

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman

The Hon'ble Sayeed Ahmed Baba, Administrative Member

Case No. –OA 594 of 2019

NAZIMA BIBI – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicants : Mr. Partha Sarathi Deb Barman,
and Mr. Srikanta Datta,
Date of Mr. Srikanta Datta,
order Advocates

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20.07.2022 For the Respondents : Mr. Saurav Bhattacharjee,
Advocate

In this application, Nazima Bibi, the applicant, has prayed for certain reliefs, the relevant portion of which is as under:

“a) A specific direction upon the respondents to sanction family pension of the applicant and release the pensionary benefits in favour of the applicant along with arrear immediately after setting aside the reasoned order dated 17th January, 2019 passed by the respondent No.2”

It appears from the facts as stated in the application that the husband of the applicant, Majibur Rahaman, was Head Constable (Police) and had superannuated from Barasat Police Station, North 24-Parganas on 1st July, 1993. After retirement, Pension Payment Order was issued on 19th May, 1998 in favour of the husband of the applicant in terms of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 and had enjoyed pensionary benefits till his death on 22nd June, 2015. It has been stated that Majibur Rahaman at first had married Samsunneher Bibi, who had expired on 3rd May, 2004. There was no issue out of the first marriage. It appears on 17th March, 1977, Majibur Rahaman had married the applicant, which was registered on 15th September, 2007 as evident from the certificate issued, being annexure 'D' to the application. It is submitted that thereafter, the name of the applicant was incorporated in the voter identity card, ration card and in the Aadhar card, issued by the authorities, wherein the name of the husband was mentioned as Majibur Rahaman.

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Out of the second marriage, one daughter and three sons were born, who are proforma respondent nos. 5 to 8.

Submission is after the death of Majibur Rahaman though the applicant had filed a representation on 13th October, 2015, praying for family pension and as no step was taken, she had filed an application, being O.A. 72 of 2016 before the Tribunal which was disposed of on 13th July, 2018 directing the Superintendent of Police, North 24-Parganas, the respondent no.2 to take a decision regarding entitlement of the applicant to receive family pension. Pursuant to the said order, the respondent no.2 has passed an order on 17th January, 2019 which is under challenge in the instant application.

Mr. Partha Sarathi Deb Barman, learned advocate for the applicant submits that the order under challenge, is an example of non-application of mind by the said respondent since therein it has been mentioned that the marriage was solemnised on 15th September, 2007, whereas from a copy of entry to Register regarding registration of marriage, it is evident that marriage was solemnised on 7th March, 1977. Therefore, as the finding is contrary to the records preserved by the government authorities, the said order dated 17th January, 2019 be set aside and appropriate order be passed.

Mr. Saurav Bhattacharjee, learned advocate appearing on behalf of the State respondents submits that since the marriage was solemnised on 7th March, 1977 when the applicant was in service and during the subsistence of the first marriage, neither any entry was made in the service book nor any intimation was given to the Department and as the Department has come to learn about the second marriage after the death of the husband of the applicant, no order may be passed.

In reply it is submitted on behalf of the applicant that though it is not known whether the second marriage was intimated by her husband to the respondent authorities, however, the second marriage is permissible under the Shriah law. Further as the respondents in spite of repeated directions have not filed reply, the matter may be disposed of on the basis of record.

In order to appreciate the issue it is appropriate to set out the relevant portion of

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the order under challenge which is as under:

“It appears from the Service Book of Late OHC/155 Mujibur Rahaman that he was legally married with one Begam Somsunn Nehar and here name was recorded in the Service Book of deceased Mujibur Rahaman. The OHC/ Mujibur Rahaman (deceased) was appointed as Constable in West Bengal Police on 08.07.1958 and his date of birth was recorded in the Service Book as 22.06.1935, accordingly, on attaining the age of 58 years he was retired from service on superannuation on and from 30.06.1993, no other wedlock was entered in his Service Book.

From the documents, submitted by the petitioner and/or authorized person regarding proof of her marriage with the said deceased Mujibur Rahaman, it appears that the said document was affirmed by the Notary Public, no seal and place were mentioned, only a date i.e. 07.03.1977 was written in the said India Non Judicial Stamp at Rs.10/- and it is further appears that the petitioner submitted a Marriage Register Certificate being Form No. 1601, Book – I U/s 12, 15 OR-22, Govt. of West Bengal, wherefrom it is seen that the said marriage was solemnized in the year 2007 i.e. 15.09.2007 after the death of Begam Somsunn Nehar in the year 2004 who was the legally married wife of deceased Mujibur Rahaman. So, these documents are very much suspicious in the eye of law. Moreover, the said Late Mujibur Rahaman during his life time had never applied for before my office to incorporate the

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name of his 2nd wife in his service records as nominee.

From the above facts and circumstances, it is crystal clear that the said documents those are void abinitio and illegal in the eye of law and accordingly, the petitioner is not entitled to get any family pension along with arrears of family pension of said deceased OHC / 155 Mujibur Rahaman as per Rules particularly in existence of the original marriage of the said deceased with Begam Somsunn Nehar.

With these, I dispose of the petition of the petitioner in terms of the Order dated 13.07.2018 in O.A. No. 722 of 2016.”

It is evident that while passing the order, the Senior Superintendent of Police (Co-Ord.), North 24-Parganas & Superintendent of Police, Barasat Police District, North 24-Parganas, the respondent no.2 did not at all consider the entries in the register regarding marriage, being Annexure ‘D’ to the application, wherein it has been mentioned that the marriage between the applicant and Majibur Rahaman, since deceased, was solemnised on 7th March, 1977 and it was subsequently registered on 15th September, 2007. However, it may not be out of place to mention that the marriage was registered after the death of the first wife. Moreover the finding that the document, being annexure ‘D’ to the application “*is very much suspicious in the eye of law*” is not tenable as it is a copy of the record of the government. Moreover as in spite of the orders since 3rd March, 2020, no reply has been filed by the State respondents, and thus the statements made in the application have not been controverted by the State respondents, the statements in the original application are deemed to have been accepted by the State respondents. Therefore, the order dated 17th January, 2019 is set aside and quashed. The application is allowed. Accordingly, the Superintendent of Police, Barasat Police District, North 24-Parganas, the respondent no.2 is directed to consider the matter afresh in the light of the entries

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SCN. made in the marriage register, being annexure 'D' to the application and shall pass a reasoned order within eight weeks from the date of furnishing a copy of this order downloaded from the website of the Tribunal, after giving an opportunity of hearing to the applicant and the proforma respondent nos. 5 to 8, after referring to the relevant rules in the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and after perusing the original documents including annexure 'D' to the application and after verifying the records.

(SAYEED AHMED BABA)
MEMBER (A)

(SOUMITRA PAL)
CHAIRMAN

WEST BENGAL ADMINISTRATIVE TRIBUNAL