

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 03/NB/SB/2017

Smt. Bhawani Devi, W/o Late Tej Singh Bora, R/o Village Saud, Patti Saud,
Tehsil and District Nainital.

.....Petitioner

VERSUS

1. State of Uttarakhand, through Secretary, Panchayat Raj, Govt. of Uttarakhand.
2. Director, Panchayat Raj, Govt. of Uttarakhand, Dehradun.
3. District Panchayat Raj Officer, Udham Singh Nagar.

.....Respondents

Present: Sri T. C. Pandey, Ld. Counsel
for the petitioner.

Sri V. P. Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATE: AUGUST 07, 2018

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this claim petition for the following reliefs:-

"1. To issue an order or direction against the respondents to record the name of petitioner in service record of Late Sri Tej Singh Bora (retired from A.D.O.,

Panchayat, Bazpur, District Udham Singh Nagar) as his nominee being first legally wedded wife.

II. To issue an order directing the respondent authorities to grant the family pension of Late Shri Tej Singh Bora (retired A.D.O., Panchayat, Bazpur, District Udham Singh Nagar) to the petitioner.

III. To issue an order or direction allowing the application with cost.

IV. Any other order or further order or direction which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case in favour of the applicant."

2. According to the petitioner, she is legally wedded wife of Late Sri Tej Singh Bora, with whom her marriage was solemnized in 1970 as per Hindu rituals. Petitioner's husband, Sri Tej Singh Bora had been posted as Assistant Development Officer (ADO), Panchayati Raj, Bazpur, District Udham Singh Nagar, from where, he took voluntary retirement on 31.03.2002. According to petitioner, after the death of Sri Tej Singh Bora on 25.06.2012, petitioner requested Respondent no. 3 to grant her family pension of her husband but the same was denied on the ground that one Smt. Hansa Devi was nominated (wife) of Late Sri Tej Singh Bora, hence, as per nomination in the department, only Smt. Hansa Devi is entitled for family pension.

3. The petitioner has also alleged that in the year 1982, she filed a case for Maintenance in the Court under Section 125 CrPC against Sri Tej Singh Bora as Misc. Criminal Case No. 04 of 1982. Her petition was allowed and Shri Tej Singh Bora was directed to pay Rs. 200 per month as maintenance to the petitioner, which was later on, enhanced to Rs. 700 by the order of Hon'ble High Court dated 08.03.2010, passed in Criminal Revision No. 234 of 2003. The petitioner has also contended that her husband Late Sri Tej Singh Bora kept one

Hansa Devi, as concubine without divorcing her. Thereafter, petitioner's husband recorded the name of Hansa Devi as his wife in his service record and illegally authorized her for grant of pensionary benefit after his death. The petitioner has also contended that she filed a Civil Suit No. 19 of 2012 for mandatory injunction in the court of Civil Judge (Junior Division), Nainital against the department, with the prayer to record her name as nominee of Late Sri Tej Singh Bora and to pass an order of family pension in her favour. The Suit was decided on 25.10.2013 with the observation that it is barred by Section 6 of the Uttar Pradesh (Uttarakhand) Public Services Tribunal Act, 1976 and accordingly, Plaint was returned. The order of the Civil Judge (Junior Division) was challenged in the appeal before the Court of District Judge, whereby her appeal was dismissed vide order dated 20.12.2016. Hence, this petition has been filed for the aforesaid reliefs.

4. The petition was opposed by the respondents with the contention that the petitioner never stated before the respondents in life time of Sri Tej Singh Bora that she is his legally wedded wife. In response to the letter written by the petitioner, she was informed that after the retirement of Sri Bora from the department on 31.03.2002, the department cannot take any action against him, as per Rules because the relationship of servant (employee) and master (employer) was ceased due to his retirement from service. When petitioner filed her application dated 19.07.2012, informing about the death of Sri Tej Singh Bora on 25.06.2012 and requested to grant family pension to her, she was informed that according to the service record of Sri Bora, for the purpose of granting family pension, gratuity, General Insurance, General Provident Fund and other benefits, he had declared Smt. Hansa Devi to be his nominee (wife), hence, all retiral dues have been paid by the department accordingly.

5. During the service period of Late Sri Tej Singh Bora, petitioner (Smt. Bhawani Devi) never claimed or made any request to enter her name as nominee, being his first legally wedded wife, therefore, it is impossible now to record her name after a period of 15 years of retirement of Sri Bora and in view of death of Sri Tej Singh Bora on 25.06.2012, no further action can be taken now in relation to deceased employee by the department. Sri Tej Singh Bora had already received all amount of Earned Leave, GPF, Gratuity, General Insurance and other service benefits himself and for the purpose of family pension, he had declared one Smt. Hansa Devi as his nominee (legally wedded wife). Hence, the claim of the petitioner has no substance and is liable to be dismissed.

6. It has also been contended by the respondents that the petitioner does not come under the definition of public servant in view of Section 2(b) of the U.P. (Uttarakhand) Public Services Tribunal Act, 1976. Moreover, the prayer of the petitioner to record her name as nominee in the service record of Sri Bora is of civil nature and this court is not competent to declare her as legal nominee (wife) of Late Sri Tej Singh Bora. Hence, having no jurisdiction, Tribunal cannot decide this issue.

7. According to respondents, the claim petition is hopelessly time barred, as the prayer has been raised after 15 years of retirement of the employee in 2002. As the petitioner never made any request before the department that she is legally wedded wife of Late Sri Tej Singh Bora and never requested to record her name in his service book, whereas Sri Bora declared one Smt. Hansa Devi as his wife and nominee in his service record, hence, the department is nowhere at fault for not recording Bhawani Devi as legally wedded wife of Sri Bora (retired ADO) in the service record. According to declaration made by the government servant (Sri Bora) in the department, Smt. Hansa Devi

was declared his nominee (wife) against which no objection was made by the petitioner during his service period or his life time. Respondents do not have any power to reopen any matter in connection with the nomination by an employee and after retirement and death of the employee, it is not legally possible for the department to enter the name of Smt. Bhawani Devi as nominee of the employee, by deleting the name of one Smt. Hansa Devi who was nominated by the employee during his life time. Thus, the claim petition filed by the petitioner for such relief, has no legal force and is liable to be dismissed.

8. In the rejoinder affidavit filed by the petitioner, the same averments have been reiterated which are stated in the claim petition.

9. We have heard both the parties and perused the record.

10. Through this petition, the petitioner has prayed for two things. Firstly, the petitioner has sought an order or direction against the respondents to record her name in the service record of Late Sri Tej Singh Bora (retired ADO), Panchayati Raj, Bazpur, District Udham Singh Nagar, as his nominee, being his first legally wedded wife, and,

Secondly, the petitioner also sought for an order or direction against the respondents to grant the family pension of Late Sri Tej Singh Bora (retired ADO) to the petitioner.

11. In response to the petition, the respondents had raised an objection that the real question in controversy on the basis of pleadings and facts, is, "who is the legally wedded wife of Late Sri Bora?" Smt. Bhawani Devi, the petitioner, has claimed herself to be the legally wedded wife of Late Sri Bora whereas, according to the service record, in the nomination filed by the government servant in his department, he had mentioned Smt. Hansa Devi as his wife and nominee, for family pension. On the request of the employee, an

order was also passed that the family pension of the employee will be paid to Smt. Hansa Devi (wife) after death of the pensioner. Smt. Bhawani Devi (petitioner) is nowhere mentioned in the service record as the wife of Late Sri Bora.

12. The respondents have raised an objection that this question “whether the petitioner is legally wedded wife or Smt. Hansa Devi was the legally wedded wife of Late Sri Tej Singh Bora,” cannot be decided by this Tribunal and it is a question, to be decided by the Civil Court. Learned counsel for the petitioner has argued that earlier they had filed a Civil Suit for such relief in the Court of Civil Judge (Junior Division), Nainital which was decided vide order dated 25.10.2013, that the Civil Suit is barred by Section 6 of the Uttar Pradesh (Uttarakhand) Public Services Tribunal Act, 1976 and the petition was returned by the Civil Court, and the order of Lower Court was confirmed by the Appellate Court.

13. Learned counsel for the respondents has argued that in the Civil Court, the petitioner was required to get the declaration about her legal status of wife of Late Sri Tej Singh Bora but Suit was filed for different relief. After going through the record and hearing both the parties, we are of the view that the question, who is the legal heir/legally wedded wife of the employee, Sri Bora, cannot be decided by this Tribunal, specifically in view of the fact, that in the service record i.e. the nomination, submitted by the government servant in the department, the petitioner was not nominated as his wife, and Late Sri Tej Singh Bora at every place, has mentioned Smt. Hansa Devi as his wife and nominee. The petitioner is now claiming to be the first legally wedded wife of Late Sri Tej Singh Bora against the fact disclosed by the employee in his service record, so the real question involved, is the declaration of her stature (his civil) right and it is purely a question, which can only be decided by the Civil Court and this

Tribunal cannot decide this issue. Once this issue is settled by the Civil Court, then the declared legal heir of the government servant can claim pension from the department and if that is denied, then the above issue of payment of family pension can be taken up by this Tribunal.

14. Learned counsel for the petitioner has argued that she approached the Civil Court from where the petition was returned. This court is of the view that the petitioner had approached the Civil Court with the wrong prayer, whereas the real question for decision to get the pension, was to get the declaration about the legal status of the petitioner as legally wedded wife of Late Sri Bora and this question is yet to be decided by the Civil Court.

15. Learned counsel for the respondents has raised an objection about the first relief, claimed by the petitioner whereby the petitioner has sought an order or direction to record the name of the petitioner in the service record of Sri Tej Singh Bora. This court agrees with the argument of learned counsel for the respondents because the government servant (Tej Singh Bora) retired in 2002 and furthermore, he died in 2012 hence, this relief, to record the name of the petitioner, as his nominee in his service record, neither can be granted, nor it has any meaning now, as the nomination is usually made by the government servant. If he had wrongly mentioned someone as his wife in his service record, then a prayer for such direction could only be sought and granted in the life time of the government servant, after getting appropriate order from the appropriate authority i.e. Civil Court.

16. This Tribunal can decide the question about the payment of any pension or any dues accrued on account of being a public servant, and legal heirs of the public servant can also claim the dues even after his death, but who is the legal heir of a government servant,

is a different question, which is within the domain of Civil Court and not of this Court. In the present case, when the government employee (Late Sri Bora) has specifically mentioned Smt. Hansa Devi as his wife in his service record then a contrary claim for nomination as raised by the petitioner, cannot be accepted, unless declaration by the Civil Court is made in this respect. Hence, in view of the above, first relief sought by the petitioner cannot be granted by this Tribunal.

17. Regarding second relief about the order or direction against the respondents to pay family pension of Late Sri Bora to the petitioner, learned counsel for the petitioner has put an argument that any nomination contrary to the statute will be inoperative. He has referred to the judgment of the Hon'ble Apex Court passed in **G.L.Bhatia vs. Union of India and another (1999) 5 Supreme Court Cases, 237**, wherein the husband of Lady Government Servant, living separately was not paid pension by the concerned authority in view of the fact that nomination was not made in favour of the husband. The Hon'ble Apex Court has held that the rights of the parties are governed by the statutory provisions, and individual nomination contrary to the statute are inoperative. Government servant dying leaving behind widower, while there had been no divorce between them, in such circumstances, it was held that widower even though staying separately and even though excluded in the nomination, was held, nonetheless, entitled to family pension. It was held that nomination by the deceased, contrary to the statute, was held inoperative and right to family pension accruing under statute law, cannot be defeated by making a nomination to the contrary.

18. Relying upon the aforesaid law, learned counsel for the petitioner has argued that the petitioner is a legally wedded wife of Late Sri Tej Singh Bora who had made a contrary nomination in favour of Smt. Hansa Devi. In view of this law, according to the petitioner the

right of the wife accrued under law, cannot be taken away in view of the nomination made otherwise. Learned counsel for the respondents has argued that in the nomination submitted by the deceased government employee, Smt. Hansa Devi was mentioned as his legally wedded wife and Bhawani Devi (petitioner) was, nowhere, mentioned as his wife and the nomination of Hansa Devi was in the capacity of wife of deceased government servant, hence, under law, she is entitled as per the law laid down by the Hon'ble Apex Court.

19. We are of the view that as per law laid down by the Hon'ble Apex Court, the wife of a government servant can claim family pension even if any other person is nominated in the nomination by the government servant. In the present case, Smt. Hansa Devi was mentioned as wife of the deceased (Sri Bora). Hence, she was entitled to family pension in view of the law cited above. After the petition, filed by the petitioner, the real controversy to be decided first, is whether Smt. Bhawani Devi (Petitioner) is the legally wedded wife or Smt. Hansa Devi was legally wedded wife of Late Sri Tej Singh Bora. The petitioner is required to get this declaration first from the appropriate forum i.e. Civil Court and after said declaration made in her favour, if any, she can claim the benefit of law laid down by the Hon'ble Apex Court.

20. Learned A.P.O. on behalf of the respondents has argued that in view of the nomination made by Late Sri Bora of Smt. Hansa Devi as his wife, all dues have been paid accordingly and petitioner never raised any objection nor pleaded before the department that she is the legally wedded wife of Late Sri Tej Singh Bora. It has also been argued that being a government servant, Late Sri Bora was not permitted to have two legally wedded wife at a time as per the Government Rules and in such circumstances, he was not entitled to remain in service and to get the dues as per law. Unless it is finally

settled that the petitioner and Hansa Devi both were legally wedded wife of Late Sri T.S.Bora, this question cannot be raised, neither it is a question for decision before this Court.

21. Learned counsel for the petitioner has submitted that they have filed a proof to the fact that the petitioner is the first legally wedded wife of Late Sri Bora because after her marriage when her husband (Sri Bora) neglected her, she filed a maintenance suit as Misc. Criminal Case No. 4 of 1982 in the Court of Judicial Magistrate, Nainital, claiming maintenance against her husband. She has also filed a copy of that judgment (Annexure: A-3). The application of the petitioner was allowed by the criminal court ex-parte and she was granted maintenance of Rs.200 per month which was later on enhanced by the court from time to time and finally, through Criminal Revision No. 234 of 2003, Hon'ble High Court has raised this amount to Rs. 700 per month vide its order dated 08.03.2010. Learned counsel for the petitioner has argued that this is a sufficient proof to show that petitioner is the first legally wedded wife of Late Sri Tej Singh Bora. Learned A.P.O. for the respondents has argued that in the circumstances, it may be possible that after his first wife Smt. Bhawani Devi, the Government servant might have contracted a marriage with Smt. Hansa Devi after divorcing the petitioner, although, there is no such case and proof before the Court.

22. Respondents have also argued that the prayer of the petitioner is of civil nature as to record her name as nominee in the service record of Sri Bora and this court is not competent to declare the legal status of a person. We agree with the argument of the respondents and hold that the legal status of the petitioner as a legally wedded wife of deceased T.S.Bora till his death, can be decided only by the Civil Court, specifically in view of the fact that Late Sri Bora has mentioned Smt. Hansa Devi as his nominee (wife) in his service record,

and also in a declaration form submitted on 06.06.1994 (Annexure: CA-R-1).

23. The court is of the view that unless the question of the petitioner being legally wedded wife of Late Sri Tej Singh Bora is settled by the Civil Court, this Tribunal cannot grant any relief to the petitioner regarding payment of family pension to her and in the absence of such declaration/legal proof of being legally wedded wife of Late Sri Bora, this petition is premature and the relief sought by the petitioner cannot be granted by this Court.

24. Learned counsel for the petitioner has argued that she had approached the Civil Court from where, she was directed to file the petition before this Tribunal. This court is of the view that the petitioner had approached the Civil Court with a different pleading and for a different relief, whereas, she should have approached the Court for declaration of the petitioner as wife/legal heir of Late Sri Tej Singh Bora, for which she can approach the appropriate forum, before claiming family pension from the government and thereafter, her right to approach the Tribunal is still protected. In view of the above, in the absence of any valid and appropriate proof of her being legally wedded wife of Late Sri Bora, petition deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: AUGUST 07, 2018
NAINITAL

KNP