

opposed the said prayer. Considering the fact that the matter pertains to grant of family pension to a widow and despite granting enough opportunity to file counter affidavit and the respondents chose not to file any reply, we have heard the learned counsel for the applicant and the respondents.

2. The facts that have come on record indicate that late Pradip Kumar Singh, a Sailor in the Indian Navy, was working in the Engineering Mechanical Branch when he attained the age of superannuation on 31.07.1996. In the service records, Respondent No. 5 Mrs. Prabha Ilya is shown as his wife. After the retirement of late Pradip Kumar Singh, he had received pension and other benefits from the office of the Controller of Accounts, Defence Branch (Pension), Mumbai. It is the case of the applicant herein that late Pradip Kumar Singh was married to Respondent No. 5, the first wife, who had fled away with another person viz. Respondent No. 6 Binod Kumbang and since then she has been with him. Thereafter, as his first wife had abandoned him, Pradip Kumar Singh is said to have married the applicant on 10.01.2007. Unfortunately, on 02.08.2007, he died of cancer within seven months of their marriage. Annexure-2 is the death certificate. It is stated that due to paucity of time and on account of his ailment, Pradip Kumar Singh could not change the name of the nominee in the service records before his death. It is further the case of the applicant that in the official records, the name of Respondent No. 5 is recorded as wife of the deceased and, therefore, Respondent No. 5 made claim for grant of family pension and other benefits. Thereafter, having come to know that after the death of her husband, she is entitled to family pension, she made a representation to the Zilla Sainik Welfare Office, Lakhimpur. They forwarded

her representation to the Records Officer, Bureau of Sailors, Mumbai and vide its letter dated 15.05.2012, the Commander, SSO (Pension), Bureau of Sailors, Mumbai intimated the applicant as under:

1. *Refer to Zilla Sainik Welfare Officer letter no. LSW.28/FP/2011-12/55 dated 13 Feb 2012.*
2. *The name of wife of above mentioned late sailor as per our records is Smt Prabha Ilya. If he had also married you, while his first wife was still alive, then the 2nd marriage with you is null and void. As per law only the first wife is eligible for family pension.*
3. *However, if the marriage with you occurred on obtaining divorce from 1st wife or if the 1st wife died before 2nd marriage, then please forward the Divorce Certificate or Death Certificate in original, as applicable.*
4. *This office has all the sympathy with you but we are not in a position to help. It was the responsibility of your late husband to obtain divorce from 1st wife and update the record. Being a Government Organisation we are required to abide by the rules.*

It is the grievance of the applicant that after the receipt of the letter dated 15.05.2012, she filed an application before the District Judge, Lakhimpur seeking succession of her deceased husband. On 27.06.2013, the District Judge issued a succession certificate in favour of the applicant (Annexure-6). That apart, the applicant was given a legal heir certificate by the Deputy Commissioner, Shemaji showing her name as wife and the name of deceased's mother (Annexure-7). Based on these documents, when no family pension was granted to her, the applicant has invoked the jurisdiction of this Tribunal with the aforesaid prayer.

3. Learned counsel for the applicant, drawing our attention to the facts as are narrated herein above, referred to Annexure-6 succession certificate and Annexure-7 legal heir certificate and argued that based on these documents, the claim of the applicant is to be settled and after deleting

the name of Respondent No.5, family pension and other benefits should be given to her. He has also drawn our attention to the fact that Respondent Nos. 5 and 6 have a son out of their wedlock, who is now almost 10 years of age.

4. Even though the respondents have not filed any counter affidavit or objection, it is their contention that there is no substantial evidence or proof to show that the marriage of the applicant with late Pradip Kumar Singh had taken place on 10.01.2007. It is stated that in the application, except for making a vague statement that she is married to late Pradip Kumar Singh on 10.01.2007 before his death and producing the succession certificate and the legal heir certificate, no particulars with regard to their marriage, the manner in which the marriage was solemnized, the place where the marriage took place have been stated. The learned counsel for the respondents invited our attention to the pleadings on record to say that the applicant herself admitted that her late husband was not well after the marriage and, therefore, could not seek correction of the service records nor was their marriage registered.

5. Weighing with these circumstances, the question that arises for our consideration is:

Whether, based on Annexure-6 succession certificate and Annexure-7 legal heir certificate, can we hold that the applicant is the legally wedded wife of late Pradip Kumar Singh and grant her family pension and other benefits, when the material available on record clearly shows that Respondent No. 5 is the first wife of late Pradip Kumar Singh and her name is recorded in the service record and even communications have been made to her indicating her entitlement to receive family pension?

6. Even though the succession certificate and the legal heir certificate have been produced and are available on record, there is no evidence to show that any inquiry was conducted and, therefore, based on these documents, in the peculiar facts and circumstances of the case, we are of the view that it would not be possible for us to record a positive finding that the applicant is the legally wedded wife of late Pradip Kumar Singh and grant her family pension and other benefits. Apart from this, the legal issue is as to whether the marriage between the applicant and late Pradip Kumar Singh is legally permissible, when the first wife, according to the applicant herself, is alive. However, looking into the facts and circumstances of the case, the factum of marriage between the applicant and late Pradip Kumar Singh and the factum of his relationship with Respondent No. 5, breaking down of their marriage, etc. as alleged are all matters of inquiry and we deem it appropriate to cause an inquiry into these aspects by the Registrar of this Bench.

7. We, therefore, direct the Registrar of this Bench to cause an inquiry with regard to the following:

- (i) Whether the marriage between the applicant and late Pradip Kumar Singh was solemnized on 10.01.2007?
- (ii) Whether Respondent No. 5 had abandoned Pradip Kumar Singh after his retirement and whether it is a fact that she is staying with Respondent No. 6 and his wife and whether they have a child in their wedlock?
- (iii) Whether any proceedings were held for dissolution of marriage between Pradip Kumar Singh and Respondent No. 5 and

whether any decree of divorce or dissolution of marriage had been passed?

(iv) Any other relevant issue that may arise in this regard.

The Registrar shall issue notice to the applicant, Respondent Nos. 5 and 6 and the official respondents viz. the departmental authorities through the officer in charge of the case, permit the parties to lead evidence, both oral and documentary, in support of their case and thereafter submit a report to this Court. Based on the report to be submitted, we shall decide the issue in question, both legal and factual.

8. A copy of this order be forwarded to the Registrar of this Bench, who may cause the inquiry and submit report within three months.

**(RAJENDRA MENON)
CHAIRPERSON**

**(P. M. HARIZ)
MEMBER (A)**

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