

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.2337 of 2023

Kabilas Devi, aged about 64 years, W/o Late Barhan Mandal, R/o-Village : Aurwatand, P.O.-Mandramo, P.S.-Suriya, Dist-Giridih, Jharkhand. **Petitioner**

Versus

1. The Union of India through the General Manager, South Eastern Railway, Garden Reach, Kolkata, West Bengal-700043.

2. The Divisional Railway Manager, East Central Railway, Dhanbad, Jharkhand-826001.

3. The Senior Divisional Personnel Officer, Dhanbad, Jharkhand-826001;

4. The Chief Yard Master, Patherdih, P.O. + P.S.-Patherdih, Dist-Dhanbad, Jharkhand-833102.... .. **Respondents**

CORAM:HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Rishikesh Giri, Advocate

For the Respondents : Mr. Anil Kumar Ganjhu, CGC

Order No. 06/Dated 7th February, 2024

Per Sujit Narayan Prasad, J.

1. This writ petition is under Article 226 of the Constitution of India directed against the order dated 14.03.2023 passed by the Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. No.051/00078/2023 whereby and whereunder the relief as was sought for by the writ petitioner before the learned Tribunal for holding her entitled to get the benefit of family pension, has been denied to be given.

2. The brief facts of the case as per the pleadings made in the writ petition, which are required to be enumerated, read hereunder as:-

3. It is the case of the petitioner that the husband of the petitioner, late Barhan Mandal was appointed in Railway on 08.04.1984 and took Voluntary Retirement from service as Shunt Man on 31.03.2016, after rendering nearly 32 years of unblemished service.

4. The husband of the petitioner solemnized marriage with Late Dhaneshwari Devi but Dhaneshwari Devi left the matrimonial house. Since Late Dhaneshwari Devi left the matrimonial house, there was no female in the house to look after the father and mother of Late Barhan Mandal (husband of the petitioner) and at this situation the father of the Late Barhan Mandal solemnized the marriage of the petitioner with Late Barhan Mandal.

5. Late Barhan Mandal got married in the early childhood with one Dhaneshwari Devi and from that marriage, he begot 3 children namely Yashoda Devi, Reso Mandal and Pyari Mandal but she left the matrimonial House and started living in her parental home as because at that time Barhan Mandal was unemployed. Dhaneshwari Devi did not return for more than a decade and only thereafter, Late Barhan Mandal married this petitioner. From this wedlock, all together 5 children were born namely Pradeep Mandal, Dewyanti Devi, Chinta Devi, Sarita Devi & Ashok Mandal. It is pertinent to mention here that all the children born out of wedlock between

Dhaneshwari Devi and Barhan Mandal are major and married having age more than 40 years. Similarly, children born out of the wedlock between Late Barhan Mandal and petitioner are major and married.

6. After VRS, the deceased employee was issued a pension and was getting his pension regularly till his death. Due to illness the husband of the petitioner, late Barhan Mandal died on 11.05.2021.

7. The claim of the grant of family pension to the Petitioner who is wife of the deceased employee namely late Barhan Mandal has been rejected vide letter dated 11.10.2022 on the ground that she is the second wife of the Late Barhan Mandal as there is no such policy to grant family pension to second wife.

8. The first wife Dhaneshwari Devi predeceased Late Barhan Mandal on 10.12.2018.

9. After the death of the late Barhan Mandal, petitioner applied for the grant of family pension.

10. It is the case of the petitioner that the pension paper very categorically mentions the petitioner to be the wife of the deceased employee and nominee in the pension. In all the government documents, the petitioner's name is mentioned as the wife of the deceased employee namely Barhan Mandal. Even the villagers have given in writing

that petitioner was married to Late Barhan Mandal and she is the only surviving wife who is living in destitute.

11. The petitioner has earlier approached the Central Administrative Tribunal by filing original application being O.A No. 051/00078/2023 with a prayer for quashing the letter dated 11/10/2022, whereby respondent, rejected the claim of family pension and for direction upon the respondents to sanction family pension and accordingly pay the family pension with accrued arrears to the applicant, after quashing the aforementioned orders.

12. The learned Tribunal vide order dated 14.03.2023 dismissed the aforesaid original application on the ground that the applicant in hand cannot be said to be the legally wedded wife of the deceased employee and therefore, neither under this Rule or any other Rule she can be granted family pension. Against the aforesaid order of the learned Tribunal, this writ petition has been preferred.

13. It is evident from the factual aspect as per the pleading made and referred hereinabove that the petitioner claims to be the second wife and in that capacity she claims to be the widow of deceased employee, namely, Late Barhan Mandal. Such claim of the widow is on the background of the fact that the said deceased employee had derived first marriage with one Dhaneshwari Devi and three children have born from the aforesaid wedlock, i.e., with deceased

employee and Dhaneshwari Devi. Thereafter, Dhaneshwari Devi eloped with someone else as per the case of the writ petitioner.

14. The case of the writ petitioner is that the said Barhan Mandal, the deceased employee, married the applicant. The said Dhaneshwari Devi, the first wife, died in the year 2018. The said Barhan Mandal, the deceased employee, also died on 11.05.2021.

15. The writ petitioner who was applicant before the learned Tribunal, has raised the grievance for holding her entitled for the benefit of family pension on the ground that she is widow of the deceased employee, namely, the said Barhan Mandal and to that effect a declaration has been given by the concerned deceased employee in the service record. The document to that effect has been appended, i.e., Form – 6 wherein the name of the writ petitioner, namely, Kabilas Devi, has been referred to be the wife of the deceased employee as also the other documents like Aadhaar Card and PAN Card have also been annexed by the writ petitioner in order to support the claim that she is the widow of the deceased employee.

16. The learned Tribunal had called upon the respondents. In pursuance thereto, the appearance was made.

17. The ground has been taken that the family pension is permissible to the second wife but that lady must be legally wedded wife and the applicant is not the legally wedded wife of the deceased employee.

18. Learned counsel for the respondents has referred the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

19. The learned Tribunal, after taking into consideration the rival submissions made on behalf of the parties and considering the implication of the provision or Rule 7(a)(i) of the CCS (Pension) Rules, 1972, has dismissed the original application by coming to the finding that a lady who is not legally wedded wife cannot be considered as widow under the aforesaid Rule.

20. Mr. Rishikesh Giri, learned counsel appearing for the writ petitioner, has assailed the impugned order on the following grounds :-

(i) The deceased employee has filled upon the Form-6 and other documents wherein the disclosure has been made referring the name of the writ petitioner to be his wife.

(ii) The rejection of the claim of the writ petitioner, as appended as Annexure-1, is based upon the fact that the second wife is not entitled for the family pension.

(iii) The learned Tribunal although has dismissed the original application but on the ground which was taken by the authority concerned wherein the ground of rejection has been taken that the second wife is not entitled to get the family pension while the Rule 7(a)(i) of the CCS (Pension) Rule, 1972 is otherwise.

21. The learned counsel for the writ petitioner, based upon the aforesaid ground, has submitted that the order passed by the learned Tribunal suffers from patent illegality.

22. He has relied upon the judgment rendered by Hon'ble Apex Court in the case of ***Shiramabai W/o Pundalik Bhawe and Others v. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another*** reported in **2023 SCC OnLine SC 1026**.

23. While on the other hand, Mr. Anil Kumar Ganjhu, learned counsel appearing for the respondents, has reiterated the grounds which were taken before the learned Tribunal as referred in paragraph 6 of the impugned order.

24. So far as the reliance which has been put by learned counsel appearing for the writ petitioner upon the judgment of the Hon'ble Apex Court is concerned, it has been submitted that the aforesaid judgment is not applicable in the given facts of the present case.

25. We have heard learned counsel for the parties and gone across the finding recorded by the learned Tribunal in the impugned order.

26. This Court, before entering into the legality and propriety of the impugned order, so as to exercise the power of judicial review in view of the judgment rendered by Hon'ble Apex Court in the case of ***L. Chandra Kumar v. Union of India and Others***, reported in ***(1997) 3 SCC 261*** whereby and whereunder the High Court has been conferred with the power under Article 226 of the Constitution of India to exercise the power of judicial review. The reference of the relevant paragraph needs to be referred herein which reads hereunder as :-

“**99.** In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of

the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

27. The law is well settled that the power of judicial review is to be exercised if there is any error apparent on the face of the order so assailed suffers from vice of the violation of statutory provision, reference in this regard be made to the judgment rendered by Hon'ble Apex Court in the case of **West Bengal Central School Service Commission & Ors Vrs. Abdul Halim & Ors.**, reported in **(2019) 18 SCC 39**, wherein, at paragraph-30 it has been held as under:-

“30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan vs. Mallikarjuna* reported in AIR 1960 SC 137. If the provision of a statutory rule is reasonably capable of two or more constructions and

one construction has been adopted, the decision would not be open to interference by the writ Court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ Court by issuance of writ of Certiorari.”

28. Likewise, the Hon’ble Apex Court in the case of ***T.C. Basappa Versus T. Nagappa***, reported in ***(1955) 1 SCR 250***, wherein, it has been held as under:-

“An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e. g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.”

29. It is evident from the aforesaid judgment that the power of judicial review is to be exercised if the error apparent on the face of such order.

30. This Court is now proceeding to examine the legality and propriety of the impugned order for which this Court is required to consider as to whether –

(i) Based upon the facts of the present case, the status of the writ petitioner can be said to be of “widow” so as to come under the fold of the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 holding her entitled to get the benefit of family pension.

(ii) The decision taken by the authority by way of rejecting the claim of the writ petitioner on the ground that

the writ petitioner since was second wife, hence second wife is not entitled for family pension.

(iii) Even accepting the fact that wrong ground has been taken while rejecting the claim of the writ petitioner, can it be just and proper to remit the matter if the writ petitioner is having no case in view of the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

31. This Court is required to answer the Issue No. (i) and (ii) first and thereafter the issue No.(iii) will be decided.

32. The admitted fact herein is that the deceased employee, namely, Barhan Mandal, who was in service, made application for voluntary retirement and was separated from service on 31.03.2016.

33. It is the admitted case of the writ petitioner that the deceased employee, namely, Barhan Mandal, who had died after separation from service, had married with one Dhaneshwari Devi.

34. It is the further admitted fact that the writ petitioner who claims to be the legally married wife and in that capacity she was living with the deceased employee since long and after death of the deceased employee, she claims to be the widow of the deceased employee.

35. The first wife Dhaneshwari Devi, who admittedly was the legally married wife, was having three children from the wedlock with the deceased employee, namely,

Barhan Mandal. But she died sometime in the year 2018 and, subsequently, the employee has also died on 11.05.2021.

36. After the death of the deceased employee, the writ petitioner, namely, Kabilas Devi, has raised her grievance for holding her entitled for the family pension in view of the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

37. The said claim has been rejected by the authority concerned vide Annexure-1 dated 11.10.2022 on the ground that she was not the legally married wife and hence, she is not entitled for the family pension under Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

38. The said plea of the writ petitioner has been rejected by the learned Tribunal on the ground that the Rule 7(a)(i) of the CCS (Pension) Rules, 1972 provides that the family pension is payable to more widows than one. The family pension shall be paid to the widows in equal shares.

39. The learned Tribunal has interpreted the word “widow” and has come to conclusion that if a right is to be claimed, the same is to be claimed within the framework of the statutory provision. Under the statutory provision, the “widow” has been held entitled for the family pension and the one will only be said to be a “widow” of the deceased employee if she is able to prove that she was legally married wife of the deceased employee.

40. The learned Tribunal, based upon the aforesaid reason, has come to the conclusive finding that in the facts and circumstances of the case, the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 is not applicable and, as such, dismissed the original application against which the present writ petition has been preferred.

41. The ground which has been taken on behalf of the writ petitioner basis upon which the Issue Nos.(i) and (ii) have been formulated for answering the same, this Court is of the view, the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 needs to be referred herein which reads hereunder as :-

"7 (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widow 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."

42. It is evident from the aforesaid provision that the family pension has been held to be payable to more widows than one, the family pension shall be paid to the widow in equal shares.

43. Rule 7(a)(ii) provides that on the death of a widow, her share of the family pension shall payable to her eligible

child. The said provision contains a proviso to the effect 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.

44. Therefore, the aforesaid provision has emphasized regarding the claim to be given under Rule 7(a)(i) of the CCS (Pension) Rules, 1972 to the “widows”. In case of two widows, equal share, in case of death of first widow, the entire share and in absence of children of first widow, the entire share will go to the second widow.

45. Hence, in pursuance to the import of the aforesaid provision, the *sine qua non* for entitlement of family pension is that the lady must be a widow and for establishing the fact that a lady is widow, she has to prove that she was legally married wife of the deceased employee.

46. This Court is now proceeding to answer both the issues in the aforesaid premise of the statutory provision.

47. The admitted fact herein is that the writ petitioner has claimed to be the widow of the deceased employee mainly on the ground that she was living with the deceased employee. However, certificate of Mukhiya, PAN Card, Aadhaar Card etc. have been filed in order to substantiate that she was legally married wife. The other document, i.e.,

Form-6 has been filled up by the deceased employee showing the status of the writ petitioner to be the wife.

48. Learned counsel for the petitioner has submitted that a presumption is to be arrived based upon the documents, i.e., certificate of Mukhiya, Form-6, Aadhaar Card, PAN Card as has been brought on record and to that effect the reliance has been put upon the judgment of the Hon'ble Apex Court in the case of ***Shiramabai W/o Pundalik Bhave and Others v. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another*** (Supra).

49. The moment the writ petitioner has taken the ground of presumption then the question will arise that presumption by which court, whether the court having the original jurisdiction or the competent court of civil jurisdiction to come to a presumption by giving a finding by leading evidence.

50. We have gone through the judgment rendered by Hon'ble Apex Court in the case of ***Shiramabai W/o Pundalik Bhave and Others v. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another*** (Supra) wherein the factual aspect involved is that the employee had solemnized marriage with one Smt. Anusuya. During the subsistence of marriage with Anusuya, he married with the Appellant No.1, namely, Smt.

Shiramabai. The employee concerned was discharged from service at his request and was granted service pension. But, during the subsistence period of marriage with Smt. Anusuya, the appellant No.1 was living with the deceased employee. However, a decree of divorce was also filed which was decreed based upon the compromise sometime in the year 1990.

51. The factual aspect, therefore, of the aforesaid case discloses that the Appellant No.1 of the said case, the second wife, was living along with the deceased employee since the year 1981 and during the relevant time the decree for divorce was also filed before the competent court of civil jurisdiction which was decreed sometime in the month of November, 1990.

52. The second wife has claimed the pensionary benefit of the deceased on the ground that the first wife, namely, Anusuya, did not claim the pensionary benefit of deceased and, therefore, the respondents ought to have granted the legitimate claim of the appellant but the same has been turned down which led the Appellant No.1 of the said case to approach the court of law.

53. It further appears that after decree of divorce having been passed in the month of November, 1990, the name of the first wife was deleted from the service record and the

name of the second wife, the Appellant No.1 of the said case, was inserted therein.

54. The claim of the Appellant No.1 of the said case, however, was allowed by the learned Civil Judge (Senior Division), Chikodi whereunder the suit instituted by the appellants for seeking a declaration to the effect that the Appellant No.1 is the legally wedded wife of the Late Subedar Pundalik Bhave and the Appellant No.2 and 3 are their legitimate children which was decreed in their favour by holding therein that they became entitled to the pensionary benefit payable by the respondents of the aforesaid case and standing in the name of the deceased Subedar Bhave.

55. The aforesaid judgment passed by the Civil Judge (Senior Division), Chikodi, however, was reversed by the first appellate court has also been affirmed by the second appellate court. Thereafter, the matter reached to the Hon'ble Apex Court. The Hon'ble Apex Court, by making reference of the provision of Section 114 of the Evidence Act, has drawn presumption based upon the decree passed by the learned Civil Judge (Senior Division), Chikodi and has reversed the judgment passed by the first and the second appellate courts.

56. Now coming back to the facts of the present case, there is no declaration by any competent court of civil

jurisdiction so far as it relates to the declaration of the widow being given by any court of competent jurisdiction.

57. The writ petitioner, however, claims that she is widow in consequence of her status of the legally married wife on the basis of the certificate given by the Mukhiya and the Form-6 where the deceased employee has given a declaration with respect to the status of the writ petitioner as wife.

58. The argument has been advanced basing upon the judgment rendered by Hon'ble Apex Court that on the basis of these two documents the learned Tribunal ought to have reached to the presumption in view of the provision of Section 114 of the Evidence Act.

59. This Court, therefore, deems it fit and proper to appreciate the aforesaid issue as has been agitated by the learned counsel for the petitioner to refer the provision of Section 114 of the Evidence Act, which reads hereunder as:-

114. Court may presume existence of certain facts.

— The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The Court may presume —

(a) that a man who is in possession of stolen goods soon, after the theft is either the thief or has received

the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars;

(c) that a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the common course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

60. The aforesaid provision is for the purpose of presumption by the court on existence of certain facts which the court can presume on the basis of the fact that if the fact is likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

61. The implication of Section 114 of the Evidence Act has been dealt with by the Hon'ble Apex Court in the case of ***Syad Akbar v. State of Karnataka***, reported in **(1980)**

1 SCC 1930 wherein it has been held that the presumption of fact as raised in various clauses of Section 114 of the Evidence Act will itself not evidence but only makes *prima facie* case for a party.

62. Therefore, the law as has been stipulated under Section 114 of the Evidence Act is only to form a *prima facie* view on the basis of the presumption of the factual aspect.

63. In the judgment rendered by Hon'ble Apex Court in ***Shiramabai W/o Pundalik Bhave and Others v. Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh, Gaya, Bihar State and Another*** (Supra), a presumption has been arrived after going through the judgment passed by the first court, i.e., Civil Judge (Senior Division) wherein while giving a declaration with respect to entitlement of the Appellant No.1, second wife, with respect to the status of a wife holding her and the children taken birth from the wedlock of the deceased employee so as to get the benefit of family pension. However, the aforesaid judgment has been reversed by the first and second appellate court.

64. The Hon'ble Apex Court after appreciating the argument, has come out with the principle of presumption as per the stipulation made under Section 114 of the Evidence Act by coming to the conclusion that whatever

has been held by the original court based upon the relevant documents, the decree of declaration was given on contest then the higher courts, i.e., the first and second appellate court, ought to have considered the aforesaid fact for the purpose of arriving at a *prima facie* view.

65. In the instant case, the petitioner is making the claim on the basis of presumption as per the provision of Section 114 of the Evidence Act and based upon the certificate issued by the Mukhiya and declaration of status of the writ petitioner as wife in the Form-6 by the deceased employee himself.

66. Both documents need to be examined by the competent court in order to reach to the conclusion even for making out a *prima facie* case on the basis of the principle of presumption as per the provision of Section 114 of the Evidence Act.

67. Coming to the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972, the statutory mandate is that a widow will be entitled for family pension. The question is who can be considered as a widow. Whether the lady without getting married legally can claim the status of a widow of a male or the public servant who is no more.

68. The widow is the consequence of effect after death of the husband of a female. In absence of a marriage said to be legally married, the female cannot take the status of

widow of a particular person who is no more in the world. Therefore, the primary requirement is to come to the conclusive finding with respect to the fact that when a female or male, as the case may be, is claiming the benefit of family pension as per the provision of Rule 7(a)(i) of CCS (Pension) Rules, 1972, the onus is upon him or her to prove that she is spouse, i.e., legally married husband or the legally married wife so as to come to the status of the widow, if the male member who was employee, has died or in case the female was working and died, then the surviving spouse husband will be entitled for the pensionary benefit. However, the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 does not deal with the entitlement of the male members since the male member cannot be construed to be widow which means that it is only meant for the purpose of spouse who is female and, as such, the word widow has been used therein.

69. Here, it is admitted case of the writ petitioner that there is no substance save and except the certificate of Mukhiya and the declaration of the reference of the status of the writ petitioner to be the wife of the deceased employee.

70. The question is how on the basis of two documents the Court can reach to the *prima facie* view that the writ petitioner was legally married wife so as she came in the

status of widow for the purpose of coming under the fold of Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

71. The law has already been settled that the Aadhaar Card and PAN Card cannot be said to be the substantial evidence for the purpose of creating a right.

72. As has been held by Hon'ble Apex Court that the presumption is on the basis of the *prima facie* case but on the basis of these two documents the *prima facie* view for the purpose of deriving a valuable right under the statutory provision to get the family pension, according to our considered view, cannot be said to be just and proper.

73. So far as the third issue that there is rejection of the claim of the writ petitioner on the basis of the fact that she was not legally married wife. However, the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 does not refer the word legally married wife, rather, the word used is “widow”.

74. The authorities have disallowed the claim on the ground that she is second wife as is available in the order dated 11.02.2022 as part of the paper book but whether on the basis of the aforesaid fact can it be just and proper to remit the matter before the authority to take fresh decision if the law from which the benefit is to be derived, i.e., Rule 7(a)(i) of the CCS (Pension) Rules, 1972 is against the claim of the writ petitioner since she is not coming under the provision of said rule in the capacity of “widow”.

75. The law is well settled that the order of remand is to be passed if there is chance of change in the actual outcome and even after remand there is no chance of change in the outcome, then the purpose of remedy if there is no chance of change in the outcome, the same will be said to be empty formality and futile exercise as has been held by Hon'ble Apex Court in the case of ***Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & Others* [(2004) 4 SCC 281]** wherein at paragraph 64 it has been observed which is quoted hereunder as:-

“**64.** ... Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India.”

76. Further, the Hon'ble Apex Court in ***Dharampal Satyapal Ltd. v. Deputy Commissioner, Central Excise, Gauhati & Ors.* [(2015) 8 SCC 519]** has taken similar view at paragraph 45 which reads as under:-

“**45.** Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be

totally futile having regard to the law laid down by this Court in *R.C. Tobacco* [(2005) 7 SCC 725].”

77. This Court has examined the aforesaid fact on the basis of the aforesaid law as to whether remitting the matter before the authority will not be said to be empty formality and futile exercise?

78. Herein, the writ petitioner since has not been able to substantiate even on the basis of presumption by taking aid of Section 114 of the Evidence Act about the valid marital status then for what purpose the matter would be remitted and in that circumstances if the matter would be remitted, there is no likelihood of change in the outcome which is for the purpose of claiming the right of family pension in view of the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

79. This Court, therefore, is of the view that even though the authorities have rejected the claim on wrong premise even then there is no reason to interfere with the same in view of the fact that the writ petitioner has not been able to make out a case of her substantial right to be given under Rule 7(a)(i) of the CCS (Pension) Rules, 1972.

80. Accordingly, all the three issues have been answered.

81. Coming back to the order passed by the learned Tribunal, this Court is of the view that the learned Tribunal

has taken note of the provision of Rule 7(a)(i) of the CCS (Pension) Rules, 1972 and after coming to the conclusion that there is no substance in the fact that the writ petitioner is the legally married wife and hence, if the learned Tribunal has come to conclusion that she cannot be said to have status of “widow” so as to hold her entitled for the benefit of the family pension.

82. This Court, therefore, is of the view that the aforesaid finding is based upon correct interpretation of the rule, hence, it is not a case where the power of judicial review is to be exercised, as per the law laid down by Hon'ble Apex Court in the case of ***L. Chandra Kumar v. Union of India and Others*** (Supra) as referred hereinabove.

83. Accordingly, this Court is of the view that the instant petition lacks merit and the same is hereby dismissed.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Birendra/**A.F.R.**