Engineer, Bidhannagar Municipal Services Division had requested the District Magistrate, Howrah to issue a Legal Heir Certificate of the deceased employee, Md. Farid Uddin Khan. The applicant had furnished her prayer before the respondent authorities for sanction of family pension in her favour. Similarly, the other person, Nurjahan Bibi, being also the wife had also applied for sanction of family pension in her favour. From a statement

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by the applicant in her application, it is also understood that the immovable property of the deceased employee has been divided among the two wives equally. Copies of the documents enclosed in this application shows a Succession Certificate has been issued in favour of Nurjahan Bibi as wife of deceased employee by the Block Development Officer, Namkhana, South 24-Parganas dated 01.02.2024. Similarly by Memo. No. 1440 dated 02.08.2024, the District Magistrate & Collector, Howrah has communicated to the Executive Engineer, determination on legal heir of late Md. Farid Uddin Khan. The name of the applicant Sonehar Bibi Khan is shown as wife of the deceased employee.

From the submissions and the records, it is clear and an accepted fact that both Sonehar Bibi Khan and Nurjahan Bibi were the wives of the deceased employee, Md. Farid Uddin Khan and are now the widows. The Sr. Accounts Officer / Pen.III addressed to Executive Engineer, Bidhannagar Municipal Services Division by Memo. No. 411656 dated 02.08.2023 had observed that the second wife of any Government employee is not eligible for any pensionary benefits if such marriage was solemnised in the lifetime of the first wife in terms of Rule 5(4) of WBS(DRO) Rules, 1980. The Memo. also requested the Executive Engineer to re-examine in the light of their observation.

After examining the documents and the pleadings of the learned counsels, the Tribunal makes the following observations :-

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

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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 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

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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 the above observation, the Tribunal directs the Respondent No. 4, the Executive Engineer, being the Pension Sanction

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Authority to pass an order and to initiate the process of sanctioning family pension and other death benefits in equal share to both the wives, namely Sonehar Bibi Khan and Nurjahan Bibi within three months from the date of communication of this order.

The application is disposed of.

SAYEED AHMED BABA  
Officiating Chairperson & Member (A)

S.M.