13.03.2025

Item : ML102
Court No. 23

Asraf, A.R.(Ct.)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Case No. **WPA 30820 of 2024**

KHATEMAN BIBI

....Writ Petitioner

VS.

UNION OF INDIA & ORS.

....Respondents

For the Writ Petitioner:
Mr. Mahammad Mahmud
....Advocate

For the Respondent / EPFO :
Mr. Shiv Chandra Prasad
....Advocate

Affidavit of service filed in Court today is taken on record.

The petitioner claims to be the second wife of Sattar Ali Mondal who was an employee of National Iron and Steel Company (1984) Limited being the respondent no.2 in this writ petition. The said Sattar Ali Mondal voluntarily retired from the services on 30th January, 2006. The respondent no.6, Parul Nesa Bibi, is the first wife of the said Sattar Ali Mondal as per the petitioner.

The petitioner says that there is an agreement between Sattar Ali Mondal, Parul Nesa Bibi (respondent no.6) and the petitioner which had been raised before this Court in a previous writ petition being WP No. 830(W) of 2011 by way of a compromise agreement. It has been recorded in the said agreement that on the death of Sattar Ali Mondal, Parul Nesa Bibi (respondent no.6) and the petitioner will each get 50% share of his family pension.

Although, the petitioner relies upon the compromise agreement but the law in this regard is well-settled in case of an employee professing the faith of Mohammedan. The issue of family pension in case of a Mohammedan employee who has more than one wife had fallen for consideration before a Division Bench of Gauhati High Court in the case of **Sirazun Nessa vs. State of Assam & Ors.** reported in **(2012) 5 Gauhati Law Reports 15**. It has been held in the said judgment that each of wives of a Mohammedan employee is entitled to a proportionate share in the family of their husband.

The learned advocate representing the Employees Provident Fund Organization (in short, "EPFO") says that in the scheme under the EPFO is operating there is no provision for paying the family pension to the second wife on the death of the employee concerned. It is also the case of EPFO that in view of such embargo they have communicated the same to the petitioner.

The legal position as it stands at the present in case of an employee professing the faith of Hinduism while an employee professing the faith of

Mohammedan is different. Under the Hindu Marriage Act, 1955 contracting the second marriage during the subsistence of the first marriage amounts to a void marriage and, as such, the second wife is not entitled to any benefit either in the retiral benefit or in the family pension as has been held in the judgment of **Rameshwari Devi vs. State of Bihar & Ors.** reported in **(2000) 2 SCC 431**.

In case of an employee professing the faith of Mohammedan, the personal law allows contracting more than one marriage and the second or the third marriage, as the case may be, during the subsistence of the previous marriage or marriages are not held to be void. The personal law in case of a Mohammedan has been preserved by the Constitution of India. In that view of the matter as has been held in **Sirazun Nessa (supra),** each wife of a Mohammedan employee is entitled to a proportionate share in the family pension.

It is correct the family pension is not part of the estate but is granted as per the scheme as has been held by the Supreme Court in the case reported in AIR **2016 SC 4552** (***Nitu Vs. Sheela Rani & Ors***.). However, if the substantive law allows pension to the second or the third wife in case of a Mohammedan employee scheme under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 cannot be made operational contrary to the constitutional mandate to deprive such proportionate pension. Since the personal law of a Mohammedan has been preserved by the Constitution of India and the personal law allows contracting of more than one marriage in such a case, the embargo in the scheme will not come in the way of paying the proportionate family pension to the wives of a Mohammedan employee on his death. This is more so as the total amount of pension is fixed only the same is divided into parts and given to each of the wife.

In the aforesaid facts and circumstances, I direct the respondent nos.1 to 5 to give the petitioner 50% of the family pension receivable on the death of Sattar Ali Mondal, the concerned employee.

Since it is the case of the petitioner that no family pension has been given to any of the wives of the deceased employee, i.e., respondent no.6 and the petitioner, the respondent nos.1 to 5 shall assess the family pension and release the same by 31st May, 2025, in proportion to the petitioner and the respondent no. 6.

The family pension for the month of April shall be paid in the month of June, 2025. The respondent nos.1 to 5 shall ensure payment of the proportionate share of the family pension for the month of May, 2025 to the petitioner in the month of June, 2025.

The arrears of proportionate family pension receivable by the petitioner shall be paid to the petitioner by 30th June, 2025 and the principal amount shall carry interest at the rate of 6 % per annum from the date when the same had fallen due till the date of actual payment.

Nothing further remains to be adjudicated in this writ petition.

The writ petition is accordingly **disposed of**.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

The parties are directed to act upon the server copy of this order duly downloaded from the official website of this High Court without insisting upon production of a certified copy thereof.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)