

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WP(C) No.450 of 2014

1. **Smt. Fulmati Debnath (Bhowmick),**
W/o Late Meghdhan Bhowmick,
P.O. Aralia, P.S. East Agartala, West Tripura.
2. **Miss Dipali Bhowmick,**
D/o Late Meghdhan Bhowmick,
P.O Aralia, P.S. East Agartala, West Tripura.

..... *Petitioners.*

- Vs -

1. **The State of Tripura,**
Represented by the Secretary to the Government of Tripura,
Department of Agriculture, Government of Tripura,
New Civil Secretariat Complex, P.O. Kunjaban, Agartala,
Pin - 799 010.
2. **The Director of Agriculture, Department of Agriculture,**
Government of Tripura, Krishi Bhavan, Pin - 799001.
3. **Senior Agronomist, State Agricultural Research Station,**
Arundhutinagar, Agartala, West Tripura.
4. **Smt. Sandhya Bhowmick, W/o Late Meghdhan Bhowmick,**
Dhaleshwar, Lane No.16, P.O. Dhaleshwar, Agartala, West
Tripura.
5. **The Accountant General of Tripura, Kunjaban, Agartala,**
West Tripura, Pin - 799 005.

..... *Respondents.*

_B_E_F_O_R_E_
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE U B SAHA

For the petitioners : Mr. R Pal, Advocate.

For the respondents : Mr. P K Biswas, Asstt. S.G.,
Mr. S Chakraborty, Addl. Govt. Advocate,
Mr. A L Saha, Advocate,
Mr. P Majumder, Advocate.

Date of hearing & Judgment : 26.02.2015.

Whether fit for reporting : No.

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this Writ petition, the petitioners have prayed for a Writ in the nature of 'Mandamus' directing the respondents 1 to 3 to pay pension to the petitioner no.1 and her daughter, petitioner no.2 on account of the pension payable in respect of Lt. Sri Meghdhan Bhowmick.

2. The undisputed facts are that Meghdhan Bhowmick was an 'Agriculture Assistant' working in the Department of Agriculture, the State of Tripura.

3. As per the facts now proved on record, Meghdhan Bhowmick was earlier married to Smt. Sandhya Bhowmick respondent no.4 herein. There are children born from this wedlock with Sandhya Bhowmick. The marriage between Meghdhan Bhowmick and Sandhya Bhowmik was never dissolved by any decree of divorce.

4. According to the petitioner no.1, Meghdhan Bhowmick had entered into a second matrimonial alliance with her in the month of January, 1990. This fact is disputed by Sandhya Bhowmik but the fact remains that out of this alliance, whether it was a legal marriage or not, one child Dipali Bhowmick petitioner no.2 was born.

5. Even if there was a marriage in view of the fact that there was a subsisting marriage with living spouse the second marriage would not be a valid marriage and would be a void marriage

and therefore, there can be no pension payable to the petitioner no.1, Smt. Fulmati Debnath(Bhowmick). As far as the minor child Miss Dipali Bhowmick who was born out of this alliance is concerned, she is definitely entitled to compensation.

6. Earlier there were some dispute in this regard but the Government of India has issued a memorandum dated 27th November, 2012 which reads as follows :

*"No.I/16/1996-P&PW (E) (vol.II)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare*

*3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi
Dated: 27th November, 2012.*

Office Memorandum

Sub : Eligibility of children from a void or voidable marriage for family pension - clarification regarding.

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 marriages 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 (c) of

Rule 54 of CCS (Pension) Rules, 1972, along with the legally wedded wife.

3. *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 Departments, these Orders issue after consultation with the Comptroller and Auditor General of India.*

5. *This issues with the concurrence of Department of Legal Affairs vide their FTS No. 3036, dated 17.10.2012.*

6. *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.*

7. *Hindi version will follow.*

*(D.K. Solanki)
Under Secretary to the Govt. of India
Tel. No. 24644632.*

*All Ministries/Departments of the Government of India
O/o The Comptroller & Auditor General of India,
O/o The Controller General of Accounts,
Lok Nayak Bhavan, New Delhi."*

7. In the present case the Pension Payment Order(PPO) issued on 20th November, 2013 is only in favour of the Sandhya Sarkar(Bhowmick), W/o Meghdhan Bhowmick and no amount has been paid to the petitioner no.2 Dipali Bhowmick. The government granted pension in favour of Sandhya Sarkar(Bhowmick) on the basis of the 'Pension and Gratuity Form'

submitted by Late Sri Meghdhan Bhowmick in which he had only shown Smt. Sandhya Sarkar(Bhowmick) to be his wife and Dibjyoti Bhowmik to be his son. Later the petitioner also claimed to be the widow of Late Sri Meghdhan Bhowmick. It is not disputed before us that petitioner no.2 is the daughter born of Late Sri Meghdhan Bhowmick.

8. The gratuity etc. were paid during the lifetime of Meghdhan Bhowmick. The family pension payable to the widow has been paid after his death on 22nd November, 2012. The memorandum in question has come into force on 27th November, 2012. Therefore, we dispose of this Writ petition with the following directions :

- (i) That on and with effect from 1st December, 2012 the petitioner no.2 Dipali Bhowmick shall be entitled to pension in her own right in terms of Rule 54(7) of the CCS(Pension) Rules, 1972 as clarified by its memorandum dated 27th November, 2012.
- (ii) The office of the Accountant General shall calculate the amount payable to Dipali Bhowmick as per the Rules 54(7) of the CCS(Pension) Rules and issue separate Pension Payment Order in her favour.
- (iii) The office of the Accountant General shall also calculate the excess amount already paid to Sandhya Sarkar (Bhowmick) and out of the pension payable to her in future w.e.f. the month of April, 2015 a sum of Rs.500/- (*Rupees five hundred*) shall

be deducted from the share of Sandhya Sarkar (Bhowmick) and paid to Dipali Bhowmick till the entire arrears are cleared out. The amount payable to Dipali Bhowmick shall be paid to her mother Smt. Fulmati Debnath(Bhowmick) till she attains majority.

The Writ Petition is disposed of in the aforesaid terms.

JUDGE

CHIEF JUSTICE