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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 642 OF 2006
Cuttack, this the 31st day of August 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

.....
Jamila Khatun, aged about 51 years, w/o late Sk. Usman Alli,
At-Joda, Ward No.6,P.O.Joda, Dist.KeonjharApplicant

Advocate for applicant - Mr.P.C.Acharya

Vrs.

1. Union of India, represented through its Secretary, Department of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecommunication, Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Telecom District Manager, Dhenkanal, At/PO/Dist. Dhenkanal.
4. Telecom District Engineer, Keonjhar, Dist.Keonjhar.
5. Jolekha Khatun, aged about 45 years, w/o late Usman Alli Khan, At-Olavar, P.S.Rajkanika, Dist.Kendrapara

..... Respondents

Advocate for Respondents 1 to 4 : Mr.S.B.Jena, ASC

Advocate for Respondent 5 : M/s P.R.Sutar,
H.S.Deo &
R.K.Sahoo

.....


ORDER
SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who claims to be the second widow of late Sk.Usman Alli, the deceased Government servant, has prayed for the following relief:

- “(i) Let the respondents No.2 to 4 be directed to grant 50% of the family pension to the applicant, and to her children from 17.3.93 along with 50% DCRG amount as per law.
- ii) Let the respondents No.2 to 4 be directed to grant 50% of the gratuity, GPF amount and any other dues of the late Usman Alli Khan to the applicant and any excess payment to the Respondent No.5 be adjusted from her dues to be paid or from her 50% family pension,

OR

Let the respondents be directed to take decision in the matter of Annexure-3 within a specified period,

OR

May pass any other order as this Hon'ble Tribunal deems fit and proper, the requirement for ends of justice demands.”

2. Brief facts of the applicant's case are that she is the second widow of late Sk.Usman Alli who died on 17.3.1993 while in service as Line Inspector under Telecom Department, Joda, Keonjhar, having six children out of their wedlock. Respondent No.5, who is the first widow of the said deceased Government servant, surreptitiously got the retirement benefits including family pension settled in her favour on the basis of a purported succession certificate



Granted by the Civil Judge (Junior Division), Kendrapara. When the applicant's request for grant of family pension and other retirement dues was not acceded to by the Respondent-Department, O.A. No. 185 of 1995 was filed by her before this Tribunal. As the status of the applicant was in dispute and the Tribunal did not have jurisdiction to decide the said disputed question of fact, the Tribunal disposed of the said O.A. by order dated 30.3.1996 (Annexure 1) allowing the applicant's prayer for withdrawal of the O.A. with permission to approach the Tribunal if and when a cause of action arises on a decision being taken by the court of competent jurisdiction in her favour. The applicant thereafter filed a Misc. Case No.305 of 1996 under Section 383 of the Indian Succession Act, 1925 in the Court of the learned Civil Judge (Senior Division), Kendrapara, for revocation of the succession certificate issued in favour of Respondent No.5. The learned Civil Judge, after considering the oral and documentary evidence, came to the conclusion that the said succession certificate was obtained by Respondent No.5 by suppressing the material facts and revoked the same by order dated 2.12.2002. Being aggrieved by the order dated 2.12.2002, Respondent No.5 and her children filed Misc. Appeal No. 27 of 2003 before the learned District Judge, Cuttack. The learned District Judge, by judgment dated 2.4.2005 (Annexure 2) dismissed the said appeal and confirmed the order of the learned Civil Judge. Thereafter the applicant, by her representation dated 6.7.2005 (Annexure 3), moved the Respondent-Department for grant of 50% family pension and other retirement benefits on the basis of the findings arrived at by the learned Civil Judge and District Judge in her favour that she is the



second widow of late Sk.Usman Ali. No heed having been paid to her such representation, the applicant filed this O.A.

3. The Respondent-Department have filed a counter opposing the prayer of the applicant. They have stated that the name of the applicant does not appear in the details of family (Annexure R/1) given by the deceased employee in Form No.3; that family pension was settled in favour of Respondent No.5 on the basis of the succession certificate (Annexure R/2); that there was no official record to show that the applicant was the legally married wife of the deceased employee; and that GPF amount has not been settled in anybody's favour. Besides, the Respondent-Department have also acknowledged the fact of revocation of the succession certification by the learned Civil Judge and confirmation of the same by the same in appeal by the learned District Judge.

4. Respondent No.5 has filed a counter refuting the claim of the applicant. She has stated that her husband, the deceased employee did not mention the name of the applicant as a member of his family before the employer; that although the succession certificate was revoked by the learned Civil Judge and the revocation was confirmed by the learned District Judge, yet Writ Petition © No. 16284 of 2006 filed before the High Court of Orissa against those decisions of the said civil courts is still pending adjudication; that the applicant has not yet been issued with the succession certificate; that mention of the applicant's name by the deceased employee in the G.P.F. nomination paper does not give her a right to claim that she is the second wife of the deceased



employee; and that the Respondent-Department has rightly not considered the applicant's representation (Annexure 3) due to want of succession certificate.

5. The applicant has filed a rejoinder denying the statements made by Respondent No.5 in her counter. The applicant has also sworn and filed an Affidavit on 10.7.2007 stating that W.P. © No. 16284 of 2006 filed by Respondent No. 5 and her children against the decisions of the learned Civil Judge and the learned District Judge was disposed of by the High Court of Orissa by order dated 17.5.2007 permitting the petitioners (Respondent No.5 and others) to withdraw the writ petition.

6. I have heard the learned counsels for the parties and perused the pleadings.

7. After giving my anxious consideration to the pleadings and the rival submissions of the parties, I find that after the death of late Sk. Usman Alli, the deceased Government employee, the Respondent-Department, while examining the matter of settlement of retirement benefits and family pension on the basis of available records, entertained some doubts over the entitlement of the applicant and Respondent No.5 and their status as widows, in as much as the declarations given by the deceased Government employee on 21.9.1962 in Form No.3 (Details of Family) and the nomination in the GPF paper mentioning the present applicant as one of his two wives were contradictory. It is the admitted case of the parties that the names of both the present Respondent No. 5 and applicant were mentioned by the deceased Government servant in the GPF nomination paper as his two wives. The Respondent-Department have



stated that on the basis of the succession certificate granted in favour of private Respondent No.5, the DCRG amount and family pension were settled in her favour.

8. The applicant's case is that she, along with her children born through the deceased Government servant, had filed an application under Section 383 of the Indian Succession Act, which was registered as Misc. Case No. 305 of 1996 before the learned Civil Judge (Senior Division), Kendrapara, for revocation of the succession certificate in favour of private Respondent No.5. The private Respondent No.5 and her children as well as the Respondent-Department were impleaded as opposite parties in the said application. The learned Civil Judge, on an analysis of the oral and documentary evidence, by order dated 2.12.2002, allowed the said application under Section 383 of the Indian Succession Act on contest against the private Respondent No.5 and her children and ex parte against the Respondent-Department, and revoked the said succession certificate. Misc. Appeal No. 27 of 2003 filed by the private Respondent No.5 and her children before the learned District Judge, Cuttack, against the order dated 2.12.2002 passed by the learned Civil Judge revoking the succession certificate, was dismissed by judgment dated 2.4.2005 (Annexure 2). It is her further case that both the learned Civil Judge and the learned District Judge have categorically recorded findings that the applicant is the second wife of the deceased Government servant Sk. Usman Ali and that her children were born through the said Sk. Usman Ali. Thereafter the applicant made representation dated 6.2.2005 (Annexure 3) to the Respondent-Department



claiming 50% family pension, DCRG, etc.. It has been submitted by the learned counsel for the applicant that when the competent civil court has revoked the succession certificate with the clear finding that the applicant is the second wife of the deceased Government servant and when the Respondent-Department have admittedly settled the DCRG, family pension, etc., in favour of private Respondent No.5 solely on the basis of the succession certificate, the Respondent-Department have acted illegally and arbitrarily in not considering and granting the applicant's request for payment of 50% family pension, DCRG, etc., in her favour.

9. The learned counsel appearing for private Respondent No.5, in reply, submitted that private Respondent No.5, along with her children, has challenged the orders of the learned Civil Judge and the learned District Judge in W.P. (C) No. 16284 of 2006 before the High Court of Orissa, Cuttack, and the said Writ Petition being still subjudice, the applicant's status as second wife of the deceased Government servant has not been finally determined and therefore, there is no cause of action for filing the present O.A. which is liable to be rejected. The learned counsel also submitted that mention of the name of the applicant in the GPF nomination paper did not and does not confer on the applicant the status of second wife of the deceased Government servant and on that basis, no direction can be issued to the Respondent-Department to grant any benefits to the applicant.

10. I have carefully considered the rival submissions and perused the judgments passed by the civil courts. It has been clearly found by the learned



Civil Judge as well as the learned District Judge that the applicant is the second widow of late Sk. Usman Alli, relying on both oral and documentary evidence.

The applicant has filed an affidavit on 10.7.2007 in the present O.A. that W.P.

(C) No. 16284 of 2006 has already been disposed of by order dated 17.5.2007

which reads as under:

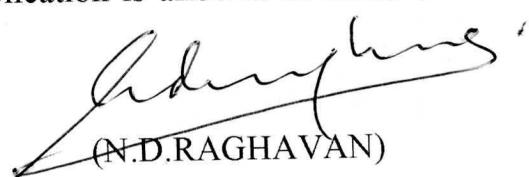
“The application has been filed for conversion of the writ petition to a Civil Revision. The applicant was filed in December 2006. Admittedly the writ application is not maintainable. In view of the same I am not inclined to allow the application. However, Civil Revision is barred by time. The petitioner wants to withdraw the writ petition to file Civil Revision. Prayer is allowed. Writ Petition is disposed of.”

From the above order passed by the High Court, which was quoted by the applicant in her affidavit dated 10.7.2007, it is clear that the writ petition filed by the private Respondent No.5 has already been disposed of. As observed in the said order, Civil Revision, if filed by the private Respondent No.5, will also not be maintainable in as much as the same will be barred by limitation. Be that as it may, the private Respondent No.5’s contention that since the judgments of the civil courts have been assailed in the Writ Petition before the High Court and since the writ petition is still pending, the status of the applicant as the second wife has not been determined has no force because the writ petition has already been disposed of as withdrawn. In this view of the matter, I have no hesitation to hold that in terms of Rule 54 of the CCS (Pension) Rules, 1972, the applicant is entitled to get 50% family pension and DCRG, GPF and other retiral dues, etc., as she is the second widow of late Sk. Usman Alli, the deceased Government servant which has been clearly determined by competent civil courts.



11. The applicant has prayed for a direction to the Respondent-Department to grant 50% of family pension to her from 17.3.1993 and 50% of DCRG and GPF and other dues. She has also prayed for a direction to the Respondent-Department to adjust the amount of family pension and DCRG payable to her from the 50% of GPF amount payable to the private Respondent No.5. The Respondent-Department have stated that family pension was settled in favour of the private Respondent No.5 who has been getting it from 17.3.1993 till now, that the DCRG amount has been paid to the private Respondent No.5 and her son, and that the GPF amount is still lying undisbursed. Now that it has been held that the applicant is entitled to get 50% of family pension and other retiral dues of the deceased Government servant as the second widow of the deceased Government servant, the Respondent-Department have to issue necessary revised Family Pension Payment Order and payment authority with regard to payment of DCRG and GPF amount both in favour of the applicant and the private Respondent No.5 and determine the total dues payable to the applicant. While doing so, the Respondent-Department have to adjust the amount already paid to the private Respondent No.5 in excess of what she is entitled to, from the 50% of the GPF amount payable to her. It is ordered accordingly.

12. In the result, the Original Application is allowed in terms of the above direction. No costs.


(N.D.RAGHAVAN)