

28.01.2021
Item No. 01
Ct. No. 04
PG

M.A.T. 154 of 2020
with
I.A. No. CAN 1 of 2020 (Old No. CAN 1406 of 2020)
With
I.A. No. 2 of 2020(Old CAN 1407 of 2020)
Kalpana Mondal
Vs.
Kolkata Port Trust & Ors.

Mr. Indradeep Pal
Mr. Mustafizur Rahaman
Mrs. S. Pal.....for appellant

Ms. Sujata Mukherjeefor respondents/
Kolkata Port Trust

One of the sons of the deceased employee has been examined in Court. Court asked questions. Thereafter Mr. Pal, learned advocate appearing on behalf of appellant declined to put questions on examination-in-chief. Ms. Mukherjee, learned advocate appearing on behalf of Kolkata Port Trust cross-examined the witness.

Mr. Pal had handed up a declaration bearing particulars of the dependant family members of deceased employee as on 25th June 1983, obtained from the deceased employee. He had also handed over original admit card issued by West Bengal Board of Secondary Education issued to the witness. Our questions were put, *inter alia*, on the basis of those documents.

We are satisfied that the witness deposed truthfully. There have been lapses of memory, the lapses being consistent.

By impugned order dated 1st October, 2018, *inter alia*, following was said:

“I am of the view that in the present state of confusion that the respondents have, it is not possible for them to grant any family pension in favour of the petitioner.

However, the petitioner will be at liberty to obtain a declaration from a competent Court of civil law about her relationship with the deceased employee of the Kolkata Port Trust. In case such declaration is obtained by a decree or an order, as the case may be, the Port Trust Authority shall be bound by the same. Thereafter, the petitioner will be at liberty to make a fresh application for the grant of family pension in her favour and the Port Trust Authority shall dispose of the same as early as possible, but positively within a period of six weeks from the date of receipt of any such application, if at all, in terms of the Court’s decree or the order.”

The appeal is by widowed daughter of the deceased employee. In said declaration her name does not appear, we presume, as she was married on the date of the declaration. Dependency had changed from the father to the husband. She could not then be included as a dependant of the deceased employee.

In order dated 13th January, 2021, we had said as follows:

“.....Submissions have been heard. It appears appellant does not have resources to file a suit, produce witnesses and obtain declaration that she is daughter of the deceased employee. According to her, the deceased employee was her father. Family pension was being given to her

widowed mother. She also died and hence her claim.

Respondents will consider whether they will accept, as proof of identity, affidavits of two persons, who were colleagues of the deceased employee, to effect they knew appellant to be daughter of the deceased employee. This is one way, by which appellant can get the relief. Otherwise, Court might consider this to be a special case or an extraordinary one requiring direction for production of witnesses and their examination, to ascertain the truth.”

On next date of hearing, we by our order dated 21st

January, 2021 said, *inter alia* as follows:

“.....With reference to our observations in said order dated 13th January, 2021, we find from **Babubhai Muljibhai Patel** (supra) that the civil appeal was against judgment of the High Court, in which was considered, *inter alia*, oral evidence of deponents of affidavits filed in the writ petition. In paragraph 10 Supreme Court said :

“**10**the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.”

Mr. Pal, on instructions submits, brother of deceased employee will be produced as witness by appellant for examination before this Court. He prays for listing on 28th January, 2021.

List on **28th January, 2021** marked at **10.45 A.M.** under heading ‘**For Examination of Witness**’.

Above direction has been issued in exercise of extraordinary power under article 226 of the Constitution of India read with rules 27 to 29 in order 41, Civil Procedure Code, 1908. Additional evidence will be on the point of proof of appellant’s claim to be daughter of the deceased employee.”

The deposition of the witness is set out
below:

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Appellate Side
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Vs.
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PRESENT:

The Hon'ble Justice Arindam Sinha

And

The Hon'ble Justice Suvra Ghosh

Mr. Subhash Naru being sworn/solemnly
affirmed by Asamanya Sarkar and examined as a
witness on behalf of appellant on this Twenty Eighth
Day of January, 2021.

Interpreted by:
Mr. Asamanya Sarkar

My Name is Subhash Naru

My father's name is Late Prafulla Kumar

Naru.

Occupation : Driving

My Age is about 44+ years

I reside at Village- Balarampur (Narupara),
P.O.-Bonhooghly, P.S.-Narendrapur, South 24-
Parganas.

To Court:

1. What is the name of your father ?/ My father's name is Late Prafulla Kumar Naru.
2. When did your father die ?/ He died in 2003.
3. Do you not remember the date of death ?/ I do not remember the exact date of my father's death.
4. Did you perform the last rites of your father ?/
Yes, I have done along with my brother.
5. What is the name of school where you studied ? /
Balarampur Nimna Buniyadi Vidyalaya.
6. How many brothers and sisters are you ?/ We are three brothers and four sisters. The eldest brother has died.
7. Give the names of your brothers and sisters in order of age./ (1) Late Bibhash Chandra Naru, (2) Prabhash Chandra Naru, I am third (3) Subhash Naru, (4) Kalpana Mondal, (5) Alpana Mondal, (6) Swapna Naru and (6) Krishna Barui.
8. Kalpana Mondal is your sister?/ Yes, she is my elder sister.
9. Is her husband alive ?/ He is not alive. He is dead.
10. When did he die ?/ It has been quite some time in 2008.

Mr. Pal, learned advocate for the appellant submits, he has no question to ask. The witness is offered to Ms. Mukherjee, learned advocate appearing for Kolkata Port Trust.

To Ms. Sujata Mukherjee, in cross-examination.

11. What is your name ?/ Subhash Naru.

12. Please tell once again in the chronological way the name of your all the sisters and brothers./ (1) Late Bibhash Chandra nar, (2) Prabash Chandra Naru, (3) Subhash Naru, sisters (4) Kalpana Mondal, (5) Alpana Mondal, (6) Swapna Naru and (7) Krishna Barui.

13. Is this on the basis of the date of birth ?/ Yes, I have said according to chronological order.

14. Do you know Kalpana Mondal ?/ Yes, she is my elder sister.

15. Is she elder than you ?/ Yes, she is elder than me.

16. Kindly tell their Lordships the name of your other sisters/ (1) Alpana Mondal, (2) Swapna Naru and (3) Krishna Barui.

17. When your father died ?/ He died in 2003.

18. Where your father worked ?/ He used to work at Kolkata Port Trust.

19. When he was retired ?/ Probably he retired in between 1999 and 2000.

20. Under which post he was employed ?/ He used to work at saw mill of Kolkata Port Trust.

21. When husband of Kalpana Mondal died ?/ He died in 2008.

22. Which year he has died ?/ In 2008.

23. Where he has worked ?/ He was a farmer.

24. Please tell the address of the in-laws house of your sister./Village-Jhanjra, P.O.- Amgachia, P.S.- Bishnupur., South 24- Parganas.

25. After the death of your father, did your mother receive family pension or widow pension ?/ Yes, she used to get the pension.

We are satisfied that appellant is widowed daughter of the deceased employee. Kolkata Port Trust will once again deal with her application on the rejection of it, set aside and quashed by us. Decision is to be taken within three weeks from date of communication of this order. Consequential action should be taken forthwith thereafter.

Ms. Mukherjee submits, this order should not be seen as precedent on her client dealing with claims of family pension. All we have done above is exercise of extraordinary power to ascertain the truth for a genuine claimant being granted the benefit, available as per law and procedure applicable.

The appeal and connected applications are disposed of, as above. The documents are handed back.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)