

GAHC010262272017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5189/2017

PURNIMA MALAKAR @ PURNIMA MALI @ PURNIMA PAUL @ PURNIMA
LAXMI PAUL
W/O. LT. SANJIT MALAKAR @ SANJIT MALI, R/O. VILL. INSTITUTE
COLONY, LUMDING, PO. and P.S. LUMDING, DIST. HOJAI, ASSAM, PIN-
782447.

VERSUS

THE UNION OF INDIA and 11 ORS.
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11, PIN-782447.

2:THE GENERAL MANAGER
N.F. RAILWAY

MALIGAON
GUWAHATI
PIN-781011.

3:THE CHIEF PERSONNEL OFFICER
N.F. RLY.
MALIGAON
GUWAHATI
PIN-781011.

4:THE GENERAL MANAGER P

N.F. RLY.
MALIGAON
GUWAHATI
PIN-781011

5:THE DIVISIONAL SUPERINTENDENT P

N.F. RLY.
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

6:THE DIVISIONAL ACCOUNTS OFFICER

N.F. RLY.
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

7:THE DIVISIONAL RAILWAY MANAGER

N.F.RLY
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

8:THE DIVISIONAL RAILWAY MANAGER P

N.F. RLY.
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

9:R.R.P. SARMA

CHIEF HEALTH INSPECTOR
N.F. RLY.
LUMDING DIVISION
DIST. HOJAI
ASSAM
PIN-782447.

10:MRS. P ROY

DPO-11

LMG
O/O. THE DRM P
N.F. RLY.
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

11:SMTI. SIPPO KHAN @ SIPPO MALAKAR
WIDOW OF LT. SANJIT MALAKAR
EX SFW/2
N.F. RAILWAY
LUMDING
R/O. RELIEF YARD COLONY
LUMDING
P.O. and P.S. LUMDING
DIST. HOJAI
ASSAM
PIN-782447.

12:SMTI. MANJU MALAKAR

W/O. SRI. NARAYAN CHANDRA MALAKAR
R/O. FOREST TILLA
LUMDING
P.O. and P.S. LUMDING
DIST. HOJAI
ASSAM
PIN-782447

Advocate for the Petitioner : MR.A K PURKAYASTHA

Advocate for the Respondent : SC, NF RLY

Linked Case : WP(C)/3400/2017

UNION OF INDIA and 9 ORS.
REP. BY THE GENERAL MANAGER
N.F. RLY.
MALIGAON
GUWAHATI-781011

2: THE GENERAL MANAGER
NF RLY
MALIGAON
GUWAHATI-781011

3: THE GENERAL MANAGER P
N.F. RLY.
MALIGAON
GUWAHATI-781011

4: THE CHIEF PERSONNEL OFFICER
N.F. RAILWAY
MALIGAON
GUWAHATI-781001

5: THE DIVISIONAL SUPERINTENDENT P
N.F. RLY.
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447

6: DIVISIONAL ACCOUNTS OFFICER
N.F. RLY LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSM
PIN-782447

7: THE DIVISIONAL RAILWAY MANAGER
N.F. RLY
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447

8: THE DIVISIONAL RAILWAY MANAGER P
N.F. RLY
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447

9: SRI R.R.P. SHARMA

CHIEF HEALTH INSPECTOR
N.F. RLY. LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447

10: MRS. P ROY
DPO-II LMG
OFFICE FO THE DRM P
N.F. RLY
LUMDING DIVISION
LUMDING
DIST. HOJAI
ASSAM
PIN-782447
VERSUS

SMT. SIPPO KHAN @ SIPPO MALAKAR and 2 ORS.
WIDOW OF LATE SANJIT MALAKAR
EX SFW/2
N.F. RAILWAY
LUMDING
R/O RELIEF YARD COLONY
LUMDING
PO and PS LUMDING
DIST. HOJAI
ASSAM

2:SMT. PURNIMA MALAKAR
2ND WIDOW OF LATE SANJIT MALAKAR
C/O CH and ML/LUMDING
PO-LUMDING
DIST. HOJAI ASSAM
PIN-782447

Advocate for : MR.D K DEYRly.Adv.
Advocate for : MR.R C PAULR-2 appearing for SMT. SIPPO KHAN @ SIPPO
MALAKAR and 2 ORS.

- B e f o r e -
HON'BLE THE CHIEF JUSTICE
Hon'ble Mr. Justice SOUMITRA SAIKIA

For the Petitioner(s) :Mr. A.K. Purkayastha, Adv
Mr. R.C. Paul, Adv.
Mr. S. Sharma, Adv.
Mr. D.K. Dey, Advocate for Railways

For the Respondents :Mr. P. Mahanta, Adv.
Mr. R.B. Gohain, Adv.

Date of Hearing : **28.03.2023**

Date of Judgment : **08.06.2023**

Judgment & Order(CAV)

(Soumitra saikia, j)

Petitioner in W.P(C) No. 5189/2017 is the opposite party No. 11 before the CAT, Guwahati in O.A. No. 040/00329/2015 and petitioners in W.P.(C) No. 3400/2017 are the Railway Authorities who were arrayed as Petitioners No. 1 to 10 in O.A. No. 040/00329/2015. Since both these writ petitions are directed against the order dated 21.02.2017 passed by the CAT, Guwahati in O.A. No. 040/00329/2015, the matters are heard and taken up for disposal together. The respondent in the writ petition filed the Original Application before the CAT,

Guwahati claiming to be the widow of one late Sanjit Malakar who was working as SFW/2 N.F. Railway, Lumding and was a resident of Relief Yard Colony, Lumding, District: Hojai, Assam challenging the orders passed by the respondent-Railways dated 11.09.2015. By the said order, the Railway authorities disposed of the application received from the writ petitioner and the respondent, both claiming to be legally wedded wife of the deceased Railway employee late Sanjit Malakar holding that the writ petitioner-Purnima Malakar was the 'legal wife' of late Sanjit Malakar and that she was eligible for payment of funeral assistance and family pension, GIS, leave salary and DCRG as well as compassionate ground appointment as per Pension Manual Rules. The Railway authorities further held that the status of Sippo Malakar namely the respondent No. 11 (Applicant before the CAT, Guwahati) was as the second wife of the deceased. Since the said deceased, Railway employee late Sanjit Malakar, did not take any prior permission for second marriage as per the Rules, the second marriage with Sippo Malakar was void and as a consequence, she was not entitled for settlement of dues of late Sanjit Malakar. It was further held that Miss Champa Malakar who claims to be the daughter borne out of the wedlock of late Sanjit Malakar and Sippo Malakar is entitled to her share of settlement dues of pension on production of guardianship certificate from the Hon'ble Court of Law.

2. The CAT, Guwahati, vide the impugned order dated 21.02.2017 came to a finding that the Railway Authorities committed an error in declaring Purnima Malakar, namely the writ petitioner, to be the first wife of late Sanjit Malakar. The CAT, Guwahati further held that the children borne out of the wedlock, even if they are illegitimate, will have their share of the dues payable to the dependents of the deceased under the relevant rules till they are major and in case of daughters till their marriage. The Railway Authorities were directed to make payment to the applicant before the CAT namely Sippo Malakar of all the dues payable as the dependent of the deceased employee late Sanjit Malakar within a period of three months. It was further directed that in the event of any delay beyond as directed, the Railway Authorities would be bound to pay interest at the rate of 9% per annum for the period of delay. Being aggrieved the opposite party before the CAT, Guwahati namely Purnima Malakar has filed the present writ petition assailing the order dated 21.02.2017 passed by the CAT, Guwahati. The impugned order dated 21.02.2017 has been assailed in the present writ petition on the following grounds:

“A. For that the L’d. Tribunal below having failed to appreciate the relevant records on the basis of which the Rly. Department arrived at the impugned decisions and consequent order can be said to inconformity with the relevant provision of Section 18 Special Marriage Act, 1954 so as

to conclusively declared the Respondent No. 11 to be the lawful and valid wife of deceased husband of the present petitioner Sanjit Malakar w.e.f. 27/11/1997 and the impugned finding on account of being vitiated by vice of perversity or erroneous conception perse rendered the impugned order of the Respondent Rly Department to be without any authority in law and non appreciate of the aforesaid legal aspect of the matter, also rendered the impugned Judgment/Order to be unascertainable in law and the same is consequently liable to be set aside and quashed.

B. *For that the Ld. Tribunal below having acted beyond authority and adjudicated the issues pertaining to the respective marital status of the present petition as well as Respondent No. 11 by declaring the Respondent No.11 to be the legally married wife of deceased Sanjit Malakar in terms the Marriage solemnized between them on 27/11/1997 without taking into account that the Marriage even if any was performed by the Parties, the said Marriage under all circumstances has to be accepted to be a Marriage w.e.f. 08/02/2010 the day on which the Marriage was registered as per the requirements as provided under Special Marriage Act, 1954 and /or the day on which the marriage certificate was issued by the marriage registered in terms of Section 18 of Special Marriage Act, 1954 and not otherwise and the impugned Judgment and Order passed Ld. Tribunal below in view such apparent error in law vis-a-vis, the misconception as apparent on the face of the record, is untenable in law as nonest.*

C. *For that even assuming that the Ld. Tribunal is otherwise competent to adjudicate the issue pertaining to the marital status of the parties which is in fact exclusively vested with competent Civil Court to adjudicate and decide but the Ld. Tribunal apparently seem to have committed a gross error and illegality in accepting the Respondent No. 11 to be the 1 wife of deceased Sanjit Malakar w.e.f 27/11/1997 solely on basis of marriage agreement and too without any taking into consideration the far reaching legal impact of Section 18 Special Marriage*

Act, 1954 and the impugned judgment and order in view of such manifest error and mis-conception on a most material point of law, in ipso facto, unsustainable in law and the same is liable to be set aside and quashed for want of legal authority and lack of jurisdiction.

D. *For that the Ld. Tribunal below having failed to appreciate the most legal aspect of the matter once the Marriage performed between the parties followed by the Registration of their Marriage under the Special Marriage Act, 1954, the said Marriage has to be and/or shall have to be accepted or treated to be a Marriage only w.e.f. the date Registration of the Marriage as per the provisions of Section 18 of the Act and since the marriage solemnized between the petitioner and the deceased Sanjit Malakar as per the provisions as provided under Hindu Marriage Act, 1955 was undisputedly and admittedly accepted by Criminal Court while adjudications the maintenance case instituted w/s 125 Cr. P.C and as accepted by the Rly authorities on basis of aforesaid uncontroverted judicial decision of the Court, the Ld. Tribunal below committed a serious error and illegality in declaring the Respondent No. 11 to be the 1st wife of deceased Sanjit Malakar on the basis of mere marriage agreement and the said decision of the Ld Tribunal below and the order passed thereon perse appears to be contrary to Section 18 of Special Marriage Act, 1954 and the same is consequently liable to set aside and quashed."*

3. The case of the writ petitioner as projected before the CAT, Guwahati was that her marriage was solemnized with one Sanjit Malakar (since deceased) which was an arranged marriage and it took place on 01.10.1999 as per Hindu Rites and Rituals and also by performing the ceremony of *Saptapadi* at Lumding. From the wedlock, one female child namely Smti Preeti Malakar and also one male child namely Shri Rohit Malakar were born on 11.06.2001 and

03.08.2004 respectively. Subsequently, one more male child namely Shri Angat Malakar was born on 01.12.2005. It is contended that the petitioner and her late husband initially led a peaceful conjugal married life. However, after a few years of marriage, problems arose between them and she was subjected to various forms of cruelty and mental agony at the hands of her husband. During this period, she came to know about an illicit affair between her late husband Sanjit Malakar and the respondent No. 11-Sippo Malakar, who was the applicant before the CAT, Guwahati. This led to her filing a maintenance case against her late husband before the court of SDJM, Hojai being MR Case No. 70/2012. The Court of SDJM, Hojai vide Judgment and Order dated 16.12.2013 gave a specific finding that the petitioner is the legally married wife of late Sanjit Malakar and accordingly directed her late husband to pay monthly maintenance of Rs. 2000/- to her and Rs. 1000/- to each of the minor children. The appeal filed by the late husband against the Judgment of the SDJM, Hojai came to be dismissed and the Judgment of the SDJM, Hojai was upheld by Judgment dated 25.08.2014 passed by the Addl. District and Sessions Judge, Hojai. Late Sanjit Malakar carried the matter to the High Court and filed a Criminal Petition seeking quashment of the Judgment dated 25.08.2014 of the Addl. District and Sessions Judge, Hojai as well as Judgment dated 16.12.2013 passed by the SDJM, Hojai. During the pendency of the criminal petition, the petitioner, Shri Sanjit Malakar

expired and accordingly the criminal petition was closed.

4. Pursuant to the death of Shri Sanjit Malakar, the petitioner laid a claim to the Railway Authorities for release of the death-cum-retirement benefits and other family pension dues payable to her. A similar application was preferred before the Railway Authorities by the respondent No. 11-Sippo Malakar. The Railway Authorities conducted an enquiry and upon consideration of the entire matter by communication dated 11.09.2015 came to a finding that the petitioner is the legally wedded wife of late Sanjit Malakar and accordingly, she was entitled for all pensionary benefits including family pension as well as DCRG and leave salary etc. The respondent No. 11-Sippo Malakar was held to be the second wife and therefore, was held disentitled for the said benefits. Being aggrieved, the respondent No. 11-Sippo Malakar challenged the order of the Railways before the CAT, Guwahati by filing OA No.040/00329/2015. The petitioner was arrayed as a party and she contested the case by filing her written statement. The Railway Authorities also filed their written statement. The CAT, Guwahati by the impugned Order dated 21.02.2017 held that the Railway Authorities committed an error in declaring the petitioner as the first wife as the same was considered to be contrary to the findings of the SDJM, Hojai in the order granting maintenance dated 16.12.2013. The CAT, Guwahati

held that the marriage agreement dated 27.11.1997 along with the marriage certificate dated 08.02.2010 as well as the birth certificate of Champa Malakar dated 19.09.2013 were sufficient to arrive at a conclusion that the respondent No. 11-Smt. Sippo Malakar was the first wife of late Sanjit Malakar and accordingly, it was ordered that all pensionary dues and consequential benefits should be paid to the applicant and the OA was allowed to that extent by the impugned order dated 21.02.2017 which is under challenge in this writ petition.

5. The learned counsel for the petitioner strenuously urged that CAT, Guwahati exceeded its jurisdiction while venturing to decide the marital status of the parties contrary to the provisions of the Rules for pension as well as the materials available on record. It was urged that as per the nomination furnished by Late Sanjit Malakar, it is the name of the petitioner-Purnima Malakar, which is available on the records of the Railway Authorities as the legally wedded wife of late Sanjit Malakar and therefore, the decision of CAT, Guwahati by interfering with the communication dated 11.09.2015 issued by the Railways Authorities declaring that the pensionary benefits would be payable to the petitioner namely-Purnima Malakar, is contrary to the facts available on records as well as the provisions of the Railway Pension Rules. The same therefore is *non est* in law and needs to be interfered with and set aside and quashed.

6. It was submitted that the employer/Department is the appropriate authority to decide entitlement of pensionary benefits of the employee on the basis of the records available and as per the details submitted by the deceased employee. Late Sanjit Malakar had nominated the petitioner, namely Purnima Malakar, as his legally wedded wife and the Railway Authorities, upon due enquiry and verification having come to the conclusion that the petitioner is entitled to the pensionary benefits, unless it was shown that the conclusions arrived at by the Railways Authorities are perverse or contrary to the facts available on the records, the CAT, Guwahati could not have disregarded the findings of the Railways Authorities and passed an order interfering with the findings of the Railway Authority in favour of the petitioner. Under the provisions of the Administrative Tribunals Act, 1985, the CAT, Guwahati neither had the jurisdiction to decide any family matter nor could it adjudicate upon the marital status of a public servant.

7. It was further submitted that in the proceedings before the CAT, Guwahati material facts were suppressed by the applicant namely the respondent No. 11-Sippo Malakar in the present proceedings. It was pointed out that the respondent No. 11-Sippo Malakar had filed a title suit seeking a declaration that

she was the legally wedded wife of late Sanjit Malakar and a further declaration that she is entitled to receive the pensionary benefits. The learned counsel for the petitioner has categorically submitted that the petitioner was never intimated about the filing of the suit by respondent No. 11 against late Sanjit Malakar nor was any notice issued by the Court on the petitioner. This fact was not divulged in the O.A. filed before the CAT, Guwahati by respondent No. 11 and therefore, this writ petition should be dismissed as there was suppression of material facts before the CAT, Guwahati.

8. The learned counsel appearing for the petitioner has produced a copy of the title suit which was filed by the respondent No. 11- Sippo Malakar seeking a declaration that the plaintiff namely, Sippo Malakar was the legally wedded wife of the defendant namely Shri Sanjit Malakar. It was numbered as title suit No. 94/2014 before the Court of Munsiff (presently Civil Judge), Hojai Sankardev Nagar. Pursuant to the death of Sanjit Malakar, he was substituted by one Champa Malakar as his legal heir. The learned counsel for the petitioner submitted that as the respondent No. 11-Sippo Malakar had filed a suit seeking declaration that she was the legally wedded wife of late Sanjit Malakar, then the claim of the respondent No. 11-Sippo Malakar that she is the legally wedded wife of late Sanjit Malakar is an issue which required declaration by Civil Court in

the suit instituted by Smti Sippo Malakar herself. It was submitted that the very fact that she had approached the Civil Court seeking a declaration goes to show that she was not the legally wedded wife of Sanjit Malakar. The learned counsel for the petitioner urged that the communication dated 11.09.2015 issued by the Railway Authorities whereby the petitioner was held to be the legally wedded wife and entitled for payment of funeral assistance, family pension, GIS, Leave Salary, DCRG as well as compassionate ground appointment as per Pension Manual Rules, has been issued by the Railway Authorities after thorough enquiry on the basis of the available records. Once the authorities have rendered this finding on the basis of a proper fact finding enquiry, the CAT, Guwahati ought not to have interfered with the said findings and taken a contrary view to hold that the respondent No. 11-Sippo Malakar and not the petitioner was the legally wedded wife of late Sanjit Malakar. As such, the impugned order dated 21.02.2017 passed by the CAT Guwahati was rendered on wrong appreciation of the records available with the Railway Authorities and as material facts were suppressed by the respondent No. 11 as the applicant, the same should be declared as *non est* in law and should be accordingly, interfered with, set aside and quashed and the communication dated 11.09.2015 be sustained and declared to be correct.

9. The learned counsel for the petitioner contended that reliance placed by the CAT, Guwahati on the evidences adduced in maintenance case filed by the petitioner in MR Case No. 70/2012 decided by the Court of SDJM, Hojai, cannot be the sole basis for the Tribunal to arrive at a finding that the respondent No. 11 is the legally wedded wife of late Sanjit Malakar and not the petitioner inasmuch as the said proceedings were initiated by the present petitioner against her late husband under Section 125 Cr.P.C. seeking maintenance. The findings arrived at by the CAT, Guwahati was on the basis of a fraction of the evidences adduced in the maintenance case filed by the petitioner in W.P(C) No. 5189/2017. The conclusions arrived at by CAT, Guwahati that the respondent No. 11 was the legally wedded wife of Late Sanjit Malakar and not the present petitioner and thereby proceeding to interfere with the order dated 11.09.2015 passed by the Railway Authorities, is contrary to the procedure prescribed in law. The order dated 11.09.2015 which the proceedings before the CAT, Guwahati initiated by the respondent No. 11 and the proceedings before the Court of SDJM, Hojai in MR Case No. 70/2012 initiated by the present petitioner were separate and independent proceedings. Accordingly, the evidences adduced before the Court of SDJM, Hojai to decide whether maintenance was required to be paid by late Sanjit Malakar to the present petitioner could not have been used or relied upon by the CAT, Guwahati so as to arrive at a finding

that the order dated 11.09.2015 passed by the Railway Authorities was contrary to records or evidence adduced before the Court of SDJM, Hojai. The said impugned order dated 11.09.2015 passed by the Railway Authorities was never under consideration before the Court of SDJM, Hojai or at any point in time earlier till being assailed by the respondent No. 11 before the Tribunal. The Tribunal had no reliable material before it save and except the inadmissible evidences which were adduced before the Court of SDJM, Hojai in MR Case No. 70/2012 so as to record that the order dated 11.09.2015 passed by the Railway Authorities was contrary to provisions of law.

10. The learned counsel for the petitioner submits that the late Sanjit Malakar had submitted his family declaration and nomination during the period 2001-2007 whereby her name was nominated as the legally wedded wife of late Sanjit Malakar. On these submissions, it was urged that the order passed by the CAT, GUwahati is unsustainable in the eyes of law.

11. Mr. P. Mahanta, learned counsel for the respondent No. 11 disputes the contentions of the learned counsel for the petitioner and urged that the CAT, Guwahati had correctly decided the issue and arrived at a just conclusion that the respondent No. 11-Sippo Malakar is the legally wedded wife of late Sanjit

Malakar and not the petitioner. Therefore, the order dated 11.09.2015 ought not to be interfered with. On the contrary, the writ petition should be dismissed as being devoid of any merit.

12. The learned counsel for the respondent No. 11 urged that the respondent No. 11 was the first wife of late Sanjit Malakar and they had contracted marriage by way of a Deed of Marriage agreement executed on 27.11.1997 between the two of them. That apart, they had applied for and had been granted a certificate of marriage under Section 16 of the Special Marriage Act, 1954 which was dated 08.02.2010. Referring to page 71 of the writ petition, the learned counsel for the respondent No. 11 contended that in the said certificate, it is clearly mentioned that late Sanjit Malakar and respondent 11-Sippo Malakar had been married on 27.11.1997 and they had been living together as husband and wife and that this marriage certificate had been applied for by both parties and that the certificate had been issued on 08.02.2010 which will have effect from the said day onwards. The learned counsel for the respondent No. 11 has also referred to the order dated 17.05.2012 passed by the Court of SDJM, Hojai at Sankardev Nagar in M.R. Case No. 53/2010 and contends that a maintenance case was also filed by the respondent No. 11 against late Sanjit Malakar claiming maintenance. However, subsequently, the parties had amicably settled

the matter and the case was disposed of on compromise. It is submitted that by order dated 17.05.2012 while disposing of the maintenance case on compromise, the learned Court of SDJM, Hojai recorded a finding that the first party, namely Sippo Khan @ Sippo Malakar and the second party-Sanjit Malakar had filed a joint petition supported by an affidavit stating therein they have already amicably settled the matter and now they are living as husband and wife peacefully. On such submissions, the maintenance case was disposed of.

13. The learned counsel for the respondent No. 11 also referred to a copy of the particulars of the passbook of a bank account opened jointly by late Sanjit Malakar and Sippo Malakar to the contend that they were husband and wife. It was submitted by the learned counsel for the respondents that a child was born out of the wedlock of late Sanjit Malakar and respondent 11-Sippo Malakar. Attention was drawn to page-81 of the paper book, being a birth certificate issued on 13.09.2013 to certify that a girl child namely Champa Malakar was born on 20.01.1999 and the name of her parents as shown in the certificate are that of Sanjit Malakar and Sippo Malakar respectively. The learned counsel for the respondent urged that pursuant to the death of Sanjit Malakar, she had applied to the Railway Authorities seeking service benefits as the legally married

wife and nominee of late Sanjit Malakar. It is submitted that Sanjit Malakar had submitted details of the family members and particulars of nomination before the Railway Authorities wherein name of the respondent No. 11-Sippo Malakar was shown as the wife of late Sanjit Malakar. However, Railway Authorities did not take appropriate steps to incorporate the same at the relevant point in time because of which late Sanjit Malakar, during his lifetime by the letter dated 25.03.2014 issued a reminder letter for the declaration of family members in the service record. In the said reminder, it was clearly mentioned that late Sanjit Malakar's wife was Sippo Malakar and daughter was Champa Malakar. It was further submitted by the learned counsel for the respondent No. 11 that a photocopy of the extract of the particulars pertaining to the nomination and details of family members is available with the respondent No. 11 and the same is enclosed to the paper book at Page 86A and a typed copy of the same is at Page-86. Referring to the said document, learned counsel for the respondent No. 11 submitted that as on 27.04.2012, the name of the respondent No. 11 had been incorporated as the wife of late Sanjit Malakar, which however was never communicated to her or to late Sanjit Malakar. She had even approached the Competent Civil Court for such a declaration by filing a Title Suit. However, because of the expiry of her husband late Sanjit Malakar, the suit was abated. It is submitted that since the suit had abated due to the expiry of the defendant

namely her husband Late Sanjit Malakar and as no finding was arrived at by the competent Court, the respondent No. 11 was of the view that it was not a relevant/ a material fact which was required to be brought before the Court. The learned counsel for the respondent No. 11 contended that it is only those facts which will have a material bearing in the outcome of a proceeding which can be considered to be material facts for that proceeding. The learned counsel for the respondent No. 11 argued that since the suit was abated and no finding was rendered by the Civil Court, the said proceedings were not at all relevant for the purposes of the issues raised before CAT Guwahati. Therefore, it cannot be said that there was suppression of any relevant or material facts in so far as the proceedings before CAT Guwahati were concerned.

14. The learned counsel for the respondent No. 11 relied on the following Judgments in support of his contentions:

(i) Smt. Violet Issaac and Ors. Vs. Union of India and Ors., reported in (1991) 1 SCC 725 (Family pension to devolve as per family pension Rules (Para-4, 5, 6 and 7)

(ii) Rameshwari Devi Vs. State of Bihar and Ors., reported in (2000) 2 SCC 431 (Pension cannot wait till a pronouncement by a civil Court. Authorities can decide entitlement inter-se two wives (Para 12 and 13)

(iii) Yamunabai Anantrao Adhav Vs. Anantra Shivram Adhav, reported in (1988) 1 SCC 530 (Void marriages void ipso jure from the very inception. Not essential to obtain advance declaration from a Court (Para 3))

(iv) MCD Vs State of Delhi, reported in (2005) 4 SCC 605 (Suppression of material facts. Facts suppressed shall be in order to gain advantage on the other side (Para-2)

15. In rejoinder, the learned counsel for the petitioner in W.P.(C) No. 5189/2017 submits that the deed of marriage agreement stated to have been executed on 27.11.1997 is no document in the eye of law having any legal sanctity and therefore, the same cannot be relied upon for any useful purpose before any Court of law. The learned counsel for the petitioner submits that the deed of agreement executed by and between the respondent No. 11 and Late Sanjit Malakar before the Sub-Divisional Magistrate, Karbi Anglong, Diphu does not have any evidentiary value for the purposes of being used in support of the claims made by respondent No. 11. In so far as the certificate of marriage issued under Special Marriage Act, 1954 is concerned, learned counsel for the petitioner-Purnima Malakar, submits that a perusal of the same reveals that the certificate of marriage specifies that the marriage between late Sanjit Malakar and respondent No. 11-Sippo Malakar was stated to have been performed on 27.11.1997 "*according to Hindu Rites*". The learned counsel for the petitioner submits that Special Marriage Act, 1954 is a beneficial legislation in order to enable people belonging to different communities to enter into marriage. It is submitted by the learned counsel for the petitioner that as per Section 7 of the

Hindu Marriage Act, 1955 a Hindu Marriage is considered to have been performed only upon completion of the '*Saptapadi*'. It is submitted that during the proceedings before the CAT Guwahati as well as in the present proceedings, no evidence was brought before the Court by the learned counsel for the respondent No. 11 to suggest that such '*Saptapadi*' as mandated under the Hindu Marriage Act, 1955 has been performed by late Sanjit Malakar and Sippo Malakar during their marriage. As such, it is submitted that unless the provisions of Hindu Marriage Act, 1955 are scrupulously shown to have been followed, no marriage can be said to have been performed under the Hindu Marriage Act, 1955 between any parties. That apart, there is no dispute that Sippo Malakar is a person who is not a Hindu by religion and therefore, as per the provisions of Hindu Marriage Act, it can only be performed between two persons who profess the same faith namely the faith of Hinduism. It is in order to overcome these circumstances that the legislature has come out with the legislation of Special Marriage Act, 1954 which permits marriages to be performed between parties belonging to different faith and different communities. The learned counsel for the petitioner submits that since the Special Marriage Act certificate dated 08.02.2010 mentions that the marriage was conducted between the parties as per Hindu Rites, the same is not a reliable document in support of the marriage stated to have performed between respondent No. 11 and Late Sanjit Malakar

as the same certifies conduct of marriage which on the face of it appears to be contrary to the provisions of Hindu Marriage Act itself. The learned counsel for the petitioner submits that in view of all the submissions made, the writ petition be allowed and the impugned order dated 11.09.2015 passed by the Tribunal, Guwahati be interfered with, set aside and quashed and the order dated 11.09.2015 passed by the railway authorities granting pensionary benefits to the petitioner be sustained and upheld.

16. The learned counsel for the railways submitted that as per the records of the railways and as per the service records of late Sanjit Malakar maintained by the railways, name of Purnima Malakar was included as the wife of late Sanjit Malakar. The learned counsel for the railways submitted that the application referred to by the learned counsel for respondent No. 11 which was claimed to have been filed for cancellation of earlier nomination and requesting for nominating the name of Sippo Malakar and Champa Malakar as the wife and the daughter respectively of late Sanjit Malakar, is not available in the records of the railway Authorities. There is further no record available pertaining to late Sanjit Malakar to suggest that there was any request made for cancellation of nomination in favour of Purnima Malakar and/or change of nomination in favour of Sippo Malakar. The respondent No. 11-Sippo Malakar, after the expiry of the

Sanjit Malakar, filed an application claiming funeral benefits as well as family pension benefits. Similar application was also filed by Purnima Malakar. The railway authorities had undertaken an elaborate enquiry and exercise into the matter and thereafter, had come to the conclusion that the marriage of Sippo Malakar as per the marriage certificate was valid with effect from 08.02.2010 only whereas the date of marriage of Purnima Malakar wife of Sanjit Malakar as per the records available is shown as 01.10.1999. Accordingly, the railway authorities had accepted Purnima Malakar namely the petitioner as the first wife. As per the service rules of railways, in so far as any second marriage is concerned, prior permission is required to be obtained by the concerned employee from the competent railway authorities. From the records available with the railways, no prior permission was found to have been applied for by late Sanjit Malakar and granted by the Railway Authorities prior to the marriage with respondent No.11-Sippo Malakar. Under such circumstances, the marriage of late Sanjit Malakar with Sippo Malakar was treated to be his second marriage and the second marriage having found to be contrary to the provisions of the Service Rules, the railway authorities declined to accept the claims of respondent No. 11-Sippo Malakar. The pensionary benefits were therefore granted to the petitioner in W.P(C) No. 5189/2017 namely Purnima Malakar. Since this order was issued after the detailed enquiry and only on the basis of

relevant documents available as per records and in consonance with the Service Rules, the findings of the Tribunal by the impugned order interfering with the order dated 11.09.2015 issued by the Railway Authorities, is contrary to the records as well as the provisions of the Rules and therefore, the same cannot be sustained and needs to be interfered with and set aside and quashed.

17. The learned counsel for the railways submits that in W.P(C) No. 5189/2017, the railways are arrayed as respondents No. 1 to 10. The railways have also preferred a separate writ petition being W.P.(C) No. 3400/2017 where Sippo Malakar is the respondent and Purnima Malakar is the proforma respondent. The learned counsel for the railways submits that the submissions made by him are in respect of both the writ petitions.

18. The learned counsel for the Railways has relied upon the Judgment of the Apex Court in Khursheed Ahmed Khan Vs. State of Uttar Pradesh and Ors, reported in (2015) 8 SCC 439 to contend that where the Rules prescribe prior permission is required to be obtained before entering into a second marriage and where no such prior permission was obtained by an employee, it can be considered to be a misconduct if the Rules so prescribe. The learned counsel for

the railways has also referred to the Judgment of the Apex Court in *Rameshwari Devi (Supra)* to submit that the parties can always approach the Civil Court for determination regarding the entitlement of the claims made by the rival parties. So far as the railways are concerned, no such order of any Civil Court has been furnished before the Railway Authorities to support the claim of the respondent No. 11 that she has been declared to be the legally wedded wife of late Sanjit Malakar by any competent Civil Court. Accordingly the findings arrived at by the Tribunal interfering with the order dated 11.09.2015 of the Railway Authorities declaring Purnima Malakar to be the lawfully wedded wife of late Sanjit Malakar and the beneficiary of family pension and other retiral benefits is grossly improper and not based on records. The impugned order dated 11.09.2015 passed by CAT, Guwahati, is therefore, required to be interfered with set aside and quashed.

19. The learned counsels for the parties have been heard. Pleadings on record have been carefully perused.

20. It is seen that the Railway Authorities upon receipt of application both from the petitioner as well as the respondent No. 11 undertook an enquiry in

the department. The findings of the said enquiry which is available in the paper book are extracted as under:

“Sri Sanjit Malakar was appointed in Railway service w.e.f. 31.12.1995 as SFLA. While going through the service record, it is seen that he submitted his family declaration and nomination during the period 2001 to 2007 in his lifetime. It is pertinent to mention herein that these declaration and nominations were duly forwarded by his office H&MI/LMG, From the Family declaration it is observed that Sri Sanjit Malakar declared Smt. Purnima Malakar as his legal wife to whom he legally married on 01.10.1999.

In the year 2014, Sri Sanjit Malakar again submitted his family declaration, whereby the name of Sippo Khan alias Sippo Malakar and her daughter Champa Malakar were mentioned but he did not nominate Smt. Sippo Malakar by giving notice for cancellation his previous nomination and declaration against Smt. Purnima Malakar.”

21. From the detailed enquiry undertaken by the Railway Authorities, it was revealed from the records available with the Railways in respect of Late Sanjit Malakar, that in the nomination filed by Sri Sanjit Malakar, the name of the petitioner Purnima Malakar was incorporated as the wife. The subsequent

application stated to have been filed by late Sanjit Malakar vide letter dated 25.03.2014 requesting for including the names of Sippo Malakar and Champa Malakar as his wife and daughter respectively is stated to be not available in the records of the railways. Consequently, the railways have not admitted that such a document was ever filed by late Sanjit Malakar and received by the railways.

22. That apart, during the course of the hearing, it transpires that respondent No. 11 had approached the competent Civil Court by filing a title suit seeking a declaration that she is the legally wedded wife of the defendant therein namely Sanjit Malakar. The title suit was numbered as TS No. 94/2014 before the Court of learned Munsiff, Hojai. The defendant Sanjit Malakar filed a written statement admitting to the claims made by the plaintiff Sippo Malakar. However, as submitted by the learned counsel for the respondent No. 11 because of the demise of Sanjit Malakar, the suit was abandoned and presently the counsel is not posted with instructions as to the status of the said suit.

23. The impugned order passed by the Tribunal has been carefully perused and it is seen that the Tribunal had extensively relied upon the findings of the Court of SDJM, Hojai in its Judgment dated 16.12.2013 in MR Case No.

70/2012. From perusal of the Judgment dated 16.12.2013 passed by the Court of SDJM, Hojai in MR 70/2013, it is seen that the same was a proceeding for grant of maintenance under Section 125 CrPC. The petitioner before that Court is the present petitioner in W.P(C) No. 5189/2017 namely Purnima Malakar, who had filed the said case seeking maintenance from her late husband Sanjit Malakar as he then was. The points for determination that had been framed by the Court of SDJM, Hojai in the proceedings are as under:

“(1) Whether the petitioner is the legally married wife of the O.P?”

(2) Whether the petitioner and the minor children are entitled to monthly maintenance from the O.P.?”

24. In so far as the first point is concerned, namely, “*whether the petitioner is the legally married wife of the O.P.*”, the Court of SDJM, Hojai on the evidences adduced before the Court as well as judgments referred to at the bar, held that the petitioner namely Purnima Malakar is the legally married wife of Sanjit Malakar and the petitioner prima facie succeeded in satisfying the court that she and the OP namely Sanjit Malakar lived as husband and wife after their marriage. The said point accordingly was answered in affirmative in favour of the petitioner namely Purnima Malakar and against the OP namely Sanjit

Malakar.

25. In so as the point No. 2 is concerned, namely "*whether the petitioner and the minor children are entitled to monthly maintenance from the O.P.*", the Court of SDJM, Hojai after taking into account the entire evidences adduced, held that the petitioner namely Purnima Malakar was entitled to maintenance of Rs. 2000/- (Rupees Two Thousand Only) and their Children were entitled to maintenance of Rs. 1000/- (Rupees One Thousand Only) each and to be paid by the Opposite Party namely Sanjit Malakar. The said point for determination No. 2 accordingly was also decided in favour of the petitioner and against the opposite party. It is trite to mention here that in the evidences adduced before the Court of SDJM, Hojai, it was revealed that the opposite party Sanjit Malakar was in relationship with another woman namely Sippo Malakar who is respondent No. 11 herein. It was held by the Court of SDJM, Hojai that from the deposition of the PW1 namely Purnima Malakar, it is evident that there was a relationship between the Second party, namely Sanjit Malakar and another woman. The Court of SDJM, Hojai held that the said deposition of PW1 remained "*uncontroverted in material particulars*". The Court of SDJM, Hojai held that the second party namely Sanjit Malakar had failed to discharge the onus of proof by leading any cogent evidence. In the face of such evidences adduced, the Court

of SDJM, Hojai answered both the points of determination in favour of the petitioner namely Purnima Malakar and against opposite party- Sanjit Malakar. Accordingly, the maintenance of Rs. 2000/-(Rupees Two Thousand Only) to the petitioner and Rs. 1000/- (Rupees One Thousand only) each to the three minor children were directed to be granted by the Court of SDJM, Hojai. A cost of Rs. 1000/- was also directed to be paid to the petitioner namely Purnima Malakar.

26. There was no point/question of determination raised before the Court of SDJM, Hojai as to, between Purnima Malakar and Sippo Malakar, namely the petitioner and respondent No 11 herein, who was the first wife or the legally wedded wife. Consequently, there was no occasion for the Court of SDJM, Hojai to render any finding on the aspect of determination as to who between the petitioner and the respondent No. 11 was the first wife of late Sanjit Malakar. While determining the second point namely the issue regarding entitlement of maintenance, the Court of SDJM, Hojai on the basis of the evidences adduced had accepted the marriages of both the petitioner as well as the respondent No. 11. It is also seen that at Para 41 in the said Judgment, the term "first" was used before the word "wife" to refer to respondent No. 11, namely Sippo Malakar. The said Judgment of the Court of SDJM, Hojai was assailed by Sanjit Malakar before the Court of Addl. District and Session Judge, Sankardev Nagar

in Cr. Rev No. 13/2014. The Court of Addl. District and Sessions Judge vide the Judgment delivered on 25.08.2014 dismissed the petition and declined to interfere with findings of the Court of SDJM, Hojai. The order of the Addl. District and Sessions Judge, Hojai was assailed before the High Court by way of Criminal Petition No. 805/2014. However by order dated 25.05.2015 the said Criminal Petition was closed upon the expiry of the petitioner namely Sanjit Malakar.

27. In the opinion of this Court, the same cannot be accepted to be a judicial finding arrived at on the basis of evidences adduced in that regard. In the preceding paragraphs of the said Judgment while appreciating the evidence, the Court of SDJM, Hojai had clearly held that on the basis of the evidences adduced before the Court, a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claim of first marriage of the Second Party namely, Sanjit Malakar with Sippo Malakar is not sufficient to render complete and effective decision with regard to the marital status of the parties and that to in a collateral proceeding. The Court of SDJM, Hojai relied upon the Judgment of the Apex court in Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad & Another, reported in (2013) 2 SCC 137. The Court of SDJM, Hojai held that there was no disclosure by the opposite party namely Sanjit

Malakar regarding the marriage of Sanjit Malakar between Sippo Malakar. The evidence adduced by Sippo Malakar and her sister as D.W-2 and D.W.-3 was found to be not reliable and trustworthy. Consequently, the Court of SDJM, Hojai doubted the claim of first marriage of the Opposite Party- Sanjit Malakar with Sippo Malakar and/or Margina Begum @ Sippo Malakar. The relevant Paragraphs of the Judgment rendered by the Court of SDJM, Hojai is extracted below:

“(23) On the contrary, the D.W.-1’s evidence discloses that he is already married with one Shipu Malakar. D.W. 2 Shipu Malakar herself corroborated the said fact and also added that she was earlier known as Marjina Begum. But D.W.3, who is the sister of D.W.2, deposed that his sister’s name is Shipu Khan and not Marjina Begum. Hence, I find the evidence of D.W.2 and D.W.3 not reliable and trustworthy.

(24) The P.W.s have categorically corroborated each other as regards to marriage between Sanjit Malakar with Purnima Malakar. Contrarily, the evidence of D.W.s are not in a chord of corroboration as regards to the marriage between Shipu Malakar and Sanjit Malakar. Because D.W.2 herself never revealed that her earlier name was Shipu Khan. The Exhibit A3 marriage certificate reveals the name of the bride as Shippu Khan @ Shipu Malakar. Hence, it can be inferred that Sippu Khan @ Shipu Malakar and Marjina Begum @ Shipu Malakar are not the one and same person. Moreover, the O.P. in his written statement had never divulged his wife’s name though he all along contended that he was already married. Moreover, Sanjit Malakar as D.W.1 has never disclosed, during his evidence, that Shipu Malakar was earlier known by Shipu Khan. What prevented the D.W.1 from disclosing the said fact during his evidence is nothing but suppression of truth. Thus, a doubt creeps in as regards to the first marriage of Sanjit Malakar with Shipu Khan @ Shipu Malakar and/or Marjina Begum @ Shipu Malakar.

(28) *The documentary as well as the oral evidence of D.Ws do not , in any way show that the O.P has been able to establish his first marriage with either (D.W.2) Marjina Begum @ Shipu Malakar or Shipu Khan @ Shipu Malakar. The O.P. cannot dispense with the proof of subsisting valid first marriage in light of the decision of the Hon'ble Supreme Court in Vimala's case (supra).*

(29) *Mere production of Exhibit A3 a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the O.P. with one Shipu Malakar is not sufficient to render a complete and effective decision with regard to the marital status of the parties and that too, in a collateral proceeding for maintenance. (relied on (2013) 2 SCC 137 Deoki Panjhiyara vs. Shashi Bhushan Narayan Azan & Another).*

(30) *Situated thus, it is revealed from the testimonies of the witnesses of both the parties that the balance of evidence of petitioner far outweighs the evidence of O.P. The latter has only denied the marriage with the petitioner, But the P.W.s have clearly shown that there was a marriage between the petitioner and the O.P, out of which, three children were born. The fact of no-marriage between the petitioner and the O.P. as stated by the D.W.s is further nullified by the fact that the O.P., for the . said no-marriage with petitioner, has never filed any declaration suit against the petitioner The OP, ought, to have obtained the necessary declaration from the competent Court in view of the highly contentious question raised by him on the aforesaid score. This goes on to show that there was a marriage between the petitioner and the O.P. but the latter is trying to deny the said marriage for reasons best known to him only.*

(31) *Exposit, it is that the O.P., in all probability, lived and co-habited with the petitioner by suppressing his first marriage to the petitioner, thereby, the O.P gave a false representation to the petitioner that he was single. In these circumstances, can the O.P, be allowed to take advantage of his own wrong*

and turn around to say that the petitioner is not entitled to maintenance u/s 125 Cr.P.C as she is not the legally married wife? (32) The answer is in negative. It has come to light from the written-statement that the O.P., though already married, has been living With the petitioner with due consent and also co-habited with her but also claimed that they are not husband and wife and that she is not his wife according to law. However, a presumption arises that when the O.P. himself co-habited with the petitioner for a considerable period of time and out of such cohabitation, even without a valid marriage, three children were begotten, then, the term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 Cr.P.C. I am fortified by a decision of our Hon'ble Supreme Court as reported in (2011) 1 SCC 141 Chanmuniya us. Virendra Kumar Singh Kushwaha and Another wherein it was held that the term "wife" occurring in Section 125 Cr.P.C. is to be" given very wide interpretation. This is so stated in the following manner:

“A broad and expansive interpretation should be given to the term "wife" to include' even those cases where a man and woman have been living together as husband and wife for reasonably long period of time, and strict proof of marriage should not be pre-condition for maintenance under Section 125 of the Code of Criminal Procedure so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125 Cr.P.C.”

(33) As far as the submission of learned counsel for the O.P is concerned as regards to fact that there was no valid marriage between petitioner and OP as there was no ritual followed by the parties at the time of marriage as per Hindu Law, the law is no longer res integra in view of a decision of Hon'ble Supreme Court as reported (1999) 7 SCC 675 Dwarika Prasad Satpathy vs. Bidyut Prava Dixit & Another wherein it has been held at para no. 13 that-

“13 Hence, in our view from the evidence which is led if the Magistrate is prima facie satisfied with regard to the performance of marriage in proceedings under Section 125 Cr.P.C. which are of summary nature, strict proof of performance of essential rites is not required. Either of the parties aggrieved by the order of maintenance under Section 125 Cr.P.C. can approach the civil Court for declaration of status as the order passed under Section 125 does not finally determine the rights and obligations of the parties.”

(34) For all the foregoing discussion, it is highly probable that there was marriage between Purnima Malakar and Sanjit Malakar, though, it was may be, during the subsistence of the first marriage of Sanjit Malakar. Prima facie, it appears from the evidence-on-record that the petitioner and the O.P., after their marriage, lived as husband and wife out of which wedlock, three children were born to them.

(35) Situated thus, it can be inferred from the presents facts and circumstances of the case that the petitioner is the legally married wife of the O.P. and the petitioner, prima facie, succeeded to satisfy this Court that she and the O.P. lived as husband and wife after their marriage.

(37) In this case, the petitioner has shown, while deposing as P.W.1 that she found her husband/O.P in a compromising position with another woman and for which reason, later, she left the O.P's house and took shelter at her mother's house. P.W.3 corroborated the testimony of P.W.1 in this regard. On the other hand, D.W.1's evidence reveals that he is already married with one Shipu Malakar. D.W.2 and D.W.3 corroborated it but the D.W.s are not in chord of corroboration for the rationale set out in paragraph 23 hereinabove mentioned,

(38) Section 125(4) Cr.P.C clearly enjoys upon a wife that she shall not be entitled to receive any allowance for the maintenance from her husband if she is living in adultery, or if she refuses to live with her husband without any

sufficient reason or if they are living separately by mutual consent. The burden lies on 1st party to prove her case. It appears the P.W.1 clearly deposed about the relationship of O.P. with another woman. The cross-examination of P.W.1 too, has remained uncontroverted in material particulars. Now the onus shifts on 2nd party in the facts of the case to prove that it was not so. But it appears that the 2nd party failed to shift the onus back to the 1st party in this regard by leading any cogent evidence.

(41) The OP's evidence reveals that he has to maintain his (first) wife and his daughter. Thus, it is to be understood that out of the monthly salary of the O.P., he has to maintain himself, his (first) wife, daughter as well as the petitioner and his three children. In ordinary course, the parents are also legally entitled to get maintenance; and the wives (and the minor children) are also equally entitled to a share of the income of their husband as maintenance. But since the OP stays with his (first) wife, thus it is apparent that the OP and his (first) wife reside together in the same mess. Needless to add, as Purnima Malakar (petitioner) and the three minor children live with the petitioner, she and the said three children ought to be given a bit higher share towards their maintenance.

(42) Thus, taking into account the status of the parties and the income of the 2nd party as well as the fact that the petitioner is an adult female as such and considering the standard of living and the status enjoyed in the society. I recon, Rs. 2000/- per month should suffice as monthly maintenance for the petitioner and Rs. 1000/- each to the three minor children, which is neither sumptuous nor impecunious, in the facts and circumstances of the case.

(43) This point is decided in the affirmative and against the O.P.

ORDER

(44) In view of the above discussions and the decision so reached in the Point Nos. 1 and 2, it is ordered that the O.P. do pay monthly maintenance of

Rs. 2000/- (Rupees Two Thousand Only) to the petitioner and Rs. 1000/- (Rupees One Thousand Only) each to the three minor children.

(45) The maintenance is made effective from the date of this order and is to be paid within the first seven days of each succeeding English calendar month. The minor daughter Priti Malakar is entitled to such monthly maintenance till her marriage. The two minor sons Ruhit Malakar and Angad Malakar are entitled to such monthly maintenance till they attain the age of majority.

(46) The O.P. is also directed to pay Rs. 1000/- as costs to the petitioner u/s 126(3) Cr.P.C.”

28. The said Judgment of the Court of SDJM, Hojai was assailed by Sanjit Malakar before the Court of Addl. District and Session Judge, Sankardev Nagar in Crl. Revision No. 13/2014. The Court of Addl. District and Sessions Judge vide the Judgment delivered on 25.08.2014 dismissed the petition and declined to interfere with findings of the Court of SDJM, Hojai. The order of the Addl. District and Sessions Judge, Hojai was assailed before the High Court by way of Criminal Petition No. 805/2014. However, by order dated 25.05.2015, the said Criminal Petition was closed upon expiry of the petitioner namely, Sanjit Malakar.

29. Consequently, the findings of the Court of SDJM, Hojai in favour of the petitioner namely Purnima Malakar remained and was not interfered with by any superior court. From the findings of the Court of SDJM, Hojai, it is evident that

Purnima Malakar was held to be entitled to maintenance as wife of late Sanjit Malakar and that she and their children was directed to be paid maintenance by Sanjit Malakar. However, as discussed above, the question as to whether Sippo Malakar was married to Sanjit Malakar or if married whether she was the first wife of Sanjit Malakar was not conclusively determined by the Court of SDJM, Hojai as the same was not a question for determination before the said Court.

30. The Tribunal in the impugned order has extensively relied upon the evidences adduced before the Court of SDJM, Hojai. The Tribunal referred to the evidences adduced before the court of SDJM, Hojai. It was held that in the evidence adduced by late Sanjit Malakar, there was a denial of marriage with the petitioner Purnima Malakar. The Tribunal relied extensively upon Paragraphs No. 33, 34 and 41 more particularly on Paragraph-34 of the Judgment of the Court of SDJM, Hojai. It is also seen that the Tribunal had relied upon the marriage certificate issued under Special Marriage Act, 1954 and has interpreted the said certificate to conclusively come to a finding that the marriage between late Sanjit Malakar and Sippo Malakar was solemnized on 27.11.1997 as is reflected in the said certificate. The said date is on the basis of a deed of marriage agreement executed by and between late Sanjit Malakar and Sippo

Malakar on 27.11.1997. The Tribunal upon perusal of the said deed of agreement as well as the certificate came to the conclusion that on the date of marriage as both parties were adults, the said statements made in the agreement has to be accepted to be correct. Furthermore, the tribunal accepted the arguments of the respondent No. 11 that the date of birth of petitioner was shown as 09.08.1985 and that if she was married to late Sanjit Malakar on 01.10.1999 then the age of Purnima Malakar would be about 14 years 1 month 22 days.

31. The Tribunal relied particularly on the findings of the Court of SDJM, Hojai in Paragraph-34 of the said Judgment that the marriage between the petitioner Purnima Malakar and late Sanjit Malakar *prima facie* appears to be correct even though it may have been during the "*subsistence of the first marriage*" of Sanjit Malakar. That apart, the Tribunal also referred to the order dated 17.05.2012 passed in M.R. Case No. 53/2010 which was a maintenance case filed by the respondent No. 11-Sippo Malakar as the applicant against late Sanjit Malakar. By the said order, the Court of SDJM, Hojai in M.R Case No. 53/2010 disposed of the case on compromise wherein the parties declared themselves to be living as husband and wife. The Tribunal relying on such findings of the Court of SDJM, Hojai and also considering the fact that on the date of marriage, the petitioner-Purnima Malakar was about 14 years 1 month and 22 days old, came to the

conclusion that late Sanjit Malakar had married with Sippo Malakar prior to the marriage with Purnima Malakar and their daughter-Champa Malakar was born on 20.01.1999 i.e. before the marriage with Purnima Malakar. The Tribunal accordingly came to the conclusion that the Railway Authorities have committed an error in declaring Purnima Malakar as the first wife as it is against the observation made in Paragraph-34 by the Court of SDJM, Hojai in the order of maintenance dated 16.12.2013. The Tribunal concluded that the agreement dated 27.11.1997, Marriage Certificate dated 08.02.2010 and the Birth Certificate of Champa Malakar dated 13.09.2013 are sufficient to come to the conclusion that respondent No. 11- Smt. Sippo Malakar is the first wife of late Sanjit Malakar and accordingly, all pensionary dues and consequential benefits were directed to be paid to the applicant, namely, Sippo Malakar. The Tribunal held that the children of both the wives even if they are considered to be illegitimate will have their share of dues payable to the dependents of the deceased under the relevant Rules till they attain their age of majority. The railway authorities were accordingly directed to make payment to the applicant namely Sippo Malakar of all dues to the dependent of the deceased employee late Sanjit Malakar within a period of three months.

32. Upon careful perusal of the Judgment dated 16.12.2013 of the Court of

SDJM, Hojai it cannot be said that the conclusions arrived at by CAT, Guwahati, relying on the evidences adduced before the Court of SDJM, Hojai in a proceeding under Section 125 Cr.PC for maintenance, are correct to return a finding that the respondent No. 11 is the first wife and not the petitioner. Such finding arrived at by the CAT Guwahati is bereft of required evidences and quite contrary to the provisions of law of evidence. The Tribunal under the provisions of Central Administrative Tribunal Act and Rules is not empowered to entertain and consequently render any findings in family matters. It is a Civil Court alone which can give a declaration to that effect. Even the order dated 17.05.2012 passed in M.R. Case No. 53/2010 by the Court of SDJM, Hojai disposing of the maintenance case filed by the respondent No. 11 as an applicant cannot be accepted to have declared a finding the Respondent No. 11 was the first wife of Sanjit Malakar. The references made to respondent No. 11 and Sanjit Malakar as husband and wife, in the said order, is on the basis of the joint petition supported by an affidavit filed by both Respondent No. 11-Sippo Malakar and Sanjit Malakar.

33. The core issue which confronts this Court is whether the CAT Guwahati on the basis of evidences adduced before the Court of SDJM, Hojai in a proceeding initiated under Section 125 Cr.P.C on the two questions of determination namely

1) Whether the petitioner is the legally married wife of the O.P? and (2) Whether the petitioner and the minor children are entitled to monthly maintenance from the O.P, can return a finding to conclude that respondent No. 11 is the first wife and not the petitioner, when the Court of SDJM, Hojai itself was not called upon to decide the issue in the said proceedings. The Paragraph No. 34 of the Judgment of the Court of SDJM, Hojai relied upon by the CAT Guwahati cannot be read in isolation. The Judgment of Court of SDJM, Hojai has to be read in its entirety keeping in view the questions which were presented before the Court of SDJM, Hojai for determination. The CAT Guwahati misdirected itself in deciding the question as to who was the first wife between the petitioner and respondent No. 11 in the absence of proper evidence led by the parties before the Tribunal. This Court is of the view that under the provisions of the Act and Rules of CAT, no power has been specifically vested upon the CAT to entertain and render any finding or any declaration in respect of family matters that too in the absence of any specific evidences led by the contesting parties.

34. This Court is of the view that the competent Court to render such a finding would be the Civil Court. There is no dispute at the bar that at the relevant point in time the respondent No. 11 had approached the Competent Civil Court

by filing Title Suit No. 94/2014 which on a bare perusal of the plaint produced before the Court reveals that it was a suit filed by the respondent No. 11 as the plaintiff against late Sanjit Malakar as the defendant seeking a declaration that the plaintiff (respondent No. 11 herein) was the first wife of the defendant late Sanjit Malakar. A copy of the written statement filed by late Sanjit Malakar which is also presented before the Court reveals that the said defendant namely Sanjit Malakar admitted to all the claims made by the plaintiff. It is further evident that the present petitioner namely Purnima Malakar was not arrayed as a party respondent in the said proceedings. However, the suit did not proceed further as the sole defendant Sanjit Malakar expired in the meantime. The present status of the suit is also not known to the learned counsel for the respondent No 11. In view of such undisputed facts it is clear that there appears to be a doubt with regard to the marriage of respondent No. 11 with late Sanjit Malakar because of which she had approached the civil court seeking a declaration that she is the legally wedded wife of Sanjit Malakar . However, in the absence of any such declaration being rendered by a Competent Civil Court, it will have to be accepted that there is no clear finding as on date by any Court of Competent Jurisdiction that the respondent No. 11 is the first and/or the only legally wedded wife of Sanjit Malakar.

35. In ***Deoki Panjhiyara Vs. Shashi Bhushan Narayan Azad***, reported in **(2013) 2 SCC 137**, the Apex Court held as under:

“23. We would also like to emphasis that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts. Including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.”

36. On the basis of the Principle culled out by the Apex Court in *Deoki Panjhiyara (Supra)*, this Court holds that the marriage certificate by itself is not sufficient to render a complete and effective finding as to the marital status of the parties by referring to the evidences adduced before the Court of SDJM, Hojai in a proceeding initiated under Section 125 CRPC. The proceedings under Section 125 Cr.P.C before the Court of SDJM, Hojai are collateral proceedings and in which proceedings the question of correctness of Special Marriage certificate between the respondent No. 11 and late Sanjit Malakar is concerned

was not a point of determination. Even if the said special marriage certificate is accepted on a face value it only means that the respondent No 11 was married to late Sanjit Malakar on the date mentioned in the said certificate. However, that certificate by itself cannot be relied upon to conclusively arrive at any finding that Sippo Malakar-respondent No. 11 was the first wife or only legally wedded wife of late Sanjit Malakar.

37. As discussed above, in the absence of any effective finding or declaration by any Court of Competent Jurisdiction as to the question of the marriage of Sippo Malakar with Sanjit Malakar and/or as to whether Sippo Malakar was the first and the legally wedded wife of Sanjit Malakar, recourse will have to be taken to the records as available with the railway authorities. The railway authorities have undertaken an elaborate enquiry as is evident from the enquiry report itself dated 14.08.2015. In the said enquiry the railway authorities have not discarded the special marriage certificate furnished by Sippo Malakar-respondent No. 11 herein. The railway authorities have accepted the fact that the special marriage certificate implies that the marriage between respondent No 11 Sippo Malakar and Sanjit Malakar was legally registered on 08.02.2010 and the marriage will therefore have to be accepted w.e.f 08.02.2010, whereas the family declaration and nomination submitted by Sanjit Malakar available in

the Railway records show Purnima Malakar as his legal wife who he married on 01.10.1999. The Railway Authorities also relied upon the findings of the Court of SDJM, Hojai that Purnima Malakar was married to Sanjit Malakar and is therefore entitled to be granted maintenance under Section 125 Cr.P.C. The said order was not interfered with by any superior court and therefore reliance placed by the railway authorities on the findings arrived at by the Court of SDJM, Hojai with regard to the question No. 1 namely whether Purnima Malakar is the legally married wife of opposite party and which question having been answered by the court of SDJM, Hojai in affirmative in favour of Purnima Malakar and against Sanjit Malakar, cannot be faulted with. The findings of the Court of SDJM, Hojai with regard to the said question have been arrived at by due process of law in a judicial proceeding and the same having not been interfered with by any superior Court, the findings in respect of the said questions remains and will have to be accepted as correct. The Judgments pressed into service by the learned Counsel for the respondent No. 11 will have no application in the facts of the case and the discussions made herein above.

38. Under such circumstances, we find no infirmity in the conclusions arrived at by the railway authorities in recording a finding that the petitioner-Purnima Malakar is the legally wedded wife and is entitled to the pensionary benefits of

late Sanjit Malakar. It is also pertinent to mention here that as per the Railway Service Rules, it is prescribed that railway employees are required to obtain prior permission from the authorities concerned before entering into any second marriage. In view of the findings upon enquiry from the records available with the Railways read together with the findings of the Court of SDJM, Hojai and also taking note of the fact that respondent No. 11 Sippo Malakar had approached the Competent Civil Court filing a title suit seeking a declaration that she is the legally wedded wife of Sanjit Malakar, this Court is unequivocal on the aspect that the materials available on record before the Railways, which are relied on by the Railway Authorities for determining the rival claims for family pension, will have to be accepted in favour of the petitioner in W.P.(C) No. 5189/2017-Smt. Purnima Malakar as has been done by the Railways in the enquiry. Consequently the order dated 11.09.2015 passed by the Railway Authorities pursuant to the enquiry initiated by the Railways cannot be declared to be incorrect. The CAT, Guwahati did not correctly appreciate the evidences which were adduced before the Court of SDJM, Hojai in the maintenance case filed by the petitioner and had erroneously arrived at its conclusion by referring to only a portion of the Judgment rendered by the Court of SDJM, Hojai and consequently interfering with the order dated 11.09.2015 issued by the Railways and further directing the Railways to release the pensionary benefits to the

respondent No. 11-Sippo Malakar.

39. In view of all the discussions above, this Court is of the considered view that the findings arrived at by the CAT, Guwahati are not based on a correct appreciation of the evidences adduced before the Court of SDJM, Hojai and has wrongly interfered with the findings of the Railway Authorities. The impugned order dated 21.02.2017 is hereby reversed and set aside. The order dated 11.09.2015 issued by the railways is sustained. The authorities are directed to take necessary steps for release of pensionary benefits to the petitioner. The children of both the petitioner and respondent No. 11 are entitled to their share of benefits as permissible under the pension rules of Railways. The Railway authority will examine this issue and accordingly pass necessary orders expeditiously.

40. The writ petitions are accordingly allowed and disposed of. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant