

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5071 of 2012**

Radha Devi Wd/o Jay Narayan Maharaj Aged About 60 Years Village-
Nawada P.O. -Sahawa, P.S.-Issuapur Dist. Saran (Bihar)

---- Petitioner**Versus**

1. Chief General Manager South Eastern Coalfields Ltd. Chirmiri Area, P.O. West Chirmiri Colliery Dist. Korla C.G.
2. Manager, South Eastern Coalfields Ltd. Korla Colliery P.O. Korla Colliery Dist. Korla C.G.
3. Central Coalfields Ltd. Through Its Chairman-cum-Managing Director, Darbhanga House Ranchi (Jharkhand)

---- Respondents

Shri Gary Mukhopadhyaya, counsel for the petitioner/s.
Shri Goutam Khetrapal, counsel for the respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****06/11/2017**

The issue of quintessential importance arising for consideration in this petition is whether the petitioner, a widow, is entitled to family pension after death of her husband, the petitioner admittedly being the second wife.

2. The facts relevant for decision of the controversy involved in this petition are in narrow compass.

One Jay Narayan Maharaj was employed and working as Safety-cum-Production Assistant in the services of South Eastern Coalfields Limited. He retired upon attaining the age of superannuation on 03/08/1983. After his retirement, in

addition to getting the benefits of gratuity, provident fund, insurance benefits etc., he was receiving pension also. He, however, died on 19/01/2001. Undisputedly, the deceased employee had two wives. His first marriage was solemnized with Ram Sawari Devi. He, thereafter, contracted second marriage with the petitioner during subsistence of first marriage. The first wife died on 20/04/1984 i.e. after retirement of the aforesaid employee. On the date, when the employee died i.e. in the year 2001, he was survived by the petitioner – the second wife and three children. At this stage, the petitioner came forward with a claim of payment of family pension on the claimed status of widow of the deceased employee. The claim of the family pension was, however, rejected vide impugned order on 11/09/2004 (Annexure P/1). The petitioner/ widow kept on making representations and wasting her time until she filed this petition long after eight years in the year 2012.

3. Learned counsel for the petitioner argued in extenso and contended that the deceased employee, at the time of his death, was survived by the sole widow, the petitioner who was only dependent upon pension which her husband was getting. He would further submit that the deceased employee had earlier nominated both the wives including the petitioner and three children for the purpose of getting pension. This nomination continued until the employee died. On the basis of this nomination, the petitioner also obtained the succession certificate from the Court of 1st Subordinate Judge, Chhapra, Bihar on 31/03/2003 against Western Coal Fields Ltd. As the jurisdiction of the Western Coal Fields Ltd. was bifurcated and a part of its mining area came under the jurisdiction of South Eastern Coalfields Ltd., a subsidiary of Coal India Ltd., the succession certificate in favour of the petitioner obliged the respondents under the law to pay family pension to the petitioner. He would submit that the Central Civil Services (Pension) Rules, 1972 (for short 'the

Rules of 1972') which is applicable to the services of the deceased employee, does recognise right of more than one widows to receive pension irrespective of whether the second marriage was legally valid or not. Therefore, in these circumstances, the petitioner is entitled to family pension w.e.f. the date of death of the employee. In support of his submission, learned counsel for the petitioner places reliance upon decision of the Supreme Court in the case of **Vidhyadhari and ors. v. Sukhrana Bai and others**¹.

4. Per contra, learned counsel appearing for the respondents would submit that the family pension is not dependent upon nominations but is governed by the rules applicable in the matter of payment of pension. According to him, family pension may be payable to more than one widows only in the circumstances that the second marriage was solemnized after due permission and such second marriage was permissible under the personal laws of the employee. Learned counsel for the respondents argued that grant of family pension cannot be claimed as of right and *de hors* the rules. Where second marriage is contracted without permission of the department and without it being permissible under the personal laws, it tantamounts to misconduct under the Conduct Rules and therefore, in such a situation, where second marriage is in violation of the Conduct Rules, no pension is payable under the law and therefore, in such a case, wife, who is not legally wedded, would not be entitled to family pension. He places reliance on the decision of the Supreme Court in the case of **Rameshwari Devi v. State of Bihar and ors.**². He would further submit that unless the service rules permit, family pension could not be claimed, placing reliance on the decision of the Supreme Court in the case of **Raj Kumari and anr. v. Krishna and ors**³. Relying upon decision of the Madhya Pradesh High Court in the case of **Smt. Koushalya**

1 (2008) 2 SCC 238

2 (2000) 2 SCC 431

3 (2015) 14 SCC 511

Bai v. M.P. State Electricity Board and anr.⁴, it is submitted that the nomination does not entitle pension because under the applicable rules, nomination is permissible only in respect of gratuity and not for any other purpose.

5. In addition to the admitted facts which have been stated in the paragraphs herein above, the admitted position of law is that the service conditions of the deceased employee are governed by the Rules of 1972. There is no quarrel with the other legal position that as the rules applicable for Central Government Servant have been applied in the matter of governing terms and conditions of services of the employees of South Eastern Coalfields Ltd., the Conduct Rules of the Government servants will also be applicable which are known as Central Civil Services (Conduct) Rules, 1964 (for short 'the Conduct Rules').

6. The family pension scheme is essentially an attribute of public employment aimed at providing financial support to the eligible members of the family of deceased employee dependent on the monthly pension receipt of the retired employee. As to who would be entitled to family pension and under what circumstances it would be payable and what would be the extent to which the family pension would be payable are governed by the terms of appointment and the statutory rules, if any, made in this behalf. This Court can take notice of an established practice prevalent in many of the public employment wherein provisions are made for grant of family pension. In the Central Civil Services and various State Civil Services, as also in other public sector undertaking either of the Central Government or State Government, family pension schemes have been applied. More than an entitlement based on any successory right under the laws of succession, family pension scheme under various rules and regulations governing terms and conditions of employees in public employment is actuated by

4 2006 (1) MPHT 257

considerations of financial support to the family of the deceased Government Servant who was receiving pension at the time of his death.

7. The Rules of 1972 is one such piece of statutory prescription framed under the constitutional power by the President of India. The Coal India Limited, an undertaking of the Government of India and so also a subsidiary Government companies like South Eastern Coalfields Ltd. in the present case, have all followed a uniform statutory scheme of payment of family pension.

8. Rule 54 of the Rules of 1972 deals with family pension. It lays down, amongst other things, as to who would be entitled to receive family pension. Various provision of this rule, all of which need not be reproduced here, deal with different circumstances and category of dependents including widow, children of the deceased employee to receive family pension. Rule 54 (14) (b) defines family in relation to the Government Servant as below -

“Rule 54 (14) (b) - “family” in relation to a Government Servant means -

(i) Wife in the case of a male Government servant, or husband in the case of a female Government servant.

Note 1- Deleted.

Note 2 - Deleted.

(ia) A judicially separated wife or husband, such separation not being granted on the ground of adultery, and the person surviving was not held guilty of committing adultery.

(ii) son who has not attained the age of [twenty five] years and unmarried daughter who has not

attained the age of [twenty five] years, including such son and daughter adopted legally before retirement.”

The wife of a Government Servant, amongst others, is also entitled to family pension. Whether and in what circumstances, widow, if more than one, would be entitled to family pension, has not been dealt with elaborately but Rule 54 (7) of the Rules of 1972 provides thus -

“(7) (a) (i) – Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(b) Whether the deceased Government Servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension, which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner:

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and / or to other child or children otherwise eligible, in equal shares or if there is only one widow or child, in full, to such widow or child].

(c) Where the deceased Government servant or pensioner is survived but widow by has left behind eligible child or children from a divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pension had she not been so divorced:

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the other widow or widows and / or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child].

(d) Where the family pension is payable to twin children, it shall be paid to such children in equal shares :

Provided that when one such child ceases to be eligible his / her share shall revert to the other child and when both of them cease to be eligible for family pension shall be payable to the next eligible single child / twin children].”

9. A reading of aforesaid provision would definitely indicate that the rule does not altogether prohibits payment of family pension, if there are more than one widow of the deceased retired employee but the rule making authority has carefully and cautiously used words of significance as “where the family pension is payable to more widows than one”. This phrase is indicative of the policy behind the rules that while family pension is not altogether prohibited to more than one widows, it would be given wherever and whenever it is payable. The word 'payable' occurring in the provisions in its logical and fair interpretation must mean 'payable under the

rules' or 'payable under the law'. Therefore, in order to find out whether and in what circumstances, more than one widows, would be entitled to family pension, one will have to find out either in the Pension Rules itself or in any other rules, such indicators. As far as the Rules of 1972 are concerned, learned counsel for the parties could not, and this Court also could not trace any specific provision in this regard as to when and under what circumstances, family pension would be payable to more than one widows.

10. The only guide in these circumstances is the Supreme Court verdict in the case of **Rameshwari Devi** (supra) where the issue with regard to entitlement to pension to a widow who incidentally happened to be the second wife and therefore, not a legally wedded wife, arose for consideration on facts. That was a case where the claim of family pension was raised by the widow of the deceased Government servant to whom, provisions of the Rules of 1972 and Conduct Rules were applicable. The admitted position on record was that the claimant widow was the second wife and on facts, it was found that by application of Hindu Law of marriage, the second wife could not be said to be a legally wedded wife. Their Lordships in the Supreme Court had considered the provisions of the Conduct Rules which imposed restraint regarding marriages as provided in Rule 21 of the Conduct Rules. It was noticed thus -

“10. Mr. Dubey, counsel for Rameshwari Devi, submitted that inquiry conducted by the State Government as to the marriage of Narain Lal with Yogmaya Devi was incompetent as there was no lawful authority with the State Government to hold such an inquiry. It was for Yogmaya Devi to establish her right of her being married to Narain Lal in a court of law. Mr. Dubey said that under the relevant Conduct Rules applicable to Narain Lal he could be charged with

misconduct of his having married a second time during the life time of his first wife. It is only in that circumstance when there is charge of misconduct there could be an inquiry as to the marriage of Narain Lal with Yogmaya Devi. He referred to Rule 21 of the Central Civil Service (Conduct) Rules as well as to Rule 23 of the Bihar Government Servants' Conduct Rules, 1976, which are as under:-

CCS Rules

"21. *Restriction regarding marriage* - (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person :

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that -

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government.

Bihar Government Servant's Conduct Rules, 1976

23. *Restrictions regarding marriages.* - (1) No Government servant shall enter into, or contract a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living shall enter into or contract a marriage with any

person :

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2) if it is satisfied that -

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate the fact to the Government."

11. Having so noticed, their Lordships were of the view that where the second marriage was without permission and in a case where it was not permissible under the personal laws applicable to the Government Servant, it would be a case of misconduct and therefore, the second wife, not being the legally wedded wife, may not be entitled to pension. The considerations were as below -

"11. We may also note two judgments of this Court on the question when there is charge of misconduct against a Government servant. In *State of Karnataka and another vs. T. Venkataramanappa*, (1996) 6 SCC 455 the respondent, a police constable was prosecuted at the instance of his wife for having contracted second marriage. He was discharged for want of evidence. A departmental inquiry was instituted against him for having contracted second marriage, for which he was suspended. He approached the Karnataka Administrative Tribunal against the order of suspension and for stopping of the inquiry against him on the ground that a criminal

court had discharged him of the offence of bigamy. The Tribunal accepted the stand of the respondent, quashed the departmental proceedings and lifted the suspension. On appeal filed by the State this Court said as under: --

"There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a government servant to marry a second time without the permission of the Government. But, here the respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. It was thus beyond the ken of the Tribunal to have scuttled the departmental proceedings against the respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental enquiries, as the decisions of competent courts tending to be decisions in rem would stand at the highest pedestal. There was a clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy under Section 494 IPC, may not, to begin with, be necessary."

12. [In State of W.B. and others vs. Prasenjit Dutta](#) (1994) 2 SCC 37 departmental proceedings were initiated against the respondent, who was a member of the Police Service of the State of West Bengal under Rule 5(4) of

the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 for having contracted a second marriage. That rule says that no government employee who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she belongs. On an inquiry made by an officer, appointed for the purpose, and on his report that the respondent was guilty of misconduct alleged, an order of dismissal was passed by the disciplinary authority. The respondent approached the High Court and the order of his dismissal was stayed. Nevertheless the High Court was of the view that the second marriage was a serious matter, which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. On appeal filed by the State Government this Court said: --

"5. The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be

viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status."

13. But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long-drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner. In the present case, an inquiry was held which cannot be termed as sham. The result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that the marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been

unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.

14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see [Sections 8, 10](#) and the Schedule to the [Hindu Succession Act](#), 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.”

12. The aforesaid decision rendered by the Supreme Court is on the anvil of same rules as has been made applicable in the present case and in respect of the

similar claimant.

13. Learned counsel for the petitioner, however, vehemently argued and heavily relied upon a subsequent decision in the case of **Vidhyadhari** (supra) to submit that the Supreme Court, having referred to the decision in the case of **Rameshwari Devi** (supra) and in the facts that the second wife, though may not be legally married was a nominee, held that she was entitled to succession certificate in respect of all the retiral dues which incidentally includes pension also. Therefore, in such a situation, where the widow, though not legally wedded, if nominated, would be entitled to succeed to the property of the deceased employee and entitled to receive family pension.

The submission of learned counsel for the petitioner, though lucrative, deserves rejection. In the case of **Vidhyadhari** (supra), larger issue, as to whether second wife, though not legally wedded, was entitled to succession certificate only on the basis of nominations in respect of retiral dues, was under consideration. In the peculiar circumstances of the case that second wife was nominee, found to have resided with the deceased employee, it was held that merely because she was a nominee, it would not deprive her to get succession certificate. Despite succession certificate, whether nomination, by itself, would entitle such a widow to receive family pension under the applicable rules was neither raised nor argued and therefore, Their Lordships in the Supreme Court did not have the occasion to decide that very issue which directly fell for consideration in its earlier decision in the case of **Rameshwari Devi** (supra). In the case of **Vidhyadhari** (supra), the earlier decision in the case of **Rameshwari Devi** (supra) was referred to as below -

“13. This Court in a reported decision in Rameshwari Devi's case (supra) has held that even if a Government Servant had contracted second marriage during the

subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife.”

14. The legal issue which directly arose for consideration in the case of **Vidhyadhari** (supra) was then declared as below -

“13.The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Succession Act as there is nothing in that Section to prevent such a nominee from claiming the certificate on the basis of nomination.”

15. Therefore, a close and cautious reading of the two decisions of the Supreme Court would show that while in the case of **Rameshwari Devi** (supra), entitlement of widow who was not legally wedded wife, for family pension was directly under consideration, in the case of **Vidhyadhari** (supra), the consideration was mainly on the issue of entitlement to succession certificate. At this juncture, it may be noticed that if the service rules permit receipt of any retiral benefits of deceased employee only by virtue of nomination, irrespective of any other right, the nominee may be entitled to succession certificate like gratuity, provident fund and insurance benefits. Therefore, to that extent, learned counsel for the petitioner is correct in submitting that in the context of the decision of the Supreme Court in the case of **Vidhyadhari** (supra), there may not be impediment in granting succession certificate even in favour of the widow, who happened to be second wife and therefore, not a legally wedded wife, provided there is a nomination in her favour.

The judgments of the Courts are not to be interpreted as statutes. The decision has to be interpreted in the context in which they appear and must be logically understood. In this regard, following observations have been made by the Supreme Court in the case of **Haryana Financial Corporation & anr. v. M/s. Jagdamba Oil Mills and anr., 2002 (3) SCC 496.**

“19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737 at P. 761), Lord MacDermot observed:

"The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

20. In *Home Office v. Dorset Yacht Co.* (1970) 2 All ER 294 Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course,

construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board*, (1972) 2 WLR 537 Lord Morris said:

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

xxx xxx xxx

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of

obstructions which could impede it."

16. However, in a case where nominations have limited application like the present one, nominations could not be made a basis for claiming family pension if it is otherwise not payable under the rules on considerations as discussed in the case of **Rameshwari Devi** (supra). Under the rules of 1972, as Rule 53 reads, nominations is for the limited purpose of receiving gratuity and has nothing to do with the family pension which is more a statutory scheme of public employment rather than based only on nominations. Whether or not nominations have been made, may have impact on a claim for payment of gratuity but entitlement to family pension would depend only on the scheme of the rule to those members who have been specified under the law and to no other persons. This is because the retiral dues and family pension are payable in accordance with the rules and regulations and it was so held by the Supreme Court in its recent decision in the case of **Raj Kumari and anr. v. Krishna and ors., (2015) 14 SCC 511**.

"13. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination can one say that the plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married to another woman in Arya Samaj temple, as submitted by the learned counsel appearing for the appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present appellants in accordance with the rules and regulations governing service conditions of late Shri Atam Parkash."

17. In the similar set of rules relating to nominations under the M.P. Civil Services (Pension) Rules, the High Court of Madhya Pradesh in the case of **Smt. Koushalya Bai** (supra) held that the nominations are only in respect of the gratuity.

18. This Court has dealt with the legal issue despite specific objection taken by learned counsel for the respondent that the petition is barred by limitation, keeping in view the fact that entitlement to family pension is a recurring cause of action. In the result, this petition is dismissed. No orders as to costs.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge