

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 187 of 2011

Smt. Sumati Debbarma,
D/o Lt. Ramdas Debbarma,
Madhab Bari, P.O. Ranir Bazar,
P.S. Ranir Bazar, District-West Tripura.

.....**Petitioner**

VERSUS

1. The State of Tripura, represented by the Commissioner/Principal Secretary, Health & Family Welfare Department, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, Agartala, Tripura (West).

2. The Director of Tripura Health Services, Government of Tripura, Gurkhabasti, P.N. Complex, P.O. Kunjaban, P.S. West Agartala, District-West Tripura.

3. The Accountant General (A&E), Tripura, Malancha Nivas, P.O. Kunjaban, P.S. East Agartala, West Tripura District.

4. Smt. Sarmila Debbarma, resident of Colonel Bari, Colonel Chowmuhani, P.O. Agartala, P.S. West Agartala, West Tripura District.

5. Miss Haimanti Debbarma, D/o Smt. Sarmila Debbarma, resident of Colonel Bari, Colonel Chowmuhani, P.O. Agartala, P.S. West Agartala, West Tripura District.

..... **Respondents**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE UB SAHA**

For the petitioner	: Mr. CS Sinha, Advocate
For the respondents	: Mr. S Chakraborty, Addl. GA Mr. DC Saha, Advocate
Date of hearing and delivery of Judgment & Order	: 26.11.2015.
Whether fit for reporting	: No.

JUDGMENT AND ORDER (ORAL)

(Deepak Gupta, CJ)

We are disposing this writ petition without going into the merit of the dispute between the parties because of the final order which we propose to pass in this case.

2. It is not disputed that the petitioner, Smt. Sumati Debbarma was married to Dr. Hiralal Debbarma in the year 1982. Out of this wedlock one son, namely, Arnab Debbarma was born in the year 1983. The case of the petitioner is that Dr. Debbarma was a drunkard and that he used to beat her up and he drove her out of the house in the year 1989. Therefore, admittedly from 1989 onwards the petitioner and Dr. Debbarma were not living together.

3. It is an admitted fact that in the year 1994, Dr. Debbarma filed a petition for grant of divorce against the petitioner. This petition was dismissed on 08.09.1995. The counsel for the wife, i.e. the petitioner herein, raised a plea that the Hindu Marriage Act, 1955 is not applicable since both Dr. Hiralal Debbarma and the petitioner were members of the Schedule Tribe. The learned District Judge, West Tripura accepted this plea and dismissed the petition on the ground of maintainability.

4. It is also not disputed that Dr. Hiralal Debbarma retired on 28.02.2009 and thereafter, he died on 12.01.2011. The case of the petitioner is that when she made a prayer for grant of family pension after the death of her husband she came to know that in the service record the respondent No.4, Smt. Sarmila Debbarma was shown to

be the wife of Dr. Hiralal Debbarma and Miss Haimanti Debbarma was shown to be the daughter of Dr. Hiralal Debbarma. The allegation of the petitioner is that since her marriage with the deceased Dr. Hiralal Debbarma had never been dissolved by any divorce she continued to be the only legally wedded wife of the deceased and is therefore entitled to pension, in accordance with law.

5. After notice was issued, replies were filed. In the reply filed by the State it is mentioned that at or before the time of retirement Dr. Hiralal Debbarma had filled in all his forms and in those forms he had shown respondent No.4, Smt. Sarmila Debbarma to be his wife and respondent No.5, Miss Haimanti Debbarma to be his daughter and he had not shown the petitioner or Sri Arnab Debbarma to be his wife or son. The stand of the State is that on the basis of the nomination the pension has been released to these persons.

6. The stand of respondent No.4, Smt. Sarmila Debbarma is that the marriage between Dr. Hiralal Debbarma and the petitioner, Smt. Sumati Debbarma was dissolved by the village council or the tribal authority and that after dissolution of the marriage, Dr. Hiralal Debbarma had entered into wedlock with her and, therefore, she is his legally wedded wife.

7. We are clearly of the view that the issue whether Dr. Hiralal Debbarma had divorced the petitioner and married respondent No.4 is a disputed issue of fact and cannot be decided by us in writ proceedings. Evidence has to be led to prove that divorce was

granted by the tribal authority authorized to grant such divorce in favour of Dr. Hiralal Debbarma. This divorce will have to be proved in accordance with law after leading evidence. In case such divorce is not proved then obviously the petitioner will be considered to be the legally wedded wife but if it is proved that such divorce had taken place then she cannot be considered to be the legally wedded wife. In writ proceedings we would not like to decide this issue because this will have a bearing not only on the payment of pension but also with regard to the inheritance of the property of Lt. Dr. Hiralal Debbarma and this cannot be decided without a proper trial. Therefore, we dispose of this writ petition with a direction that in case the petitioner wants to establish her status as the legally wedded wife of Dr. Hiralal Debbarma she may do so by filing a suit.

8. In view of the disputed status between the parties, it is not the Survival Certificate which will determine the issue but only the Civil Court can decide who is actually the legally wedded wife of deceased Dr. Hiralal Debbarma.

9. With these observations and directions, the writ petition is disposed of.

No order as to costs.

JUDGE

CHIEF JUSTICE

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