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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.529 of 2016

Cuttack this the 12th day of March, 2018

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Baijayanti Mohanty, aged about 45 years, D.o. late Bansidhar Mohanty, W/o. Rajkishore Das, at present residing C/o.Bipin Bihari Mohapatra, Plot No.749/2277, Behind Ramadevi Apartment, Nadikula Sahi, Sikharpur, Nayabazar, Cuttack-753 004

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy
M.K.Rath
J.Pati
N.Panda

-VERSUS-

Union of India represented through:

1. The Secretary, Indian Council of agricultural Research, Krishi Bhawan, New Delhi-110 001.
2. The Director, Central Rice Research institute, At/PO-Bidyadharpur, Dist-Cuttack.
3. The Sr. Administrative Officer, Central Rice Research Institute, At/PO-Bidyadharpur, Dist-Cuttack.
4. The Finance & Accounts Officer, central Rice Research institute, At/PO-Bidyadharpur, Dist-Cuttack.
5. Smt.Jyotsna Rani Mohanty, W/o. late Bansidhar Mohanty, At-Potapokhari Block Square, Nuabazar, Cuttack

...Respondents

By the Advocate(s)-Mr.S.B.Jena
M/s.P.Prusty
P.Ch.Mishra

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the daughter of late Bansidhar Mohanty, who retired as Assistant Administrative Officer in the year 1995



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and died on 18.3.2014. She is the daughter of the 2nd wife of the deceased Government employee. She had got married on 17.1.2000 and by way of Panchayat Faisalanama she was divorced from her husband on 13.4.2010. The applicant claims that she was residing with her father after her divorce. She had also filed a petition under Section 13(b) under Hindu Marriage Act, bearing No.227 of 2016 before the Family Court Cuttack seeking an order of decree of mutual divorce which was still pending at the time of filing of the present O.A. She also claims that her father had authorized payment of his pension in her Bank Account since December, 2014 due to the fact that she and her son were residing with her father, the deceased Government employee. After the death of the father on 18.3.2014, the pension was stopped and she made a representation on 26.2.2015 to the Director, Central Rice Research Institute (Res.No.2) to release the family pension in her favour. She also submitted a reminder on 23.4.2015. She was informed by the letter dated 22.12.2015 (A/4) by the Senior Administrative Officer that as per family declaration submitted by late Bansidhar Mohanty, the deceased Government employee, the first wife Ms.Jyostna Rani Mohanty is eligible to get family pension. Vide another letter dated 18/30.12.2015 issued by the Senior Administrative Officer (A/5) she was informed that Ms.Jyostna Rani Mohanty (Res.No.5) was eligible to get family pension as per rules. The

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applicant has also annexed the PPO in respect of Ms.Jyostna Rani Mohanty authorizing Family Pension along with applicable D.A. Aggrieved by this, the applicant has filed this O.A. praying for the following reliefs:

- i) To pass appropriate orders quashing the impugned orders dated 22.12.2015 in annexure-A4 and 18/30.12.15 in annexure-A/5.
- ii) To pass appropriate orders directing the Respondents-authorities to consider the case of the applicant for release of the share of family pension in her favour within a stipulated period; and
- iii) To pass such further order/orders as are deemed just and proper in the facts and circumstances of the case and allow this OA with costs.

2. The applicant has based her prayer mainly on the ground that the law is well settled that the child from the 2nd wife who is a divorcee is eligible and entitled to pension. Denial of pension to her is illegal and arbitrary. The applicant is a divorcee through a Panchayat Faisalanama and the mutual divorce was pending before the Family Court, Cuttack at the time of filing of the O.A. Respondent No.5 who is the applicant's step mother was living separately even during the life time of her father. Even during the life time of the applicant's father he had authorized pension in her favour, she being a divorcee daughter and suffering from mental disability.

3. The official respondent nos. 2, 3 and 4 in their counter reply filed on 2.2.2017 have contested the claim of the applicant. It is their contention that the deceased employee late

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Bansidhar Mohanty during the course of his employment had submitted the family declaration on 11.3.1992 and as per Form-III submitted by him on 15.10.1994 along with the pension papers, Ms.Jyostna Rani Mohanty, the first wife of late Bansidhar Mohanty is eligible to get the family pension. As per Rule-54 of Family Pension Rules, 1964, the applicant is not entitled to get family pension. The Respondents have no official record about the family status and the ailment of the applicant and about the application for mutual divorce filed by the applicant. However, they have ascertained from the Bank that after the death of her father, the applicant had illegally and fraudulently withdrawn the pension of the deceased employee amounting to Rs.1,55,245/- between 18.2.2014 to November, 2014. The applicant is not entitled to family pension when the first wife of the deceased Government employee is still alive. Hence, the O.A. filed by her deserves to be dismissed.

4. Private Respondent No.5, Ms.Jyostna Rani Mohanty has filed a counter on 15.2.2017. She has submitted that she is in receipt of family pension after the death of her husband late Bansidhar Mohanty on 18.3.2014. During the service of her husband, he had filed the family declaration and the pension papers mentioning Respondent No.5 as his legal wife which has been duly accepted by the concerned authorities. The applicant in the present O.A. is not entitled to get family pension and her marriage with Shri Rajkishore Das still subsists in the absence

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of any legal divorce. She has also not been declared to be of unsound mind suffering from mental disorder by any Court of Law. Respondent No.5 claims that the applicant is still living with her husband as there has been no dissolution of her marriage or divorce in accordance with law and the applicant is physically and mentally sound. The husband of Respondent No.5 had never married a second time in his life time and the question of 2nd marriage does not arise. The applicant is not the daughter of late Bansidhar Mohanty. Respondent No.5 claims that she and her son are the legal heirs of the deceased Bansidhar Mohanty. She also claims that her husband had never authorized his pension in favour of the applicant. Late Bansidhar Mohanty had submitted his family declaration at the time of pension on 11.3.1992 which was accepted by the authorities on 12.3.1992. As per Rule-54 of CCS (Pension) Rules, the applicant is not eligible to get family pension and the same has been informed to her by the Sr. Administrative Officer CRRI(Respondent No.3). The applicant in connivance with her husband is making attempt to fraudulently obtain family pension in her favour.

5. The applicant filed a rejoinder on 30.8.2017 in which she has reiterated that her father had authorized pension in her favour which she was getting through her Savings Bank Account No.10368381925. Her father was staying separately from Smt.Jyostna Rani Mohanty (Res.No.5) who never

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informed the Department about the death of her husband in order to apply for family pension in her favour. The applicant is eligible for the family pension since her marriage with Rajkishore Das has been dissolved since 13.4.2010 through a Panchayat Faisalanama and the mutual divorce petition has also been allowed by the Family Court vide order dated 27.7.2017. She also claims that the legal heir certificate has been issued in her favour by the Tahasildar, Barang dated 10.5.2016. The applicant had been residing with her father since December, 2007.

6. I have heard the learned counsels for both the parties and perused the documents submitted by them. The applicant has filed the Death Certificate of late Bansidhar Mohanty along with the O.A. which mentions the date of his death as 18.3.2014. A legal heir certificate has been issued by the Tahasildar, Barang certifying Smt.Santilata Mohanty as the widow of late Bansidhar Mohanty, Shri Biswakesh Mohanty and Shri Satyajit Mohanty as sons and Baijayanti Mohanty, the applicant as daughter. It is also mentioned that the legal heir certificate was being issued for the purpose of pension. She has also filed the decree from the Judge, Family Court, Cuttack certifying that the marriage solemnized between Smt.Baijayanti Mohanty and Rajkishore Dash stood dissolved by a decree of divorce on mutual consent through the order dated 27.7.2017. The Respondents on the other hand have mentioned that as per the

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declaration for pension, Respondent No.5, Smt.Jyostna Rani Mohanty is entitled to family pension. The PPO has been issued by the Chief Financial Accounts Officer of the CRRI in favour of Jyostna Rani Mohjanty for payment of family pension upon the death of late Bansidhar Mohanty, Ex-Assistant Administrative Officer.

7. It is quite obvious from the records that the deceased Government employee late Bansidhar Mohanty had not brought on record any dissolution of marriage with Smt.Jyostna Rani Mohanty nor there is anything on record to show that the applicant and her mother were nominated for family pension at any point of time. The matter in the present O.A. is therefore a dispute simplicitor between the legally wedded wife Smt.Jyostna Rani Mohanty and the daughter of late Bansidhar Mohanty through Santilata Mohanty, the mother of the applicant. Although the applicant has not adduced any document to show a valid marriage between the deceased Government employee and her mother Smt.Santilata Mohanty, the fact that the Tahasildar, Barang has issued a legal heir certificate in favour of Santilata Mohanty and her children including the applicant is also relevant to the matter under consideration. The Respondents have cited Rule-54 of CCS(Pension) Rules under which pension has been granted to Respondent No.5, Smt.Jyostna Rani Mohanty. Rule-54(6)(i) stipulates that subject to first proviso the period for which

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family pension is payable in case of a widow or a widower is up to the death or remarriage whichever is earlier provided that the family pension shall continue to be payable to a childless widow on re-marriage, if her income from all other sources is less than the amount of minimum family pension under sub-rule(2) of this rule and the dearness relief admissible thereon. The Department of Pension & Pensioners' Welfare, Government of India, deals with the grant of family pension to children from the void or voidable marriage. Paragraphs-20 and (20-A) of O.M. dated 2nd December, 1996 are quoted herein below:

"20. Family pension is admissible also to children from the void or voidable marriage-Attention is invited to provisions contained in Rule 54(8) of CCS (Pension) Rules, 1972 and decisions thereunder on regulation of amount of family pension payable. This Department has been receiving references from Ministries/Departments seeking advice on the question of admissibility of family pension to children of a deceased Government servant/petitioner from a wife whose marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.

2. The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of Law.
3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act States "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born

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before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on a petition under this act”.

4. The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriage when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same. (For revised provisions – See GID 20-A below)

[Gl. Deptt. Of P & P.W., O.M.No.1/16/96, P&PW (F), dated the 2nd December, 1996].

(20-A)

Eligibility of children from a void or voidable marriage for family pension – The undersigned is directed to refer to this Department's O.M.No.1/16/96-P&PW(E) dated 2.12.1996, whereby it was clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from void or voidable marriage when their turn comes in accordance with Rule-54(8). It is mentioned in Para-4 of the O.M. that “it may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same:.

2. The matter has been re-examined in consultation with the Ministry of Law and Justice (Department of Legal Affairs) and Ministry of Finance (Department of Expenditure). It has been decided that in supersession of Para – 4 of the O.M., ibid, dated 2.12.1996, the share of children from illegally wedded wife in the family pension shall be payable to them in the manner given under sub-rule 7© of Rule 54 of

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CCS(Pension) Rules, 1972, along with the legally wedded wife.

It has also been decided that in past cases, no recovery from the previous beneficiary should be made. On receipt of an application from eligible child/children of the deceased Government employee/pensioner born to an ineligible mother, a decision regarding division or otherwise of family pension may be taken by the competent authority after satisfying himself/herself about veracity of facts and entitlement of the applicant(s).

4. As regards pensioners/family pensioners belonging to the Indian Audit and accounts Department, these Orders will be issued after consultation with the Comptroller and Auditor General of India.

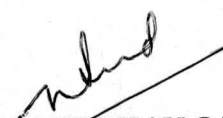
5. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their I.D.No.,530/E.V/2012 dated 23.11.2012.

[G.I. Dept. of Pen. & P.W., O.M.No.1/16/1996 (E) (Vol.II) dated the 27th November, 2012]".

8. In the present case although no certificate of 2nd marriage has been attached by the applicant, the fact that the legal heir certificate has been issued by a competent authority declaring Santilata Mohanty as the widow and the applicant as a daughter is quite relevant. The fact that the first wife Ms.Jyostna Rani Mohanty was not living with the late Bansidhar Mohanty and the applicant's mother had lived with him and has begotten three children out of the relationship cannot be brushed aside. To that extent the provisions as laid down in Para-2 of the O.M. dated 27.11.2012 as quoted above, will be applicable to the case of the applicant. It is a fact that she has also got a decree of divorce from the Family Court is on record. That being so and

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her mother and brother having signed an affidavit that the family pension can be given to her needs to be taken into consideration. Having perused all the records and the provisions of law as laid down by the OMs as quoted in Para-7 above, I am of the opinion that the applicant in the present O.A. is entitled to a share of the family pension of the deceased Government employee. However, considering that pension has already been paid to Ms.Jyostna Rani Mohanty from 2014 after the death of the Government employee, the Respondent No.2 is directed to sanction family pension to the applicant prospectively from the date of passing of this order by splitting the pension equally between the legally wedded wife and the applicant, the divorced daughter of the deceased Government employee Bansidhar Mohanty subject to the condition that such family pension will be made available to them till their death or remarriage whichever is earlier. They are directed to pass necessary orders to this effect within a period of eight weeks from the date of receipt of this order. No costs.


(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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