

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – OA 989 OF 2018

Monalisa Ghosh vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">02 <hr/>14.02.2019</p>	<p><i>For the Applicant : Mr. T.D. Maity, Mr. S. Bala, Learned Advocates.</i></p> <p><i>For the State Respondents : Mr. S. N. Ray, Learned Advocate.</i></p> <p><i>For A.G.(A&E), W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p style="text-align: center;"><i>Affidavit of service filed on behalf of the applicant today is kept on record.</i></p> <p style="text-align: center;"><i>The applicant has prayed for direction upon the respondents to release family pension in favour of the applicant after cancellation of order dated November 30, 2017 issued by Deputy Commissioner of Excise, Special Section, Government of West Bengal, by which prayer of the applicant for grant of family pension was rejected.</i></p> <p style="text-align: center;"><i>It appears from the materials on record, that one Tushar Kanti Ghosh, Excise Constable died on harness on February 14, 2016, though his normal date of superannuation was March 02, 2023. Admittedly, one Sandhya Ghosh was married to Tushar Kanti Ghosh and her name was incorporated in the relevant column of Form of nomination for death gratuity submitted by Tushar Kanti Ghosh on November 20, 1996. The further</i></p>	

ORDER SHEET

Monalisa Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 989 OF 2018**

admitted position is that Sandhya Ghosh, the first wife of Tushar Kanti Ghosh died on May 13, 2013 living behind her son Tanmoy Ghosh born from the wedlock between Sandhya Ghosh and Tushar Kanti Ghosh. The present applicant Monalisa Ghosh has claimed family pension on the ground that she was married to the deceased Tushar Kanti Ghosh on November 16, 2013 and affidavit to such an effect was jointly affirmed by Monalisa Ghosh and her deceased husband and submitted in the office record. The respondent no. 2, Deputy Commissioner of Excise, Special Section, Government of West Bengal did not accept the date of marriage of the applicant Monalisa Ghosh with Tushar Kanti Ghosh on November 16, 2013 on the ground that there was glaring evidence to establish the marriage between Monalisa Ghosh and Tushar Kanti Ghosh on 15th Agrahayan, 1418 B.S corresponding to November 29, 2011, when the first wife Sandhya Ghosh was alive.

The issue for consideration of the Bench is whether the applicant Monalisa Ghosh is entitled to get family pension as legally married wife of the deceased Tushar Kanti Ghosh. There is no dispute that the applicant Monalisa Ghosh filed a proceeding under Section 125 of the Code of criminal procedure (Misc. case no. 372 of 2012) before the court of Learned Judicial Magistrate, (First Class), 2nd Court, Uluberia, Howrah. The said maintenance proceeding was disposed of by Learned

ORDER SHEET

Monalisa Ghosh

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 989 OF 2018**

Magistrate by delivery of judgment on January 07, 2015. On consideration of the said judgment passed in Misc. case no. 372 of 2012, we find that the applicant Monalisa Ghosh has categorically stated in her pleading in the maintenance proceeding that her marriage with Tushar Kanti Ghosh was solemnised on 15th day of Agrahayan, 1418 B.S. as per Hindu Rites and Religion. The Bengali calendar date of 15th day of Agrahayan, 1418 B.S. is corresponding to November 29, 2011 as per English calendar. The maintenance proceeding was started by the applicant Monalisa Ghosh against her husband Tushar Kanti Ghosh in the year 2012 when the first wife Sandhya Ghosh was alive. The fact of submission of an affidavit declaring the date of marriage of the applicant Monalisa Ghosh with Tushar Kanti Ghosh on November 16, 2013 (i.e. after the date of death of the first wife Sandhya Ghosh on May 13, 2013) is a mere ploy to wriggle out of the clutches of void marriage which was solemnized during the lifetime of the first wife of Tushar Kanti Ghosh. Since the applicant Monalisa Ghosh claimed maintenance against her deceased husband Tushar Kanti Ghosh during the life time of the first wife Sandhya Ghosh by specifically pleading the fact of her marriage with Tushar Kanti Ghosh on Agrahayan 15 1418 B.S. corresponding to November 29, 2011, we are constrained to hold that the claim of the applicant Monalisa Ghosh about her

ORDER SHEET

Monalisa Ghosh

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 989 OF 2018**

marriage with Tushar Kanti Ghosh on November 16, 2013 is contrary to the earlier statement of the applicant Monalisa Ghosh before Learned Judicial Magistrate in the Maintenance proceeding of 2012. So, we are unable to give any credence to the present statement of the applicant Monalisa Ghosh that her marriage with Tushar Kanti Ghosh was solemnized on November 16, 2013. The irresistible inference of our above observation is that the applicant Monalisa Ghosh was married to the deceased Tushar Kanti Ghosh during the life time of the first wife of Tushar Kanti Ghosh namely Sandhya Ghosh. Since the marriage of the applicant Monalisa Ghosh with Tushar Kanti Ghosh took place during the life time of the first wife of Tushar Kanti Ghosh and since there is nothing on record to indicate that the marital tie between Tushar Kanti Ghosh and his first wife Sandhya Ghosh was snapped by decree of divorce, we would like to hold that this marriage between Monalisa Ghosh with Tushar Kanti Ghosh is void as per provisions of section 5(i) read with section 11 of the Hindu Marriage Act, 1955.

The applicant Monalisa Ghosh is not entitled to get family pension of the deceased Tushar Kanti Ghosh as her marriage with Tushar Kanti Ghosh was void ab initio. We do not find any illegality or arbitrariness in passing the reasoned order by the respondent no.2, Deputy Commissioner of Excise, Special Section, Government of

ORDER SHEET

Monalisa Ghosh

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 989 OF 2018**

West Bengal on November 30, 2017 which is legal, valid and binding on the applicant Monalisa Ghosh. The natural corollary of our above observation is that the applicant is not entitled to get any relief in the present application. The original applicant is, thus, dismissed.

The Urgent Xerox certified copy of the order, if applied for, will be given to the parties on priority basis, on compliance of all necessary formalities.

H.S

**(S.K.DAS)
Member (A)**

**(R.K.BAG)
Member (J)**

ORDER SHEET

Monalisa Ghosh

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 989 OF 2018**