

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OAC) No. 3785 of 2016

Dulana Naik @ Nayak

.....

Petitioner

Mr. G.N. Sahu, Advocate

Vs.

D.G. of Police and others

.....

Opposite Parties

Mr. A.K. Mishra, AGA

Mr.S.K. Patra, Advocate (O.P.4)

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

26.08.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. G.N. Sahu, learned Counsel for the Petitioner, Mr. A.K. Mishra, learned Additional Government Advocate for the State and Mr. S.K. Patra, learned Counsel for Opposite Party No.4.

3 The Petitioner has filed this Writ Petition seeking to quash the letter dated 16.08.2016 issued by Opposite Party No.3 under Annexure-13, by which the Superintendent of Police, Boudh had intimated that as per Rule 56 (d) Note of OCS (Pension) Rules, 1992, after the commencement of the Hindu marriage Act 1955, any second marriage contracted by a Hindu male during the life time of his 1st wife shall be void and the second wife shall not be entitled to the family pension as legally wedded wife. Therefore, the Petitioner being the second wife of Ex-Constable Hanumanta Naik is not entitled to get any Pensionary benefit. Therefore, her case was not considered for grant of family pension.

4. Mr. Sahu, learned Counsel for the Petitioner contended that one Hanumanta Naik, while continuing as Constable married to the Petitioner. Therefore, on the basis of such marriage, the petitioner

claims that she is entitled to get family pension. But such marriage was done during the life time of the 1st wife. However, it is contended that even if the Petitioner will not be entitled to get the family pension, but her children are entitled to get family pension in view of the judgment of this Court in the Case of ***Smt. Sudha Das and others v. Collector, Rayagada and others***, 2009 (I) OLR 44 and ***Niranjan Samal v. State of Orissa and others***, 2015 (II) ILR CUT-522.

5. Mr. A.K. Mishra, learned Additional Government Advocate contended that the Petitioner had approached the Civil Court by filing Civil Suit No. 106 of 2012 seeking for declaration of status as legally married wife of the deceased government servant-Hanumanta Naik, but the said Suit having been dismissed, the Petitioner is not entitled to get the family pension as claimed and as such, the order impugned is well justified and that need not be interfered with.

6. Mr. S.K. Patra, learned counsel appearing for the Opposite Party No.4 stated that what ever pension paper will be submitted before the authority, the same will be scrutinized and if it is permissible in accordance with law, the benefit will be extended to the persons who are entitled to get under the provisions of OCS (Pension) Rules, 1992.

7. Having heard learned counsel for the parties and after going through the records, it appears that the Petitioner claiming to be the 2nd wife of the deceased Government servant seeks for grant of family pension to her. But the marriage of the Petitioner having been declared void in the suit filed by her in CS No. 106 of 2012 on 28.10.2013 by the competent civil court, i.e. Civil Judge (Junior Division), Boudh and once the civil suit filed by the Petitioner seeking for declaration her status as legally married wife of the deceased government employee has been dismissed, she cannot claim as a legally married wife as a legally married wife of the deceased employee. More so, the marriage of the

Petitioner during the survival of the 1st wife is void and, thereby, the order impugned in Annexure-13 denying the benefit to the Petitioner cannot be interfered with. But fact remains, if the children of the Petitioner are still alive, who were born through the deceased government employee-Hanumanta Naik, in that case the family pension admissible to the children cannot be denied in view of the judgment of this Court in *Smt. Sudha Das and others v. Collector, Rayagada and others*, 2009 (I) OLR 44 and *Niranjan Samal v. State of Orissa and others*, 2015 (II) ILR CUT-522, wherein this Court already held that if the marriage of the Government Servant has been done while his first wife is alive in contravention of Rule-24 of the Odisha Government Servant's Conduct Rules, 1959, in that case the 2nd wife is not entitled to get the family pension, but children born to the deceased Hindu employee from second wife during subsistence of first marriage, shall be entitled to family pension, gratuity, provident fund and unutilized leave salary in equal shares in accordance with the provision of OCS (Pension) Rules. In that view of the matter the Writ Petition stands disposed of upholding the order passed by the authority under Annexure-13 denying the benefit to the Petitioner to get the family pension. However, this Court observes that the Children born through the 1st wife and 2nd wife are entitled to get family pension, gratuity, provident fund and unutilized leave salary in equal shares in accordance with the provision of OCS (Pension) Rules, 1992, which should be determined by the employer, in view of the law laid down by this Court as mentioned above.

8. With this observation and direction, the Writ Petition stands disposed of.

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(DR. B.R. SARANGI)
JUDGE