

WP.CT. 125 of 2023

(Smt. Meena Oraon Vs. Union of India & Ors.)

Mr. Asim Kumar Neogi
Mr. A. K. Paul
Mr. Vaskar Pal

..... For the petitioner

Ms. Chandreyi Alam
Ms. Sabita Roy

..... For the respondents

The writ petition is directed against an order dated 29th September, 2022 passed by the Learned Central Administrative Tribunal, Kolkata Bench in OA No. 350/00287/2020.

Facts as unfurled in the writ petition and its accompanying documents are that one Muskoo Oraon while working as Trackman under SSE/P-Way/Sansi, died in-harness on 12th May, 2004 leaving behind the present petitioner as widow and four sons. Muskoo Oraon had another wife who predeceased him on 3rd April, 1988. On being approached by the family of the deceased, the railway authority disbursed family pension in favour of one Rabi Oraon, who happens to be the son of the second wife, till the date Rabi Oraon attained the age of 25 years i.e. till 31.12.2011. Rabi Oraon was favoured with an appointment on compassionate ground by an order dated 28.09.2012. Subsequent thereto, the present petitioner claiming to be wife of deceased employee, approached the railway authority with a

prayer for release of family pension in her favour. Since such prayer has not been acceded to, the petitioner approached the learned Tribunal by preferring an Original Application being OA No. 350/00287/2020 which was disposed of by an order dated 21st September, 2022, *inter alia*, holding that the respondents committed error in stopping family pension after 31st December, 2011 and accordingly, the respondent was directed to act in accordance with law and pay arrears of family pension till the youngest son of the deceased employee, namely, Amit Oraon, acquired ineligibility by virtue of his age. Since the learned Tribunal has not returned any finding declaring that the petitioner is entitled to enjoy family pension and no order has been passed to release family pension in her favour, the petitioner has preferred this writ petition to assail the order dated 21st September, 2002 passed by the learned Tribunal.

Mr. Neogi, learned advocate appearing for the petitioner drawing our attention to the amended portion of Para 801(10) of the Manual of Railway Services (Pension) Rules, 1950 vociferously contends that where a deceased Railway servant or pensioner is survived by more than one widow, the railway authority is duty-bound to disburse family pension to them in equal shares. He further contends that since one widow has died, the petitioner shall get full family pension.

Drawing our attention to the Rule 75(19)(b)(ii) of the Railway Services (Pension) Rules-1993, he submits that unless and until a wife is judicially separated by an order passed by a competent civil Court of law on ground of adultery, the railway authority is bound to disburse family pension in favour of that wife. He submits that in spite of being approached, railway authority did not pass any order negating the claim of family pension of the present petitioner. He submits that necessary direction should be given upon the respondent to disburse family pension in favour of the petitioner.

Ms. Alam, learned advocate appearing for the respondents arduously contends that only a legally married wife can claim family pension and the petitioner, being the 2nd wife of the deceased employee, cannot be treated as a legally married wife. She strenuously contends that the deceased employee married the present petitioner at the time when he had his 1st wife living and hence, such marriage is void marriage and for this reason, which in her view is justified, the family pension has not been released in favour of the petitioner.

She, however, submits that the youngest son of the deceased employee had not approached the respondents for release of arrears of family pension till he acquired ineligibility by virtue of his age. She submits that if the youngest son of the deceased employee, namely, Amit Oraon approaches the railway authority with proper

application, the family pension shall be released in his favour in accordance with law.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

In the Original Application itself [Para-4(c)], the petitioner declared herself to be the second wife of the deceased employee and from the affidavit used by Rabi Oraon, one of the sons of the deceased employee, it transpires that Rabi Oraon was born on 1st January, 1987 whereas the first wife of the deceased employee, namely, Mangi Oraon expired on 3rd April, 1988. Hence, it is clear as day that the deceased employee had a spouse living at the time of his second marriage and the present petitioner is the second wife of the deceased employee. The writ petitioner herself admitted such fact in paragraph 12 of the writ petition.

Repeal and Saving clause of the Railway Services (Pension) Rules, 1993 (in short, the Pension Rules of 1993) postulates that on the commencement of these rules, every rule, including the rules pertaining to pension including family pension of the employee of the railway, in force immediately before such commencement ceased to operate. The petitioner's husband died in harness in 2004 and hence, in the case at hand the Pension Rules of 1993 will be applicable.

Rule 2(9) of the Pension Rules, 1993 defines the expression 'family pension' by using the words to the

effect that it means family pension 1964 admissible under rule 75.

Rule 75 of the Rules of 1993 defines the word 'family' in relation to a railway servant saying that it means the wife in case of a railway servant, a judicial separated wife if such separation is not granted on ground of adultery, unmarried son who has not attained the age of 25 years, unmarried or widowed or divorced daughter including such son and daughter adopted legally, dependent parents and dependant disabled siblings of a railway servant.

Mr. Neogi strenuously contends that such definition is inclusive. While defining a word or expression when legislature uses the word 'means' then generally such definition cannot be claimed to be inclusive. The word 'wife' used in Rule 75 of the Pension Rules, 1993 must be construed to be a 'legally married wife'. The meaning of the word 'wife' used in Rule 75 cannot be extended to such extent so as to include a wife whose marriage is not valid in the eye of law within the definition of the word 'wife'.

Indisputably, the incidents of marriage of the petitioner is governed by the provisions of Hindu Marriage Act, 1955. As per the provision of Section 5(i) of the Hindu Marriage Act, 1955 a marriage will be valid if such marriage is solemnized between any two Hindus, if neither party has a spouse living at the time of marriage

and S.11 of Hindu Marriage Act, 1955 says the marriage solemnized in contravention of the S.5(i) of Act of 1955 shall be void. Needless to mention that the marriage between the present petitioner and the deceased employee was solemnized after the Hindu Marriage Act, 1955 came into force. Rabi Oraon, son of 2nd wife, was born on 1.1.1987 whereas the 1st wife of the deceased employee died on 3.4.1988. The petitioner contracted 2nd marriage during subsistence of 1st marriage of her husband. Accordingly, the petitioner cannot be treated as legally married wife of the deceased employee and hence, she cannot be treated as a member of the family as defined in Rule 75 of the Pension Rules, 1993.

In such conspectus, the prayer of the petitioner for release of family pension in her favour cannot be entertained and we do not find any jurisdictional error and/or infirmity in the order passed by the learned Tribunal warranting interference with the same. Consequently, the writ petition is dismissed.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)