IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 5032 of 2026

Sanju Devi, aged about 54 years, wife of Late Hari Raj Dubey, resident of Quarter No. 382/13 Diesel Set, Patratu, P.O. & P.S.- Patratu District- Ramgarh, Pin - 829119

... ... Petitioner

Versus

1. The Union of India through General Manager, East Central Railway, PO + PS – Hajipur, Vaishali, Bihar, Pin- 844101.
2. The Divisional Railway Manager, East Central Railway, Mukunda, Kasturba Nagar, PO- Dhanbad, PS- Dhansar, Jharkhand,
   Pin-826001,
3. The Sr. Divisional Personal Officer, East Central Railway, Mukunda, Kasturba Nagar, PO- Dhanbad, PS- Dhansar, Jharkhand, Pin-826001.
4. Prabha Devi, aged about 59 years, Resident of village- Bishrampur, P.O.- Hurka, P.S.- Indrapuri, District- Rohtas, Bihar- 821312.

... ... Respondents

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

For the Petitioner : Mr. Atanu Banerjee, Advocate
: Mr. Piyush Anand, Advocate
For the UOI : Mr. Sunil Kumar, CGC
For the Resp. No.4 : Mr. Sheyabur Rahaman, Advocate
: Mr. Wazid Ali, Advocate
: Mr. Bhaswat Prakash, Advocate

Order No.05/Dated 18th September, 2026

1. This writ petition under Article 226 of the Constitution of India is directed against the order dated 10.02.2026 (Annexure-11) passed in O.A. No. 50 of 2025 by the learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi whereby and whereunder the relief sought for with respect to the disbursement of family pension to the extent of 50% has been refused to be granted by not interfering with the impugned order as contained in Memo No.E/Sett./F.Pension/Sanju Devi/2024 dated 06.11.2024 by dismissing the original application.

2. The brief facts of the case as per the pleading made in the writ petition, which is being referred herein reads as under :-

The petitioner/applicant is the second wife of Late Hari Raj Dubey who was working as Sr. Tech (M) under SSE/Dsl. Shed/Patratu in Indian Railway and died in harness on 30.05.2023, leaving behind 2 wives, 5 daughters and 1 son.

It has been stated that the representation dated 13.03.2024 (Annexure-B) for grant of family pension was rejected by the competent authority (Opposite Party No.3) vide order dated 06.11.2024 without considering Sub Rule 7 (C) of Rule 54 of CCS (Pension) Rules 1972 whereas in O.A. No. 478/2024, the direction was given to the respondents to consider and decide the pending representation of applicant dated 13.03.2024 (Annexure-B) in accordance with Railway Services (Pension) Rules, 1993.

It has also been mentioned that Late Hari Raj Dubey (husband of the petitioner/applicant) had two wives namely Prabha Devi (Respondent No.4, the 1st " wife) from whom he had one daughter, namely Sunita Devi (now married). Whereas Smt. Sanju Devi (petitioner/applicant) is 2nd wife from whom he had four daughters and one son.

It has also been mentioned that marriage of Sanju Devi (petitioner/applicant/2nd wife) with Late Hari Raj Dubey was solemnized with consent of first wife Prabha Devi.

It has further been mentioned that 1st wife never lived with Late Hari Raj Dubey and she used to get her monthly maintenance only from the husband.

It has further been mentioned that in the family declaration forms submitted by Late Hari Raj Dubey to the railway department, in the column of his dependents, the name of applicant has been mentioned as wife along with her four daughters, namely Chandni Kumari, Nandini Kumari, Rajni Kumari (all married) and Anjali Kumari (unmarried) and one son namely, Rahul Kumar Dubey.

It has further been stated that late Hari Raj Dubey also mentioned the name of the petitioner who is entitled to get 100% amount of his retiral benefit and earlier in the forms of Pass/PTO's/ family declaration form only the names of applicant and her children are mentioned.

The petitioner/applicant has made representation before the authorities for payment of family pension within stipulated time on the ground that the 2nd wife comes within the objective of the scheme passed in Railway Service (Pension) Rules 1993 under Chapter VI, Rule 75 (7)(1) (a) which provides that the family pension is payable to more widows than one and the family pension shall be paid to widows in equal the shares.

The respondents have filed Written Statement in O.A.No. 50 of 2025 in which it has been mentioned that Welfare Inspector submitted Legal heir Report of deceased staff, late H.R. Dubey and it is stated that as per Form-6 it was found that Hari Raj Dubey had married twice in his life time but without any permission of the railway administration and he never disclosed to administration that he has solemnized 2nd marriage in life time of his 1st wife without giving her divorce.

It has also been stated that as per R.B.E. No.150/2013 dated 14.01.2013, 50% family pension is to be granted to 1st wife and rest 50% to elder child born from 2nd wife up to 25 years age.

It has also been mentioned in the Written Statement that 50% family pension has already been sanctioned in favour of 1st wife, Smt. Prabha Devi and rest 50% is pending in favour of Shri Rahul Kumar Dubey, the unmarried elder son of deceased employee (son born with petitioner/applicant) but 50% of share to Rahul Kumar Dubey has not been released because he has not submitted the required documents. In this regard, letter dated 22.12.2023 and reminders dated 15.03.2024 and 01.10.2024 have already been sent to him. It is also submitted that DCRG amount has also been held up by administration because applicant has not vacated the railway accommodation.

3. It is evident from the factual aspects, so far as the admitted position of the present case is concerned, that the petitioner, namely, Sanju Devi has solemnized marriage during the survival of the first marriage with the deceased employee with the respondent no.4, namely, Prabha Devi. The deceased employee has died and the issue of disbursement of family pension crept up.

4. The respondents have taken decision by apportioning the quantum of pension in two equal ratio of 50%, the first 50% of benefit of pension has been extended in favour of the first wife, respondent no.4, namely, Prabha Devi and the rest of 50% has been apportioned in between the two children taken birth from the

wedlock of the deceased employee and the second wife i.e. the writ petitioner herein.

5. However, due to non-submission of documents, the benefit of pension has not been apportioned in between the two children (one son and one daughter) namely Anjali Kumari (unmarried) and Rahul Kumar Dubey taken birth from the wedlock with the deceased employee and the second wife, present petitioner.

6. The second wife, the writ petitioner herein, has raised grievance by filing the original application before the learned Tribunal by invoking the jurisdiction conferred under Section 14 / 15 of the Administrative Tribunal Act, 1985.

7. The respondents have appeared and filed written statement.

8. The writ petitioner has taken the ground that the both the Central Civil Services (Pension) Rule, 1972 and the Pension Rule applicable to the service of the deceased employee formulated by the respondent Railway itself having the statutory force as Railway Service Pension Rule, 1993 which contains a provision under rule 75 7(i)(a) thereof, by which even the second wife has been held to be entitled for the proportion of pension to the extent of 50% and it is only after the death of the second wife, the child will be eligible to get the benefit of pension.

9. While on the other hand, the respondents have taken the plea based upon the office memorandum issued by the respondent-Railway through the Ministry of Personnel, Public Grievances and the Department of Pension and Pensioners Welfare as contained in

RBE No.150 of 2013 whereby and whereunder the entitlement of the second wife has been taken away superseding the effect of the provision of Rule 75(7)(i)(a) of Railway Service Pension Rule, 1993.

10. The learned Central Administrative Tribunal agreeing with the stand taken by the Railway has declined to interfere with the impugned order by dismissing the original application, which is the subject matter of the present writ petitioner.

Argument advanced on behalf of Petitioner

11. Mr. Atanu Banerjee, learned counsel appearing for the petitioner has taken the following grounds in assailing the order passed by the learned Tribunal:-

i. The petitioner being the second wife, her status has been accepted under the statutory command both under the Central Civil Services (Pension) Rule, 1972 and the Railway Service Pension Rule, 1993 by making specific provision to that effect holding the second wife of the employee, who have died, entitled for family pension to the extent of 50 %.

ii. The ground has been taken that merely on account of an office memorandum issued by the Ministry of Personnel, Public Grievances and the Department of Pension and Pensioners Welfare the force of statute as per the stand taken by the respondent-Railway having been accepted by the learned Tribunal cannot said to be just and proper ground to deny the claim of 50% of pension in favour of the present writ petitioner.

iii. Learned counsel appearing for the petitioner has further argued that both the children, although have been considered based upon the office memorandum dated 14.01.2013 in RBE No.150/2013 giving a finding with respect to the marital status of the petitioner by taking note of provision of Hindu Marriage Act which was not available for the learned Tribunal to give a specific finding by opining therein about the marriage of the petitioner during the survival of the marriage with the first wife, i.e. the respondent no.4, namely, Prabha Devi is to be considered as a void marriage.

iv. The submission has been made that the applicability of the rule is to be tested on the basis of issue involved before the adjudicator as it is the duty of the adjudicator not to deviate from the issue, which has been raised before the Tribunal by applying the provisions, which is at all not applicable as the learned Tribunal has proceeded by considering the applicability of the provision of Hindu Marriage Act, 1955.

v. Learned counsel appearing for the petitioner, based upon the aforesaid ground, has submitted that the impugned order, therefore, suffers from error and as such not sustainable in the eye of law.

Argument advanced on behalf of Respondents

12. Per contra, Mr. Sunil Kumar, learned Senior Penal counsel representing the respondent-Railway, has submitted in rebuttal to the argument advanced on behalf of the petitioner that there is no

error in the impugned order due to the fact that by virtue of the office memorandum issued by the Nodal Ministry, i.e. the Ministry of Personnel, Public Grievances and the Department of Pension and Pensioners Welfare, the office memorandum has been issued by taking decision by neutralizing the force of the provision under Rule 75 7(i)(a) of Railway Service Pension Rule, 1993.

13. The learned Administrative Tribunal has considered the aforesaid decision taken in the aforesaid office memorandum, so long as the said office memorandum has not been assailed and it is not available for the petitioner to question the non-applicability of the office memorandum dated 14.01.2013 in RBE No.150/2013 and in view of that matter, if the learned Tribunal has refused to interfere with the decision basing upon the office memorandum dated 14.01.2013 in RBE No.150/2013, it cannot be said that there is error in the impugned order.

14. The respondent no.4, namely, Prabha Devi, who has been called upon by issuing notice by this Court, as it would appear from the order dated 18th July, 2026 being represented by Sheyabur Rahman, learned counsel.

15. Mr. Sheyabur Rahman, learned counsel appearing for the respondent no.4 has submitted by adopting the argument advanced on behalf of the respondent – Railway and has made addition to the argument by making reference of the provision of the sub-rule 7 (C) of Rule 54 of Central Civil Services (Pension) Rule, 1972.

16. Learned counsel appearing for the respondents jointly, therefore, has submitted that the order passed by the learned Tribunal does not suffer from any error and as such the present writ petition is fit to be dismissed.

Analysis

17. This Court has heard learned counsel for both the parties and gone through the finding recorded by the learned Tribunal as available in the impugned order as also the pleading.

18. The factual aspect, since has already been narrated referred hereinabove and as such the same is not being referred here in again.

19. This Court is required to consider the following issues based upon the admitted fact that the writ petitioner is the second wife of the deceased employee and as such the claim which she is claiming of proportion of pension to be extended to the extent of 50%, whether she is entitled or not.

20. This Court, in order to appreciate the aforesaid question, needs to consider the following issues: -

i. Whether the office memorandum dated 14.01.2013 in RBE No.150/2013 issued by the Nodal Ministry, i.e. the Ministry of Personnel, Public Grievances and the Department of Pension and Pensioners Welfare, will over-ride the statutory force of the Railway Service Pension Rule, 1993.

ii. Whether is it available to the learned Tribunal to conceive in their mind that the marriage is considered to be void

due to the applicability of the provision of Hindu Marriage Act, 1955.

iii. Whether was it available to the learned Tribunal to deviate from the issue for giving a finding with respect to the marital status of the petitioner, ignoring the applicable rule governing the field and going into another rule pertaining to the matrimonial issues.

iv. Whether by virtue of the office memorandum, the statutory provision can be neutralized?

Issue No.(i)

21. The issue no.1 as to whether the office memorandum will be allowed to prevail upon the statute formulated with the approval of the Parliament. The law in this regard is well settled that the office memorandum, which is being issued by the concerned Ministry of State or the Central Government is having the force of an executive instruction under the Constitutional mandate as contained under Article 166 (3) of the Constitution of India.

22. Further it needs to refer Statutory rules framed under the proviso to Article 309 of the Constitution cannot be overridden by executive orders or executive practice. Reference may be made to the judgment rendered in the case of ***K Kuppusamy & Anr. Vs. State of T.N.& Ors. [(1998) 8 SCC 469],*** wherein at paragraph 3 it has been held s under:

> "3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and,

> therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. **The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice**. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been affected. As and when it is affected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule."

23. Further, the similar view has been taken by Hon'ble Apex Court in the case of ***P. Sadagopan & Ors. Vs. Food Corporation of India, Zonal Officer (South Zone) [(1997) 4 SCC 301)],*** wherein it has been held that "*.....It is now settled legal position that executive instructions cannot be issued in derogation of the statutory Regulations...*"

24. The Hon'ble Apex Court in the case of ***Ratan Kumar Tandon v. State of U.P. reported in (1997) 2 SCC 161,*** has been pleased to hold that the subordinate legislation does not have any overriding effect on operation of statutory provision of law.

25. The executive instruction can be issued by the Government in order to supplement the statutory provision but not to supplant as has been held by Hon'ble Apex Court in the case of ***S. Sivaguru vs. State of Tamil Nadu and Ors.*** reported in ***(2013) 7 SCC 335*** wherein it has been held as under:

> "49. The qualifications prescribed under the aforesaid Rules for the basic post of Health Inspector Grade II, were: (a) SSLC Pass Certificate; (b) one year long-term Multipurpose Health Worker (Male) Training Certificate; or (c) Sanitary Course Certificate with

> short-term Multipurpose Health Worker (Male) Training Certificate. The aforesaid provision contained in the Rules framed under Article 309 of the Constitution of India could not be amended by executive instructions. We have no hesitation in accepting the first submission of Mr Rao that the **executive instructions cannot supplant the statutory rules, in view of the ratio of law laid down in Sant Ram Sharma**. The aforesaid ratio has been reiterated by this Court on numerous occasions. It is not necessary to make a reference to any of the subsequent decisions as it would be a mere repetition of the accepted ratio, noticed above. We are, however, of the opinion that the ratio of law laid down in Sant Ram Sharma case4 would not be applicable in the facts and circumstances of this case.
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> 52. From the above, it becomes apparent that GOMs No. 320 dated 27-6-1997 did not have the effect of amending the Rules. It is also clear that the aforesaid G.O. did not supplant the statutory provisions. It is also further clear that there was no relaxation of the qualifications on the post of Multipurpose Health Assistant (Health Inspector Grade II) or on the post of Multipurpose Health Supervisor (Health Inspector Grade I). Therefore, in our opinion, upon integration of Leprosy Inspectors into the cadre of Multipurpose Health Supervisors, the further categorisation into Health Inspector Grade IA and Health Inspector Grade IB was wholly unjustified. It had no rational nexus with any object sought to be achieved, and therefore, violated Articles 14 and 16 of the Constitution of India.
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> 72.2. The aforesaid GOMs No. 320 dated 27-6-1997 did not bring about an amendment in the statutory services rules contained in GOMs No. 1507 dated 16-8-1989. The GOMs was supplementary to the aforesaid Rules and did not supplant the same."

26. This Court in the light of aforesaid proposition is now proceeding to examine the statutory mandate as contained under Civil Services (Pension) Rules, 1972 (herein referred as Rule 1972). The Rules 1972 apply to all civilian government servants appointed on or before December 31, 2003, under the rule-making control of the President of India, however it is not applicable to railway

servants. For ready reference the Rule 2 Rule 2 of Civil Services (Pension) Rules, 1972 is being quoted herein which reads as under:

> *"2. Application Save as otherwise provided in these rules, these rules shall apply to Government servants appointed on or before 31st day of December,2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to - (**a) railway servants ; (b) persons in casual and daily rated employment ; (c) persons paid from contingencies ; (d) persons entitled to the benefit of a Contributory Provident Fund ; (e) members of the All India Services ; (f) persons locally recruited for service in diplomatic, consular or other Indian establishments in foreign countries ; (g) persons employed on contract except when the contract provides otherwise ; and (h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.***

27. It is evident from the provisions as contained under Rule 2 of Civil Services (Pension) Rules, 1972 that these rules have been made for applicable to the government servants appointed on or before 31st day of December, 2023, including civilian government servants in the defence services, appointed substantively to the civil services, and posts in connection with the affairs of the Union, which are born on pensionable establishment with the exclusion clause of the non-applicability to the different departments as mentioned hereinabove.

28. It is admitted that the Civil Services (Pension) Rules, 1972 is not applicable to the railway servants. Since, the Civil Services (Pension) Rules, 1972 is not applicable to the railway servants, as such, keeping the aforesaid fact into consideration the railway has

also formulated the pension rule as Railway Services (Pension) Rules, 1993.

29. It is evident from the preface of the Rule, 1993 that the Rule, 1993 will be applicable to the railway servants.

30. It is further evident that the Railway Services (Pension) Rules, 1993, has been issued by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India, which has superseded all the rules and orders of the subject prevailing hitherto.

31. Since, much have been argued on the issue of Civil Services (Pension) Rules, 1972 but since it is not applicable for the railway servants and as such the same is not being discussed herein below and primarily the discussion is being made with respect to the applicable rule i.e. the Railway Services (Pension) Rule, 1993.

32. The Rule, 1993 contains the following provision to deal with the situation in a case of more than one marriage solemnized by the employee of Railway. The relevant Provision is sub-rule **7(i)(a) and 7(b)(ii) of Rule 75 of Rule 1993** which being referred herein:

> (7) (i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.
> (b) On the death of a widow, her share of the family pension, shall become 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 share, or if there is only one such other widow, in full, to her.
> (ii) Where the deceased railway 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 railway servant or pensioner:
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> 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 not lapse but shall be payable to the other widow or widows or 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.

33. It is evident from the aforesaid provision that the respondent – Railway has accepted the marital status even if an employee has solemnized more than one marriage, which is inherent in the Rule 1993. Therefore, equal status has been decided to be given on account of death of the deceased employee by apportioning the quantum of pension to the extent in equal shares amongst the widows, meaning thereby, if the number of wives are two, then it will be in proportion of 50% but if the number of wives are more than two then in equal shares.

34. It is further evident that on the death of a widow, her share of the family pension shall become payable to her eligible child, meaning thereby, amongst the widows, if one of the widow dies, then it's the surviving child of the widow, will have the entitlement to get the pension 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 share, or if there is only one such other widow, in full, to her.

35. The other provisions are also there in the aforesaid rule that where the deceased railway 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 railway servant or pensioner.

36. The laws since is very clear that the children taken birth from the wedlock from the wife other than the first wife, has got the legitimate status, but herein that is not the issue rather the issue of claim of the second wife is involved.

37. So therefore, this Court is not discussing the entitlement of the child, reason being that the petitioner before this Court is not the child but the second wife claiming the share of the pension as per the applicability of the provision of Rule 7 of the Railway Services (Pension) Rules, 1993

38. It is, thus, evident from the bare perusal of the provision of Rule 7 of the Rule, 1993 that not only the principle of bigamy, but the principle of polygamy has also been admitted, while framing the Rule 1993 under the proviso to Article 309 of the Constitution of India.

39. Since, the law is already settled that the office memorandum is not allowed to be prevailed upon the statute, if formulated under the proviso to Article 309 of the Constitution of India. Therefore, the ground which has been considered and taken while dismissing the original application, the learned Tribunal has given no consideration with respect to the aforesaid legal position that the office memorandum cannot be allowed to prevail upon the statute.

40. Since, herein, the office memorandum dated 14.01.2013 has been solely relied in rejecting the claim of the petitioner holding the two children, one male and one female, taken birth from the wedlock of the second wife, entitled for the pension ignoring the claim of the petitioner.

41. This is the first error committed by the learned Tribunal in the impugned judgment.

Re: Issue No.(ii) and (iii)

42. The second error where the learned Tribunal has come out with the consideration in the impugned order by taking aid of the provision of Hindu Marriage Act, 1955.

43. There is no dispute that the concept in Hindu Marriage Act, 1955 is of monogamy, not the bigamy and the polygamy. But, the concept of Hindu Marriage Act, 1955, ought to have been thought of while formulating the rule under the proviso to Article 309 of the Constitution of India, under which the respondent-Railway has formulated the rule in the year 1993, accepting the bigamy and polygamy by insertion of provision of sub-Rule 7 of Rule 75 of Rule 1993 therein.

44. The issue of occupied field has also been taken into consideration, while formulating the rule under proviso to Article 309 of the Constitution of India since, even though the Hindu Marriage Act, 1955 was enacted in the year 1955, but being conscious with the issue that the concept in our country by formulating the Hindu Marriage Act, 1955, does not accept the bigamy or polygamy but even then the Rule 1993 had been

formulated and accepting the said concept, particularly for the purpose to extend the benefit of family pension.

45. The purpose for making departure from the Hindu Marriage Act, 1955 to extend the benefit of pension to the wife other than the first wife, of the deceased employee, holding entitled for family pension is only to provide a means of survival in a situation if the deceased employee has already solemnized marriage more than one.

46. Moreover, the respondent – Railway has formulated the Rule 1993, by giving equal status to the wives other than the first wife, in the matter of the entitlement of the family pension therefore it is not available for the respondent Railway to taking aid of the Hindu Marriage Act, 1955.

47. This Court, therefore, is of the view that if the rule for the particular purpose has been formulated and enacted then the learned Tribunal ought to have considered the issue basically on the principle of governing law and not making any departure therefrom as has been done by the learned Tribunal by making a reference of the Hindu Marriage Act, 1995 as under paragraph no. 26 of the impugned order, for ready reference, paragraph 26 is being referred herein: -

> "Para: - 26. Section 5 (I) of Hindu Marriage Act 1955 makes the following provision: - 5(1) Conditions for Hindu marriage: - A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:
>
> (i) Neither party has a spouse living at the time of marriage.
>
> (ii) …….
>
> (iii) …….
>
> (iv) …….

(v) .....

Accordingly, if the marriage is solemnized with another male/female in the life time of spouse, then in that case Section 11 of Hindu Marriage Act makes such marriage as void marriage. In present case, it is apparent that husband of the applicant late H.R. Dubey was Hindu by religion, therefore, according to provision of Section 5 read with Section 11 of Hindu Marriage Act, the marriage of applicant with H.R. Dubey was solemnized during the life time of Opposite Party No.4 (who had not been subjected to divorce) is void. According to Section 17 of the Hindu Marriage Act, if the second marriage is solemnized in the life time of the legally married spouse then in that case the provision of Section 494 and 495 of I.P.C. shall apply. According to Section 494 of I.P.C. if offence of bigamy committed during life time of the spouse, the accused shall be liable for punishment up to 7 years and under Section 495 up to 10 years. Therefore, law makers have taken the bigamy seriously. Even the offence cannot be settled by the parties out of the court. Although, the provision of Section 75(7)(i)(a) which makes a provision that if there are more than one widows, family pension shall be paid to widows in equal shares. It appears that the above provisions apparently has not mentions any reference of valid and void marriage or Hindu personal law. Hence, broadly we my say that the provisions of above rule include the wives of the deceased Mohammedan employees also where the second marriage solemnised in the life time of first wife as it is permissible according to their Personal Law."

48. On the basis of the discussion made hereinabove, this Court, therefore, is of the considered view that once a specific rule i.e. Rule 1993 has been formulated and enacted for the purpose in question, the learned Tribunal was bound to adjudicate the issue strictly on the basis of the governing law. Any departure therefrom, as has been done by learned tribunal by making reference to the Hindu Marriage Act, 1955, is impermissible and unsustainable.

49. Accordingly, issue no.(ii) and (iii) answered herein.

Issue No.(iv)

50. One of the grounds has been taken that the force of the Rule 1993 has been neutralized by virtue of office memorandum dated 27th November 2012.

51. This Court has gone through the office memorandum dated 27th November 2012 as available in running page 73 of writ petition and found that decision has been taken that the share of children from illegally wedded wife in the Family Pension shall be payable to them in manner given under Sub-Rule 7(c) of Rule 54 of the CCS (Pension) Rules, 1972.

52. In the aforesaid it needs to refer herein the settled position of law that if any statute has been formulated under the proviso to Article 309 of the Constitution of India, then, the same cannot be neutralized or superseded, by office memorandum as is being claimed to be done by virtue of office memorandum dated 27th November 2012.

53. Moreover, the office memorandum dated 27th November, 2012 has been issued on the basis of sub rule 7 (c) of the Rule 54 of CCS (Pension) Rules, 1972.

54. It needs to refer herein, as has already been referred hereinabove that the CCS (Pension) Rules, 1972 is not applicable for the railway servant then on what basis the said office memorandum has been made applicable so far as the railway employee is concerned.

55. The respondent – Railway has come out with a communication in furtherance to the office memorandum dated

27th November, 2012 adopting the decision taken in the office memorandum dated 27th November, 2012, mutatis mutandis.

56. Taking note of the office memorandum dated 27th November, 2012, the learned Tribunal has committed error.

57. This Court, having discussed the legal as also the factual aspects, needs to refer herein the jurisdiction which is to be exercised by this Court under Article 226 of the Constitution of India to look into the legality and propriety of the order passed by the learned Tribunal which is decided by the Hon'ble the Apex Court by its Constitution Bench judgment in the case of ***L. Chandra Kumar vs. Union of India and Ors., (1997) 3 SCC 261.***

58. The power which is to be exercised as per the position of law is to look into the legality and propriety of the order passed by the learned Tribunal in exercise of power conferred under the power of judicial review as has been held by the Hon'ble Apex Court at paragraph- 99 in the aforesaid judgment. The said paragraph is being referred as under:

> "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."

59. The power of judicial review has also been deliberated by the Hon'ble Apex Court, which is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

60. The Hon'ble Apex Court in the case of ***West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39,*** has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned order is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred 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 Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . ---."

61. In the case of ***T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250***, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

> *"11. ... 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. ...."*

62. Thus, on the basis of the aforesaid settled legal position it is evident that the power of judicial review can be exercised, if error on the face of the order impugned, challenged under the Article 226 of Constitution of India, appears to be there or suffers from perversity.

63. The word "perverse" has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality

incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> *"24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
>
> *25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.*
>
> *26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.*
>
> *27. The expression "perverse" has been defined by various dictionaries in the following manner:*
>
> *1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.*
>
> *"Perverse.--Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."*
>
> *2. Longman Dictionary of Contemporary English, International Edn.*
>
> *Perverse.--Deliberately departing from what is normal and reasonable.*
>
> *3. The New Oxford Dictionary of English, 1998 Edn. Perverse.--Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.*
>
> *4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.--Purposely deviating from*

accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.

"Perverse.--A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.""

64. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

65. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

66. It is thus evident from the interpretation of the word "perverse" that the erroneous finding without consideration of the fact will be said to be perverse order.

67. This Court applying the ratio laid down on the issue of the interpretation of word “judicial Review”, “error apparent on the face

of order" and "the perversity" is of the view, based upon the discussion made hereinabove that the order passed by the learned Tribunal, suffers from perversity and, as such, amenable under the power of Judicial Review to interfere with the same.

68. Accordingly, the order dated 10.02.26 is being interfered and consequently the order dated 10.02.2026 passed in OA No. 50 of 2025 by the learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi is, hereby, quashed and set aside.

69. The writ petition stands allowed.

70. In consequence of allowing the writ petition, the writ petitioner is being held entitled for the benefit of family pension to the extent of 50% with effect from 01.06.2023.

71. Let the arrears be released within a period of eight (8) weeks from the date of receipt a copy of the order.

72. The current pension be also paid on month-to-month basis.

73. Accordingly, the instant writ petition is allowed and stand disposed of.

74. Pending I.A. also dismissed, if any.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Date : 18.09.2026
Birendra/Nishant/-
A.F.R.