

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 152/SB/2023

1. Smt. Shakuntla Devi, aged about 61 years, w/o Late Sri Deepak Lal Bijalwan, r/o Village and Post Chamol Gaon, Tehsil Narendra Nagar, District Tehri Garhwal.
2. Amit Bijalwan, aged about 38 years, s/o Late Sri Deepak Lal Bijalwan, r/o Village and Post Chamol Gaon, Tehsil Narendra Nagar, District Tehri Garhwal.
3. Sumit Bijalwan, aged about 31 years, s/o Late Sri Deepak Lal Bijalwan, r/o Village and Post Chamol Gaon, Tehsil Narendra Nagar, District Tehri Garhwal.
4. Sanjeet Bijalwan, aged about 26 years, s/o Late Sri Deepak Lal Bijalwan, r/o Village and Post Chamol Gaon, Tehsil Narendra Nagar, District Tehri Garhwal

.....Petitioners

vs.

1. The State of Uttarakhand through Secretary, Education, Uttarakhand Govt., Secretariat, Subhash Road, Dehradun.
2. Director, Secondary Education, Uttarakhand, Nanoor Khera, Tapovan Road, Dehradun.
3. Chief Education Officer, Uttarkashi, District Uttarkashi.
4. Smt. Kameshwari Devi, aged about 46 years, Alleged w/o Late Sri Deepak Lal Bijalwan, r/o Lower Nathanpur (Mohakampur), Dehradun.
5. Ujjwal Bijalwan, aged about 20 years, Alleged s/o Late Sri Deepak Lal Bijalwan, r/o Lower Nathanpur (Mohakampur), Dehradun.

.....Respondents

WITH

CLAIM PETITION NO. 154/SB/2023

1. Smt. Kameshwari Devi, w/o Late Sri Deepak Lal Bijalwan, aged about 45 years r/o Vikaslok Colony, Lower Nathanpur (Mohakampur), Dehradun.
2. Ujjwal Bijalwan, s/o Late Sri Deepak Lal Bijalwan, aged about 21 years, r/o Vikaslok Colony, Lower Nathanpur (Mohakampur), Dehradun.

.....Petitioners

vs.

1. The State of Uttarakhand through Secretary, Education, Uttarakhand Govt., Secretariat, Subhash Road, Dehradun.
2. Director, Secondary Education, Uttarakhand, Nanoor Khera, Tapovan Road, Dehradun.
3. Chief Education Officer, Uttarkashi, District Uttarkashi.
4. Smt. Shakuntla Devi, w/o Late Sri Deepak Lal Bijalwan, r/o Chamolgaon, Tehsil Narendra Nagar, District Tehri Garhwal.
5. Amit Bijalwan, s/o Late Sri Deepak Lal Bijalwan, r/o Chamolgaon, Tehsil Narendra Nagar, District Tehri Garhwal.
6. Sumit Bijalwan, s/o Late Sri Deepak Lal Bijalwan, r/o Chamolgaon, Tehsil Narendra Nagar, District Tehri Garhwal.
7. Sanjit Bijalwan, s/o Late Sri Deepak Lal Bijalwan, r/o Chamolgaon, Tehsil Narendra Nagar, District Tehri Garhwal.

.....Respondents

In claim Petition No. 152/SB/2023

Present: Sri L.K.Maithani and Sri S.K.Jain, Advocates, for petitioners.
Sri V.P.Devrani, A.P.O., for Respondents No. 1, 2 & 3.
Sri Uttam Singh, Advocate, for Respondents No. 4 & 5.

In claim Petition No. 154/SB/2023

Present: Sri Uttam Singh, Advocate, for the petitioners
Sri V.P.Devrani, A.P.O., for Respondents No. 1, 2 & 3
Sri L.K.Maithani and Sri S.K.Jain, for Respondents No. 4 to 7

JUDGMENT

DATED: JANUARY 16, 2024

Justice U.C.Dhyani (Oral)

Since the above noted claim petitions pertain to release of family pension and other outstanding dues of Sri Deepak Lal Bijalwan (since deceased), who was working as Chief Administrative Officer in the office of Chief Education Officer, Uttarkashi, therefore, both these claim petition are

being decided together, by a common judgment and order, for the sake of brevity and convenience.

2. In Claim Petition No. 152/SB/2023, petitioner no.1 is the wife of Late Sri Deepak Lal Bijalwan. Petitioners no. 2, 3 and 4 are sons of Late Sri Bijalwan, who were born out of his wedlock with petitioner no.1. Respondent no. 4 has filed Claim Petition No. 154/SB/2023. Respondent No.5 is the son of respondent no.4.

3. In Claim Petition No. 154/SB/2023, petitioner no.1 is also claiming herself to be the wife of Late Sri Bijalwan [Para 4.3 of the claim petition]. Petitioner No.2 is the son of Sri Bijalwan, born out of nuptial tie with petitioner no. 1. Respondent No.4 is the petitioner of Claim Petition No. 152/SB/2023. Respondents No. 5, 6 & 7 are petitioners no. 2, 3 & 4 of Petition No. 152/SB/2023.

4. Sri Bijalwan passed away on 16.05.2019, while in service. Petitioners of both the claim petitions are claiming family pension and other outstanding dues of Late Sri Deepak Lal Bijalwan. Petitioners of both the claim petitions have filed documents in support of their claims.

5. Counter Affidavits have been filed on behalf of official respondents in both the claim petitions. Claim petition of 154/SB/2023 is treated as C.A. on behalf of the private respondents of petition no. 152/SB/2023. Likewise, claim petition of 152/SB/2023 is treated as C.A. on behalf of private respondents of petition no. 154/SB/2023.

6. In C.A. filed on behalf of official respondents in petition no. 152/SB/2023, it is admitted that Sri Bijalwan was posted as Chief Administrative Officer in the office of Chief Education Officer, Uttarkashi and he passed away on 16.05.2019. Petitioners of both the claim petitions are admitting such fact.

7. In para 7 of the C.A. filed by the official respondents in petition no. 152/SB/2023, it has been mentioned that during entire service period, Sri Bijalwan did not nominate anybody to receive his retiral benefits. In other

words, Sri Bijalwan did not submit nominee-form in the respondent department.

8. In para 8 of such C.A., it has been mentioned that after the death of Sri Bijalwan, petitioner no.1 of claim petition no. 152/SB/2023 and petitioner no.1 of claim petition no 154/SB/2023 moved representations to the Chief Education Officer, Uttarkashi, for disbursement of post retiral dues, admissible to Sri Bijalwan. It has further been mentioned in C.A. that there is no entry in the service record regarding legally wedded wife. Both the representationist, have not produced succession certificate issued by the competent Court, therefore, it was not possible for the respondent department to release post retiral dues in favour of any one. Copies of representations filed by petitioner no.1 of claim petition no. 152/SB/2023 and petitioner no.1 of claim petition no 154/SB/2023 have been enclosed as Annexure: C.A.-R-1 (i) and C.A.-R-(ii) to such C.A.

9. In para 9 of the C.A. thus filed, it has been mentioned that as per Uttarakhand Pension Act, 2018 and Pension Disposal and Avoidance Rules, 2003, read with other Financial Rules, it is essential for a Govt. servant to file legal nominee form, so that at the time of retirement, post-retiral dues may easily be disbursed to the legal heirs of the deceased employee.

10. It has further been mentioned, in para 10 of the C.A., that survivorship certificate issued by SDM, Narendra Nagar, Tehri Garhwal, family register and ration card are not the documents on the basis of which post-retiral dues of employee can be disbursed.

11. In para 11 of such C.A., it has been mentioned that legal opinion of DGC (Civil), Uttarkashi, was obtained by Respondent No.3, and accordingly, directed the claimants to produce NOC for disbursement of post-retiral dues. But neither succession certificate nor NOC was produced, therefore, it is not possible to release post retiral dues in favour of anyone.

12. C.A. has been filed in Claim Petition No. 154/SB/2023 by the official respondents, with almost similar facts.

13. *Documents filed in claim petition no. 152/SB/2023:* Death certificate of Sri Deepak Lal Bijalwan has been brought on record as Annexure:

A-1. Date of death of Sri Bijalwan is not disputed. In extract of family register (Annexure: A-2), the names of Smt. Bhawani Devi w/o Sri Hridaya Ram, Smt. Shakuntala Devi w/o Sri Deepak Lal, Sri Amit, Sri Sumit and Ms. Saakshi have been mentioned. Copy of ration card has been filed as Annexure: A-2 (*colly*) with the names of petitioners no. 1, 2, 3, 4 along with Ms. Shakumbari. Annexure: A-3 is an application written by petitioner no.1 to Chief Education Officer, Uttarkashi, for releasing outstanding dues of Late Sri Bijalwan. Annexure: A-4 is copy of survivorship certificate, issued by S.D.M., Narendra Nagar, Tehri Garhwal, in which names of petitioners as well as both the private respondents have been indicated as: Amit Kumar, Sumeet Kumar, Sanjeet Bijalwan, Smt. Shakuntala Devi, Smt. Kameshwari Devi and Ujjawal Bijalwan. Annexure: A-5 indicates that certain information was supplied to petitioner no.2. Copies of such documents, which were supplied to petitioner no.2, have been enclosed by the petitioners as Annexure: A-5 (*colly*). Annexure: A-6 is copy of letter dated 30.10.2020, addressed to Chief Education Officer, Uttarkashi. Annexure: A-7 is copy of letter written by Chief Education Officer, Uttarkashi, to petitioner no.1 of petition no. 152/SB/2023, informing her that succession certificate has not yet been sent by her to the office of Chief Education Officer, Uttarkashi. Annexure: A-8 is copy of affidavit of petitioner no.1 to Primary Education Officer, Uttarkashi. Annexure: A-11 is copy of letter sent by Senior Accounts Officer, office of Accountant General, Accounts and Entitlement, Uttarakhand, Dehradun to Chief Education Officer, Uttarkashi for payment of GPF to petitioner no.1 or release of GPF amount in favour of nominee(s) indicated by subscriber. Annexure: A-12 is copy of letter written by petitioner No.1 to Chief Education Officer, Uttarkashi for releasing pension etc. Annexure: A-13 is letter written by Ms. Vandana Garbyal, Director, Primary Education, addressed to Chief Education Officer, Uttarkashi for releasing outstanding dues of Late Sri Bijalwan, as per opinion given by DGC (Civil). Annexure: A-14 is copy of affidavit filed by petitioner no.3. Annexure: A-15 is letter written by Chief Education Officer, Uttarkashi to petitioner no.1 of petition no. 152/SB/2023 and petitioner no. 1 of petition no. 154/SB/2023, for releasing outstanding dues of Late Sri Bijalwan. Annexure: A-16 is copy of order dated 06.06.2023, passed by Hon'ble High Court of Uttarakhand in WPSB No. 158/2023, whereby writ filed by the petitioners

against the respondents was “dismissed as withdrawn with liberty as prayed for”.

14. Documents have also been filed on behalf of official respondents with the Counter Affidavit. Annexure: C.A.-R -1 is copy of letter written by petitioner no.1 to District Officer, Uttarkashi on 20.04.2022. Annexure: C.A.-R-1 (*colly*) is copy of letter, written by respondent no. 4 to District Officer on 10.03.2022. Annexure: C.A.-R-2 is copy of note-sheets of the office of Chief Education Officer, Uttarkashi, whereby the matter was referred to DGC (Civil), Uttarkashi, for legal opinion. Annexure: C.A.-R-3 is copy of letter written by Respondent No.4 to Chief Education Officer, Uttarkashi on 09.08.2019.

15. *Documents filed in claim petition no. 154/SB/2023:* Annexure: A-1 is copy of survivorship certificate of Late Sri Deepak Lal Bijalwan in petition no. 154/SB/2023, which indicates the names of petitioners and private respondents. Petitioner No.1 and Respondent No.4 are shown as wives of Late Sri Bijalwan. Annexure: A-2 is copy of extract of family register. Annexure: A-3 is copy of letter dated 12.09.2019, written by petitioner no.1 to Chief Education Officer, Uttarkashi. Annexure: A-4 is copy of letter dated 20.12.2019, addressed to Chief Education Officer, Uttarkashi. Annexure: A-5 is copy of letter written by petitioner no.1 to Chief Education Officer, Uttarkashi. The same is supported by the documents (Annexure: A-5 *colly*). Annexure: A-6 is legal notice dated 25.03.2022 on behalf of petitioner no.1 to Chief Education Officer, Uttarkashi. Annexure: A-7 is copy of earlier legal notice dated 28.01.2022 to the Finance Officer in the office of Chief Education Officer, Uttarkashi. Annexure: A-8 is copy of the Uttarakhand Retirement Benefits Act, 2018. Petitioners have also filed extracts from Swamy’s CCS Pension Rules, 1972 (Annexure: A-9 *colly*). Annexure: A-10 is copy of the Uttar Pradesh Retirement Benefits Rules, 1961 and Orders Relating to New Family Pension Scheme, 1965 (as amended).

16. Counter Affidavit has been filed in claim petition no. 154/SB/2023 by Sri Amit Kotiyal, Officiating Chief Education Officer, Uttarkashi, Uttarakhand, Respondent No. 3. In support of the Written Statement filed on behalf of official respondents by Ld. A.P.O., almost the

same documents have been filed, which were filed, on their behalf, in claim petition no. 152/SB/2023.

17. In claim petition no. 152/SB/2023, petitioner no. 2 also prayed for compassionate appointment. The claim petition, in respect of such relief, was not admitted for the reasons indicated in Tribunal's order dated 23.08.2023, which is excerpted hereinbelow for ready reference:

“

..... Admit, in respect of Reliefs No. 8.1, 8.2 and 8.3 only.

Relief No. 8.4 is for considering the case of the Petitioner No.2 for compassionate appointment.

Compassionate appointment cannot be claimed as a matter of right. It is not the entitlement, as a matter of right, of legal heirs. If legal heirs are found entitled to it, they may claim retiral dues, as a matter of right.

In the Public Services Tribunal, a reference can be made only by “a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal” [Section 4 (1) of the Uttar Pradesh Public Services (Tribunal) Act, 1976]. None of the petitioners comes within the definition of ‘public servant’ as defined in Section 2(b) of the Act of 1976.”

18. In claim petition no. 152/SB/2023, petitioners have prayed for a direction to the official respondents to release family pension in favour of petitioner no.1, along with arrears of family pension with interest as per GPF rate on the amount of every month's pension from 17.05.2019 till the date of actual payment; other outstanding dues *i.e.*, gratuity, leave encashment etc. be divided into five equal parts, out of which four parts be released in favour of petitioners no. 1 to 4 and fifth part be released in favour of respondent no.5, only when it is proved that he is the biological son of Late Sri Deepak Lal Bijalwan, otherwise the same be released to the petitioners, among others.

19. In claim petition no. 154/SB/2023, petitioners have prayed for, directing the respondents to pay half share in family pension/death- cum- retirement gratuity to the petitioners; to pay share in GPF, GIS, leave encashment etc., along with interest on retiral dues from 16.05.2019 till the date of actual payment to the petitioners; and reimbursement of medical expenses to petitioner no.1 .

19.1 Ld. A.P.O. pointed out that medical expenses are neither retiral dues nor are covered within the definition of ‘consequential reliefs’ of retiral dues.

20. The first question which arises for consideration of this Tribunal is, whether second wife is entitled to family pension or not?

21. In service record of Late Sri Bijalwan no one has been nominated to receive family pension. In other words, there is no nomination as regards family pension.

21.1 It will be worthwhile to extract relevant paragraphs of decision rendered by Hon'ble High Court of Judicature at Allahabad in *Savitri Yadav vs. State of U.P. and others, 2019: AHC: 162990*, hereinbelow, in an effort to find out the reply of the abovementioned query:

“In the aforementioned backdrop, it is urged by the learned counsel for the petitioner that petitioner is the legally wedded wife. The husband of the petitioner contracted second marriage during life time of the petitioner, is void marriage under the Hindu Marriage Act, 1955, and nullity for the purposes of family pension. The sixth respondent would not have the status of a widow nor does the second wife falls within the definition of family under the Uttar Pradesh Liberalized Pension Rules, 1961 (for short the "Rules, 1961"). The respondents merely on nomination in the pension form cannot grant family pension to a stranger who does not qualify as a member of the family of the deceased employee under the Rules of 1961.

Learned Standing Counsel does not dispute the facts and the material brought on record, but submits that since the employee had disclosed the sixth respondent as his wife, in the service book and pension forms at the time of retirement, along with, the names his children born from the sixth respondent. In that event, the department on bona fide belief that the petitioner had only one wife released the family pension. Learned counsel does not dispute that family pension is admissible only to the members of the family provided under the Rules of 1961. The nominee is not entitled to family pension unless she is qualified under the rules to receive the pension.

The facts, inter se, parties are not in dispute. The family pension is governed by the provisions of the Civil Service Regulations and the U.P. Retirement Benefit Rules, 1961. "Family' is defined under Sub-Rule (3) of Rule 3, which reads thus:

"(3) "Family" means the following relatives of an officer:

(i) wife, in the case of any male officer;

(ii) husband, in the case of a female officer;

(iii) sons (including step-children and adopted children)

- (iv) unmarried and widowed daughters. (Including step-children and adopted children)
- (v) brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and step-sisters);
- (vi) father;
- (vii) mother;
- (viii) married daughters (including step-daughters), and
- (iv) children of a pre-deceased son"

Rule 6 provides for nomination of one or more persons the right to receive any gratuity that may be sanctioned. The proviso clarifies that at the time of making nomination if the officer has a family, the nomination shall not be in favour of any person other than one or more members of the family. Rule 6 is extracted:

"6. Nomination. – (1) A Government Servant shall, as soon as he acquires or if he already holds a lien on a permanent pensionable right to receive any gratuity that may be sanctioned under sub-rule (2) or sub-rule (3) of rule 5 and gratuity which after becoming admissible to him under sub-rule (1) of that rule is not paid to him before death:

Provided that if at the time of marking the Nomination the officer has a family, the nomination shall not be in favour of any person other than one or more of the members of the family."

Rule 7 of Part-III of the Rules provides that family pension may be granted to the family of the officer who dies, whether after retirement or while still in service after completion of not less than twenty years' qualifying service. Sub-Rule (4) of Rule 7 provides who shall be entitled to receive pension in the event the deceased employee had two wives. Sub-rule (4) is extracted:

- (4) "Except as may be provided by a nomination under sub-rule (5) below:
- (a) a pension sanctioned under this Part shall be granted—
 - (i) to the eldest surviving widow, if the deceased was a male officer or to the husband, if the deceased was a female officer;
 - (ii) failing the widow or husband, as the case may be, to the eldest surviving son;
 - (iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter;
 - (iv) these failing, to the eldest widowed daughter; and
 - (b) in the event of the pension not becoming payable under clause (a) the pension may be granted—
 - (i) to the father;
 - (ii) failing the father, to the mother;
 - (iii) failing the father and mother both, to the eldest surviving brother below the age of 18;

(iv) these failing, to the eldest surviving unmarried sister;
 (v) these failing (i) to (iv) above, to the children of a predeceased son in the order it is payable to the children of the deceased officer under clause (a) (ii), (iii) and (iv), above.

Note.—The expression "eldest surviving widow" occurring in clause (a) (i) above, should be construed with reference to the seniority according to the date of marriage with the officer and not with reference to the age of surviving widows."

Claim of the sixth respondent towards family pension can be considered provided she falls within the scope and ambit of the definition "family' as defined in Rules, 1961.

A bare perusal of the Rules, 1961, is indicative that the definition of 'family' does not include the second wife, it only refers to 'wife', and family pension, as per Rule 7(1), is granted to the member of the 'family' of an officer. Sub-rule 3(e) of Rule 7 provides that pension is not payable to a person who is not a member of the deceased/officer's family. Sub-rule 4(a)(i) provides that pension shall be sanctioned under Part III to the eldest surviving widow and the note appended to the rule clarifies the expression "eldest surviving widow" should be construed with reference to the seniority according to the date of marriage with the officer and not with reference to the age of surviving widows.

Sub-rule (5) requires the Government Servant to make nomination indicating the order in which pension sanctioned would be payable to the members of his 'family', provided the nominee is not ineligible, on the date on which the pension may become payable to him or her to receive the pension under the provisions of sub-rule (3) of rule 7. Thus, the scheme of the Rules provide that in case the Government Servant leaves behind two wives, the second wife, not being a member of the family, is not eligible to family pension, as long as, the first wife survives. Further, there could not have been any nomination in favour of the second wife as she was ineligible to have been nominated under sub-rule (5), being not a member of the family of the employee, thus, ineligible to receive pension under sub- rule (3) of Rule 7.

Taking a case that there was nomination in favour of the second wife, the family pension would have been payable in accordance to such nomination provided the nominee is not ineligible, on the date on which the family pension became payable to her under sub-rule (3) of Rule 7. In the facts of the present case, since the first wife is alive on the date on which the family pension became due, the second wife cannot set up a claim for family pension even on the consent of the first wife, further, nomination in favour of second wife would be invalid as she being not a member of the government servants family [sub-rule (3)(e) of Rule 7].

The Hindu Marriage Act, 1956 came into force on 18 May 1955, the Act amended and codified the law relating to marriage among Hindus. Section 4 provides that the Act has an overriding effect. Section 4 is extracted:

"4. Overriding effect of Act.-Save as otherwise expressly provided in this Act.-

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

Section 5 provides the the conditions for Hindu marriage between two Hindus and one of the condition provides that neither party should have a spouse living at the time of marriage. Section 5(i) is reproduced:-

"5. Conditions for a 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;"

Section 11 provides for void marriages. Section 11 reads thus:

"11. Void Marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5."

Section 29 of the Hindu Marriage Act saves the marriages performed between Hindus before the commencement of the Act. Section 29(1) is reproduced:-

"29. Savings.-(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste."

Thus as per the scheme of the Hindu Marriage Act, marriage between two Hindus solemnized before the commencement of the Hindu Marriage Act, which was otherwise legal and valid, would be saved under Section 29 of the Act and would not be void under Section 11. The marriage between the deceased government servant and the petitioner came to be solemnized after the enactment of the Hindu Marriage Act. The Government Servant contracted the second marriage with the sixth respondent after the commencement of the Hindu Marriage Act, the marriage, therefore, is void

and a nullity in the eye of law, second wife would have no right of being a legally wedded wife.

In a Full Bench decision of this Court in the case of Nutan Kumar versus IInd Additional District Judge, Banda and others; in paragraph 8 of the majority judgement, the Court has observed as under:

"The appellation 'void' in relation to a juristic act, means without legal force, effect or consequence; not binding; invalid; null; worthless; cipher; useless; and ineffectual etc."

This Court in Shakuntala Devi (Smt.) Versus Executive Engineer, Electricity Transmission Ist U.P. Electricity Board, Allahabad and another, while dealing with two wives wherein the nomination was in favour of the second wife it was held that it cannot defeat the claim of the legally wedded wife, only legally wedded wife is entitled to retiral benefits, provident fund and appointment under Dying-in-Harness Rules.

In Rameshwari Devi Versus State of Bihar and others, where the Government servant being a Hindu having two wives died while in service, Supreme Court held that the second marriage was void under the Hindu law, hence, the second wife having no status of widow is not entitled to anything, however, children from the second wife would equally share the benefits of gratuity and family pension as per law.

Further, the U.P. Government Servant Conduct Rules, 1956, which came into force on 28th July, 1956, Rule 29 prohibits a Government Servant from bigamous marriage. Rule 29 reads thus:

"29. Bigamous marriages-(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him."

[Emphasis supplied with reference to the facts of present case]

22. Hon'ble High Court of Judicature at Allahabad, on the basis of above discussion, concluded thus:

"Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act, if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules, therefore, it follows that the "second wife" as referred to under the Rules, 1961 would only include second wife whose marriage was otherwise permissible under the personal law or law prevalent at the time of marriage, but in the case of Hindus the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the

government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for 'wives', it has to be interpreted as per the law governing marriage as applicable to the government servant and in cases where the second marriage is void under the law, second wife will have no status of a widow of the government servant. In the facts of the case in hand admittedly the second marriage was contracted after enforcement of the Hindu Marriage Act, therefore, the marriage is void. The second wife would have no right in law to claim family pension, nor can she claim the status of widow of the deceased employee.

As regards, eligibility to family pension, the pension is to be disbursed as per the provisions of the Rules, 1961. The Rules clearly state that only eligible person is entitled to receive family pension but where pension awarded ceases to be payable on the death or marriage of the recipient or for any other reason, it will be regranted to the persons next lower in the order mentioned in sub-rule (4) of Rule 7. The Hindu second wife would not be eligible for family pension as long as the first wife is alive and has not remarried. There is no provision in the Rules for relinquishment of family pension in favour of another person. The sixth respondent would not fall within the definition of "family" of the employee.

Having regard to the facts and circumstances of the case, it is not in dispute, in the light of the documents placed on record, that petitioner is legally wedded wife of the deceased employee, Umesh Chand Yadav. The second marriage was contracted after the promulgation of the Hindu Marriage Act, 1956, consequently, the marriage is nullity being void ab initio. The petitioner is the widow of deceased employee, not the second wife. The second wife does not fall within the definition of family, mere nomination of stranger, who is not a family member of the deceased employee, is not entitled to family pension.

In view thereof, the writ petition is partly allowed. The family pension shall be disbursed equally to the petitioner and the children from the second wife as per law."

[Emphasis supplied]

23. In *Manno Singh vs. State of U.P. and others* (Writ- A No. 23388 of 2012), Hon'ble High Court of Judicature at Allahabad, relying upon the decision rendered by Hon'ble Apex Court in *Rameshwari Devi vs. State of Bihar, 2000(1) ESC 577 (S.C.)*, in which it was observed that, "where the

Government servant being a Hindu having two living wives died while in service, the second marriage was void under the Hindu law and hence second wife having no status of widow is not entitled to anything, however, children from the second wife would equally share the benefits of gratuity and family pension as per law”, held that the second marriage after coming into force of the Hindu Marriage Act, 1955 is null and void. The second wife is not included within the definition of family, nomination if made in her favour would not defeat the claim of the legally wedded wife to claim family pension as she falls within the definition of family. Regulation 7 provides that family pension is not admissible to a person who is not a member of the deceased official’s family. Pension shall be paid to the ‘eldest surviving widow’. The rules refer to two widows and the manner in which pension is to be paid to them. In case, there is no nomination, the eldest widow shall receive pension and in case of nomination the nominee shall receive pension. Regulations being subordinate legislation cannot recognize second marriage which is null and void under the Hindu Marriage Act.

[Emphasis supplied]

24. **It has been noted above that nobody has been nominated by Late Sri Deepak Lal Bijalwan in the instant case. Petitioner no.1 of claim petition no. 154/SB/2023 is second wife, therefore, she is not entitled to family pension.**

25. It will also be useful to quote relevant paragraph of the decision rendered by Hon’ble High Court of Judicature at Allahabad in *Rajni Rani vs. State of Uttar Pradesh and others, 2024:AHC:5349*, hereinbelow, to take the discussion of the above noted claim petitions further:

“2. Sri Rakesh Kumar Rathore and Sri Shyam Narayan Verma, Advocates appearing for petitioner, submitted that petitioner is not disputing that Respondent-10, Usha Devi, was legally wedded wife of Sri Bhojraj Singh. However, she left him many years ago and allegedly married to another person, therefore, she is not entitled for retiral benefits of Sri Bhojraj Singh. Learned counsel further submitted that there was a proceeding initiated at the instance of Respondent-10 under Section 125 Cr.P.C. wherein a compromise was entered and agreed amount was taken by Respondent-10 and thereafter she never claimed any maintenance allowance and as such she has abandoned her right, if any.

4. In order to decide the controversy involved in this writ petition it would be appropriate to refer a judgment passed by Supreme Court in Shipra Sengupta Vs. Mridul Sengupta and others, (2009) 10 SCC 680, wherein it was held that a nominee of a Government employee is only a custodian and benefit after employee's death will confer to his/ her legal heirs. Relevant part of the judgment is reproduced hereinafter:

"17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in the present case, the deceased died on 8.11.1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one-half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.

18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956."

5. The aforesaid view of Supreme Court has been followed and reiterated by this Court (*Allahabad High Court*) also in Smt. Suneeta vs. Union of India and others (Writ-A No. 9128 of 2009), decided on 14.07.2022."

[Emphasis supplied]

26. A nominee of the Government employee is just a custodian and benefit after death of Govt. employee has to be conferred or granted in accordance with law.

27. Observations made by Hon'ble Apex Court in *Rameshwari Devi vs. State of Bihar (supra)* decided on 27.01.2000, assumes significance in the context of the claim petitions in hand and are, therefore, being reproduced hereinbelow for convenience:

"Dispute concerns to payment of family pension and death-cum- retirement gratuity to two wives of Narain Lal, who died in 1987 while posted as Managing Director, Rural Development Authority of the State of Bihar. Appellant is the first wife. Narain Lal is stated to have married second time with Yogmaya Devi on April 10, 1963 while the appellant was still alive. From the first marriage he had one son and from the second marriage four sons born in 1964, 1971, 1972 and 1976. Learned single Judge in his judgment held that children born to Narain Lal from the wedlock with Yogmaya Devi were entitled to share the family pension and death-cum-retirement gratuity and further that family pension would be admissible to the minor children only till they attained majority. He also held that the second wife Yogmaya Devi was not entitled to anything. Appeal by the first wife Rameshwari Devi against

the judgment was dismissed by the Division Bench. According to her there was no marriage between Narain Lal and Yogmaya Devi and the children were, therefore, not legitimate. Aggrieved Rameshwari Devi has come to this Court.

Rameshwari Devi has disputed the very factum of marriage between Narain Lal and Yogmaya Devi. Her case is that nothing has come on record to show that there was any valid marriage solemnized as per Hindu law between Yogmaya Devi and Narain Lal. Yogmaya Devi says that from the time of her marriage with Narain Lal in April, 1963 she has been continuously living with Narain Lal as his wife. At the time of her marriage she had no knowledge if Narain Lal had earlier been married. She has referred to various judgments of this Court to show that when two persons are living together for long years as husband and wife, in such circumstances, even in absence of proof, a presumption of valid marriage between them would arise. She says nothing has been brought on record to rebut that presumption. In *Badri Prasad vs. Dy. Director of Consolidation & Ors.* [(1978) 3 SCC 527] this Court said that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. The Court further observed that if men and women who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. There have been various other judgments of this Court holding where a man and a woman live together for long years as husband and wife then a presumption arose in law of legality of marriage existed between the two, though the presumption is rebuttable.

An inquiry report dated December 11, 1987 of ADM, Danapur Sub Division, Danapur, Patna has been brought on record. According to this report on inquiry it was found that Narain Lal had married twice. First time to Rameshwari Devi in 1948 and second time to Yogmaya Devi on April 10, 1963. There is mention of one son from his first marriage with Rameshwari Devi and four sons from marriage with Yogmaya Devi. Two persons have testified to the marriage of Yogmaya Devi with Narain Lal. Both Narain Lal and Yogmaya Devi had lived together as husband and wife at all the places wherever Narain Lal was posted. This fact was also verified from the colleagues of Narain Lal and their wives. That four sons were born to Narain Lal from his marriage with Yogmaya Devi has also been similarly testified.

Now, when first order was cancelled by the State Government and second passed depriving Yogmaya Devi and her children of any right in the pensionary benefits of Narain Lal, she filed writ petition in the High Court, which, as noted above, was allowed by the learned single Judge and later appeal filed by Rameshwari Devi against that was dismissed by the Division Bench of the High Court which is impugned. Learned single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their children would be legitimate and thus would be entitled to claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attain majority but nothing would be payable to Yogmaya Devi.

But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In

the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. Doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. Decision has to be taken in a bona fide reasonable and rational manner. In the present case an inquiry was held which cannot be termed as sham. Result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnization of the second marriage with due observance of rituals and ceremonies has been insisted upon.

It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment. Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government

as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAV High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Retd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S.N. Sinha, w/o Sri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal.”

[Emphasis supplied]

28. In view of the above noted decisions of Hon’ble Supreme Court and decisions of Hon’ble High Court of Judicature at Allahabad, second wife is not entitled to family pension. In this way, respondent no.4 of claim petition no. 152/SB/2023, who is also petitioner no.1 of claim petition no. 154/SB/2023, is not entitled to family pension of Late Sri Deepak Lal Bijalwan. The question posed by this Tribunal in Para 20 of this judgment is thus replied against her.

29. **At this juncture, Ld. Counsel for the parties submitted that the parties want to settle their dispute amicably and 1-2 hours time may be granted to them for the same.**

30. Around 02:45 pm, parties settled their dispute amicably. An affidavit has been filed by Sri Amit Bijalwan, petitioner no.2 in claim petition no. 152/SB/2023 and respondent no.5 in claim petition no. 154/SB/2023, on behalf of all the petitioners of petition no. 152/SB/2023, duly identified by Sri L.K.Maithani, Advocate and endorsed by Sri Uttam Singh, Ld. Counsel for private respondents of petition no. 152/SB/2023 and petitioners of petition no. 154/SB/2023. Such affidavit is taken on record.

31. Terms of Settlement (ToS) are as follows:

i. Outstanding dues, but for pension and arrears thereof, of Late Sri Deepak Lal Bijalwan be disbursed equally amongst five persons, viz, (i) Smt. Shakuntala Devi (ii) Sri Amit Kumar (iii) Sri Sumeet Kumar (iv) Sri Sanjeet Kumar and (v) Sri Ujjwal Bijalwan.

ii. The matter be referred to the competent authority in the Government to take appropriate decision on eligibility and admissibility of pension and arrears thereof, of Late Sri Deepak Lal Bijalwan, as per Pension Rules.

Sri L.K.Maithani, Advocate & Sri Uttam Singh, Advocate, Ld. Counsel for the rival contestants, as also Sri V.P.Devrani, A.P.O., Ld. Counsel for the official respondents, submitted that the claim petitions be decided in terms of amicable settlement between the parties. Ld. A.P.O. also submitted that the official respondents are ready and willing to disburse retiral dues of Late Sri Deepak Lal Bijalwan to those, who are legally entitled to the same.

32. Ld. Counsel for the parties submitted that such an order can be passed by the Single Bench of the Tribunal.

33. Claim Petition No. 152/SB/2023 and Claim Petition No. 154/SB/2023 are, accordingly, decided in Terms of Settlement (ToS) between the disputants. Compromise dated 16.01.2024 shall form part of this judgment/order.

34. Let copies of this judgment be sent to-

- (i) The Principal Secretary/ Secretary, Education, Govt. of Uttarakhand
- (ii) Chief Education Officer, Uttarkashi, for necessary action.

35. Rival contestants are given liberty to pursue their case before the competent authority in the Government, as per terms (para 4) of the amicable settlement.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 16, 2024
DEHRADUN

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