

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA 464 OF 2024

SK. MAHABUB HOSSAIN & OTHERS - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Sk. Rejaul Alam, Learned Advocate
	For the Respondents	:	Mr. Manujendra Narayan Roy, Learned Advocate
<u>2</u> 06.03.2025	For the Principal Accountant General (A&E), West Bengal	:	Mr. Biswanath 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 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to the respondent authorities to release family pension as per reasoned order dated 20.05.2024 by setting aside the reasoned order dated 19.07.2024 passed by the Assistant Director of Agriculture (Admn.), Tamluk Sub-Division.

The deceased ex-employee, Sk. Mahammad Imran, a Gram Sevak under the Assistant Director of Agriculture, Tamluk superannuated on 31.12.1977. Majeda Bibi, the 1st wife, being issueless, had died on 19.12.2010. The applicant, Morshuda Begam, 2nd wife made an application before the authority on 15.06.2011 praying for family pension and other benefits in her favour. In terms of the Tribunal's order dated 17.08.2018 in O.A. No.294 of 2018, the authority passed a reasoned order dated 20.05.2024. By passing another reasoned order dated 19.07.2024, the authority rejected the prayer of family pension of the applicant and being aggrieved, the applicant filed this application.

From a copy of memo No.1491 dated 26.12.2023, which is a legal heirs certificate issued by the District Magistrate & Collector, Purba Medinipur, it is evident that the 1st wife of the deceased employee had died on 19.12.2010 without any child. This legal heirs certificate also certifies that (a) Sk. Mahabub Hossain, son, (b) Sk. Mosarof Hossain, son and (c) Hurun Nesha Bibi, daughter are the children of Morshuda Begam, since deceased and Sk. Mahammad Imran, the ex-employee.

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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.

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."

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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.

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, the Tribunal directs the respondent No.4, the Additional Director of Agriculture (Admn.) to propose the arrear family pension for the period from 20.12.2010 to 02.10.2024 to the legal heirs of the deceased employee, Sk. Mahammad Imran, namely, (a) Sk. Mahabub Hossain, son, (b) Sk. Mosarof Hossain, son and (c) Hurun Nesha Bibi, daughter in equal shares before the respondent No.7, the Principal Accountant General (A&E), West Bengal within a period of three months from the date of communication of this order. The reasoned order dated 19.07.2024 is set aside as it is not tenable in the eyes of law.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.