

GOVERNMENT OF WEST BENGAL
FINANCE DEPARTMENT
AUDIT BRANCH : PENSION CELL
“HEMANTA BHAWAN”(TOP FLOOR)
12, B.B.D. BAG(EAST), CALCUTTA-700 001

From: Shri B.N.Pal, Deputy Secretary to the
Government of West Bengal.

To : Shri S. Mullick, D.A.G.(Pen)
Office of the Principal A.G.(A&E), West Bengal,
Treasury Buildings, Calcutta-700 001.

No.329-F(Pen)

Dated, Calcutta, the 15th February, 1995.

Sir,

I am directed to refer to your D.O. Letter No. Pen.Co-ordn/4-Vol.VI/75 dated 01.06.94 followed by D.O. reminder No.Pen.Co-ordn/4-Vol.VI/306 dated 20.10.94 addressed to Shri G.N. Chatterjee, Joint Secretary, Finance Department regarding **eligibility of the wife of a Government servant who fled away with another person and get re-married** long before the death of the Government servant, but after introduction of Hindu Marriage Act, 1955 for family pension and death-gratuity. The issue was taken up with Ld. L.R., West Bengal who has opined as follows:-

“The marriage between such woman and the Government servant concerned cannot be declared void even by a Court of law in the circumstances of the case but the concerned husband could approach a Court of Law for a decree of divorce under Section 13 of the Hindu Marriage Act and in the event of a decree being passed in favour of the husband such wife could not lay any claim either to pension or gratuity of her first husband.”

Hence, unless such decree is obtained by the first husband of the wife before his death, the wife will be eligible for family pension and death-gratuity as per rules which she would have received in case she did not leave her husband prior to his death.

The son of the deceased Government employee will however get a share of death gratuity in terms of rule 7 (1) (e) (1) of W.B.S. (DCRB) Rules, 1971 read with F.D. Notification No.2564-F dated 30.03.76 in case no nomination subsists.

A copy of the Ld. L.R.'s Note dated 17.01.95 and a copy of the precis to which the said Note is a reply is enclosed for perusal.

Yours faithfully,

Sd/- B.N. Pal.
Deputy Secretary to the
Government of West Bengal.

I have perused the precis.

It appears from the precis that the wife of the deceased Government servant left her husband and get herself re-married long before the death of the Govt. servant. The question is whether such re-marriage, if the term can be used as such, will automatically dissolve the marriage between her and the Govt. servant. The answer to the query is in the negative. The marriage between such woman and the Govt. servant concerned cannot be declared void even by a Court of Law in the circumstance of the case but the concerned husband could approach Court of Law for a decree of divorce under Section 13 of the Hindu Marriage Act and in the event of a decree being passed in favour of the husband such wife could not lay any claim either to pension or gratuity of the first husband. As such step has not been taken by the Govt. servant concerned as per precis, the marriage between two shall be deemed to have continued even this day and in the eye of the law she shall be treated as widow of the Govt. servant concerned. Hindu succession Act of course lays down certain disqualifications and one such disqualification also relates to the re-marriage of certain types of widows but Succession Act does not make any such disqualification in the case of widow of the intestate as because such widow obviously is the widow of the person concerned when succession opens on the death of the husband. The bar of re-marriage of widows extends to only three clauses of widows as mentioned in Section 24 of the Hindu Succession Act. Therefore, in the present case the widow in question is eligible to get retirement benefits which she would have received in case she did not leave her husband prior to his death.

It is not however Correct that the son of the deceased cannot get the benefit of death Gratuity unless, the marriage of the women with the Govt. servant is held to be void. The definition of "family" as appearing in the West Bengal Services (Death-cum-Retirement Rules, 1971 differs while the question of death gratuity is concerned from the definition of 'family' for the purpose of family pension. In accordance with definition of 'family' for the purpose of death gratuity son amongst others as mentioned therein are entitled to share the same. Therefore, even if the marriage is subsisting the son in question is entitled to share the gratuity together with his mother. For the purpose of family pension the son cannot get the same in view of Rule 104 of the D.C.R.B. Rules.

. Sd/- A.B. Mukherjee.
L.R. In-Charge
17.01.95.

Precis of the case

Accountant general, West Bengal has wanted to know whether family pension and death gratuity may be paid to the son of a deceased Government servant during the life-time of the wife of the Government servants who fled away with another person and get re-married long before the death of the Govt. servant but after introduction of Hindu Marriage Act. 1955.

It is felt that unless the first marriage of the wife is held void, the son of the deceased cannot get the benefit of death-gratuity and family pension. The question is whether the first marriage of the wife is to

be held automatically void with the second marriage of the wife or it cannot be held void unless declared as such by a Court of Law, Ld. L.R., West Bengal may be requested to give his valued opinion.

Copy of D.O.No.Pen.Co-ordn/4-Vol.VI/306 dated 20.10.94 from S.Mallick, Dy.Accountant General (Pen.),

Office of the Principal Accountant General (A&E), West Bengal, Treasury Buildings, Calcutta-1
addressed to Shri G.N.Chatterjee, Jt. Secretary to the Govt. of West Bengal, Finance Deptt.,
Audit Branch, Writers' Buildings, Calcutta-700 001.

Dear Shri Chatterjee,

Please refer to this Office D.O. Letter No. Pen. Co-ordn/4-Vol. VI/75 dated 01.06.94 seeking clarification whether family pension and death gratuity may be paid to the son of a deceased Govt. servant during the life time of the wife of the Govt. servant who fled away with another person and get re-married long before the death of the Govt. servant, but after introduction of Hindu Marriage Act, 1955.

2. As no reply in this regard has been received, I would request you kindly to look into the matter personally and arrange to issue the clarification as sought for in the above noted D.O. at an early date.

Regards

Yours sincerely,

Sd/-S. Mallick.

To
Shri G.N.Chatterjee
Jt. Secretary to the
Govt. of West Bengal
Finance Deptt., Audit Branch
Writers' Buildings
Calcutta-700 001.