

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das**

Case No – OA - 709 of 2019

Kiran Bala Mahata 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>2</p> <hr/> <p>18.11.2019</p>	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the State Respondents : None.</p> <p>For A.G. (A & E), W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for release of family pension of her deceased husband w.e.f. January 20, 2018 after setting aside the order passed by the Divisional Forest Officer, Silviculture (South) Division, Midnapore on March 28, 2019.</p> <p>One Haripada Mahata was a permanent Group D employee in the office of District Forest Officer, Paschim Midnapore. He retired from service on March 31, 2001 and received pension. He died on January 19, 2018. The applicant Kiran Bala Mahata claims to be the first wife of the deceased Haripada Mahata. On the other hand, respondent no. 7, Pramila Mahata also claims to be the wife of the deceased Haripada Mahata. Previously, the applicant moved this Tribunal by filing OA 535 of 2018 which was disposed of on February 1, 2019 by giving direction to the Divisional Forest Officer, Jhargram Division to disburse the family pension in favour of either the applicant or the respondent no. 7, who is eligible to get family pension in terms of the provisions of the rules by passing reasoned order within specific period of time. Accordingly, the respondent</p>	

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	<p>no. 4, Divisional Forest Officer, Silviculture (South) Division, Midnapore passed a reasoned order on March 28, 2019, whereby he decided to divide the amount of family pension in equal half share between the applicant and the respondent no. 7. The said reasoned order dated March 28, 2019 is under challenge in the present application.</p> <p>We have heard Mrs. Mitra, Learned Counsel for the applicant. None appears either on behalf of the State respondents or on behalf of the private respondent no. 7 in spite of service of notice as reflected from the affidavit of service filed on behalf of the applicant. Mr. Mitra, the Departmental Representative of the respondent A.G., West Bengal submits that PPO has been issued in favour of Haripada Mahata on March 14, 2001 by the pension sanctioning authority.</p> <p>There is no dispute that the PPO was issued in favour of the deceased employee Haripada Mahata on March 14, 2001 wherein the name of the respondent no. 7 Pramila Mahata was incorporated as wife for grant of family pension, in the event of death of the pension holder Haripada Mahata. The applicant Kiran Bala Mahata instituted MAT Suit No. 83 of 2001 against her husband Haripada Mahata and the private respondent Pramila Mahata before the Court of Learned Additional District Judge, 3rd Court, Midnapore, praying for declaration that the marriage between Haripada Mahata and Pramila Mahata is void. The said Matrimonial Suit was contested by Haripada Mahata before the</p>	

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	<p>Court of Learned Additional District Judge. Ultimately, on April 4, 2001 the said MAT Suit was decreed in favour of the applicant Kiran Bala Mahata and thereby the marriage between the deceased Haripada Mahata and the respondent no. 7 Pramila Mahata in the year 1972 was declared void in terms of the provisions of Section 11 of the Hindu Marriage Act, 1955. There is nothing on record to indicate that the decree passed by the Learned Additional District Judge in MAT Suit No. 83 of 2001 was challenged before any higher Court of Law and as such the said decree is binding on the deceased Haripada Mahata and the respondent No. 7, Pramila Mahata.</p> <p>The respondent no. 7 is not entitled to get any benefit of service of the deceased Haripada Mahata as her second marriage with Haripada Mahata was declared as void by competent Court of Law.</p> <p>Now, the question for consideration of the Tribunal is whether the impugned reasoned order dated March 28, 2019 is justified under the law. It appears from the reasoned order that the respondent no. 4 has not followed the decree passed in MAT Suit No. 83 of 2001 by Competent Court of Law. The reasons given by the respondent no. 4 for not awarding family pension in favour of the applicant Kiran Bala Mahata is that she reported to the office of the respondent No. 4 claiming to be the wife of the deceased Haripada Mahata only in the month of January, 2001 and that the private respondent no. 7 was declared as the wife by the deceased employee Haripada Mahata himself while he submittd application</p>	

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	<p>for grant of pension and family pension in the event of his death. The division of family pension in equal half share between the two wives of a male Hindu by the respondent no. 4 is not only in violation of the provisions of Hindu Marriage Act, 1955, but also not in accordance with the provisions of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. The marriage of the applicant Kiran Bala Mahata with Haripada took place in the year 1962 and the marriage of the respondent no. 7 Pramila Mahata with Haripada took place in the year 1972 during the subsistence of marital tie between the applicant Kiran Bala Mahata and Haripada and thereby the second marriage between the respondent no. 7 Pramila Mahata and Haripada Mahata was void in terms of the provisions of Section 5 (i) read with Section 11 of the Hindu Marriage Act, 1955. By no stretch of imagination, the second wife of a Hindu male is entitled either to inherit the property of the husband or to claim the benefit of service of the deceased husband. Accordingly, the reasoned order passed by the respondent no. 4 on March 28, 2019 is not justified under the law and as such the reasoned order is liable to be set aside. The logical inference of our above observation is that the applicant Kiran Bala is eligible to receive family pension of her deceased husband Haripada Mahata.</p> <p>In view of our above findings, the impugned order dated March 28, 2019 issued by the respondent no. 4, Divisional Forest Officer, Silviculture (South) Division, Midnapore is hereby quashed. The respondent no. 3, the Divisional Forest Officer, Jhargram</p>	

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Rajib	<p>Division, Jhargram and the respondent No. 4, the Divisional Forest Officer, Silviculture (South) Division, Midnapore are directed to stop payment of family pension in favour of the respondent no. 7 Pramila Mahata immediately. The respondent No. 3, the Divisional Forest Officer, Jhargram Division, Jhargram is directed to take steps for grant of family pension in favour of the applicant Kiran Bala Mahata within a period of eight weeks from the date of communication of the order. The applicant Kiran Bala Mahata is also directed to submit necessary documents before the respondent No. 3 for processing family pension within a period of four weeks from the date of the order.</p> <p>With the above direction, the original application stands disposed of. Let a plain copy of the order be supplied to both parties.</p> <p style="text-align: center;">(Dr. S.K. Das) Member (A)</p> <p style="text-align: center;">(R.K. Bag) Member (J)</p>	

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