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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. NO.1460 OF 2025

In the matter of an appeal from the order dated 16.07.2025 passed in W.P.(C) No.3822 of 2022.

Kankalata Dwibedi .... ***Appellant***

-versus-

State of Odisha and others .... ***Respondents***

Advocates Appeared in this case

For Appellant **-** M/s. Madhumita Panda, J. Bhuyan & D. Behera, Advocates

For Respondents - Mr. J.K. Khandayatray, ASC

CORAM

HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD
HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Hearing & Judgment : 13.01.2026

PER **KRISHNA S. DIXIT,J.**

This intra-court appeal calls in question a learned Single Judge's order dated 16.07.2025, whereby Appellant's W.P.(C) No.3822 of 2022 has been

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negatived. In the said petition, Appellant had called in question the order dated 12.11.2021 passed by OP No.4, whereby her claim for family pension has been negatived. That order reads as under:

> **"ORDER**
>
> *The Hon'bie High Court of Orissa in their Order Dtd.7.7.2021 passed in W.P.(C)(OAC) No. 872 of 2017 have directed the O.P. No.2 as well as the O.P. No.4 (the Controller of Accounts, Odisha, Bhubaneswar) to treat the writ petition of the petitioner as a representation and to take a decision as appropriate in this case.*
>
> *On going through the writ petition as well as annexure attached thereto, it is seen by the O.P. No.4 that Late Niranjan Dwibedy has acquired Smt. Kanaklata Dwibedy as 2nd wife in his life time during the existence of his wife Late Indumati Dwibedy. So, as per Note below Clause-(d) of Sub-Rule (6) of Rule, 56 of OCS (Pension)-1992, Smt. Kanaklata Dwibedy being the 2nd ife of Late Niranjan Dwibedy is not entitled to family pension, not being legally married wife of Late Dwibedy. Therefore, the O.P. No.4 has no scope to authorize family pension in favour of Smt. Kanaklata Dwibedy.*
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> *In view of the above observations, the representation of the petitioner is considered and disposed of."*

2. Learned counsel for the Appellant vehemently argues that the Odisha Civil Services (Pension) Rules, 1992 specifically employ the expression 'wife'/'wives' and therefore, her client being the second wife of the deceased employee, the first wife also having passed away, is entitled to family pension. In support of her claim, learned counsel for the Appellant presses into service the judgment of Apex Court in S***mt. Sriramabai w/o. Pundalik. Bhave v. The Captain, Record Officer for O.I.C. Records, Sena Corps Abhilekh,*** 2023 INSC 744. Learned ASC appearing for the Respondents opposes the appeal making submission in justification of the impugned order and the reasons on which it has been structured.

3. Having heard learned counsel for the Parties and having perused appeal papers, we decline indulgence in the matter, broadly agreeing with the reasoning of learned Single Judge, and also the added reasons hereunder:

3.1. After the enactment of Hindu Marriage Act, 1955, amongst the Hindus monogamy is the thumb rule with no exception whatsoever. Therefore, the idea of very second marriage during the subsistence of first one abhors the pith & substance of this Act. The vehement submission of learned counsel for Appellant that, her client entered into wedlock because the first wife did not beget any child is too dangerous to be accepted, inasmuch as that shakes the very corner stone of the institution of marriage, whose sanctity is founded *inter alia* on monogamy. The Act does not recognize childlessness as a justifiable circumstance for entering into wedlock with a person who is already in the subsisting wedlock with another. To put it in other words, after the Act came into force, monogamy is the grand norm with no exception whatsoever. The limited legitimacy conferred on children of void marriage as per the policy enacted in Section 16 of the Act, does not extend to the parties to a void marital relationship.

3.2. Mayne's Hindu Law 16th Edition (Bharat Law House) at pages 182, 230 & 352 states as under:

> *"5.... during the lifetime of a legally wedded wife or husband, and when the marriage is subsisting, the husband or the wife as the case may be,*

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cannot have a second marriage. Not only is a bigamous marriage void under this Act but bigamy is punishable under section 17 read with sections 494 and 495 of the Indian Penal Code…." (Para-5, Page 182)

"4. ***Effect of consent of first wife.-*** *The consent of previous wife does not make the second marriage valid. In the event of a spouse entering into a second marriage while the first marriage is subsisting, even the consent of the spouses of the first marriage will not make the second marriage a valid marriage."(*Para-4, Page 230)

"1. .....Section 494, IPC states that whoever having a husband or wife living, marries and such a marriage is void by reason of its taking place during the life of such husband of wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 495 states that whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 17 declares a marriage while the first wife or husband is alive as void and sections 494 and 495, IPC are made applicable for purpose of conviction and sentence for the offence of bigamy…." (Para-1, Page 352)

3.3. The vehement submission of learned counsel for the Appellant that the extant Pension Rules employ the term 'wife' or 'wives' and therefore, even the second wife is entitled to claim family pension at least after the demise of first one, is very difficult to countenance. Reasons for this are not far to seek: Family pension under the Rules is payable to the widow on the death of an employee subject to complying with certain terms & conditions. To be a widow, a valid marriage between the woman & the deceased employee is a *sine qua non*. The word 'wives' appearing in the Rules does not authorize an employee to contract marriage with multiple persons by way of polygamy or polyandry. The Pension Rules, be they promulgated under the proviso to

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Article 309 of the Constitution of India or under an enactment, cannot be construed as to defeat the avowed policy of the Parliament enacted in legislations like Hindu Marriage Act, 1955, Indian Penal Code, 1862, etc. The interpretation sought to be placed by the Appellant's counsel on the subject Rule by stressing on the rules of dictionary & grammar, spurns at the root of such a policy and therefore, does not merit acceptance. After all, the sages of law say that law is neither a slave of dictionary nor a servant of grammar book.

3.4. The vehement reliance of learned counsel for the Appellant on the decision in S***mt. Sriramabai*** (supra) does not come to the aid of her client, even in the least. The case does not essentially relate to bigamy or to the second marriage, to match with the fact matrix of the appeal at hand. It involved two individuals belonging to opposite sex in prolonged cohabitation, the first wife having died, and the Apex Court drew presumption of valid marriage between the said individuals, under Section 114 of Evidence Act, 1872. In the case at hand, admittedly the Appellant entered the wedlock with the deceased employee during the subsistence of first marriage with another woman. That act itself constitutes the offence of bigamy punishable under Section 17 of the Hindu Marriage Act, 1955 and Section 495 of the erstwhile Indian Penal Code, 1862. Granting family pension to the so called 'second wife', amounts to placing premium on illegality. It hardly needs to be stated, a

case is an authority for the proposition laid down in a given fact matrix, and not for all that which logically follows from what has been so laid down, vide ***Quinn v. Letham***, [1901] AC 495 (HL).

3.5. The vehement submission of learned counsel for the appellant that even if the second marriage when solemnized was null & void because of subsisting first marriage, on the death of first wife it gets legitimized and therefore the arguable voidness of the said marriage would evaporate, is not supported by any standard treatises on Hindu Law of Marriage. What is *void ab initio*, does not become valid by the happening of subsequent event, there being the maxim *ex nihilo nihil fit,* meaning out of nothing, nothing comes out. In fact, the question relating to claim of second wife for the grant of family pension is no longer *res integra*. The Apex Court in ***Raj Kumari v. Krishna***, 2015 (14) SCC 511 has already answered the same perfectly in the negative. Added, a Division Bench of Karnataka High Court in *Mahalakshmamma v. The Secretary*, 2023:KHC:41044-DB has observed as under:

> "*Recognizing such relations arising from second marriage during the subsistence of first one is detrimental to public interest inasmuch as that would facilitate directly or indirectly the employees contracting the second marriage, which is legally impermissible. Statutorily bigamy is an offence punishable under Section 17 of the Hindu Marriage Act, 1955.....Family pension is payable to the 'wife', and not to those whose marriage is 'no marriage' in the eye of law.... "*

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In the above circumstances, Writ Appeal being devoid of merits is liable to be and accordingly rejected.

(Dixit Krishna Shripad)
Judge

(Chittaranjan Dash)
Judge

Orissa High Court, Cuttack
The 13th day of January 2026 /Anisha

Signature Not Verified
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