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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 11540 of 2021

Smt. Rupa Halder
Vs.
Union of India & Ors.

Mr. M. Goswami,
Mr. P. Goswami
... For the petitioner.

Mr. Pulakesh Bajpayee,
Mr. Shailendra Kumar Mishra
... For the respondent nos. 1 to 5

Mr. Manjit Singh,
Mr. Gaganjyot Singh,
Mr. Biswajit Mal
... For the respondent no.6.

Affidavit of service filed in Court today is taken on record.

The petitioner claims to be the wife of one Vinod Kumar, a Constable in Border Security Force (in short, BSF) who was engaged in 26 Battalion of BSF, and died on 29th November, 2020.

The petitioner says that as the wife of the deceased Constable, the petitioner is entitled to the terminal benefits of her husband, Vinod Kumar. There is a counter-claim from the side of the respondent no.6, who claims to be the legally and validly married wife of the said Vinod Kumar and as such, it is the respondent no.6, who should get the terminal benefits of her deceased husband Vinod

Kumar.

On behalf of the employer, it is submitted that as per the information available to the employer, the date of solemnization of marriage between Vinod Kumar, since deceased and Anita Devi (Yadav), the respondent no.6, is 6th of May, 2019, whereas that with the petitioner is 25th May, 2019. Going by the dates, according to the employer, the marriage of Vinod Kumar, since deceased, with the respondent no.6 was the first and the prior marriage. The employer also says that as per the extant Rules governing the deceased employee, the first wife is entitled to the terminal benefits.

The respondent no.6, asserting her claim had approached the High Court at Judicature at Allahabad by filing a writ petition, bearing no.8012 of 2021 (Anita Yadav (Devi) vs. Union of India and five (5) others.)

It appears from the submissions made on behalf of the respondent nos. 1 to 5 and respondent no.6 in the instant writ petition that the petitioner of the instant petition was a respondent in the proceedings filed before the High Court at Allahabad. The petitioner says that she was, however, not served with any notice and as such could not be present before the High Court at Allahabad when the matter was taken up. The respondent no.6, have produced a copy of the order dated 29th July, 2021, passed by the Allahabad High Court, disposing of the writ

petition filed by the respondent no.6. The same is taken on record.

It appears from the said order that the Allahabad High Court was aware that the petitioner had made a claim as a wife of Vinod Kumar but connoted the petitioner as the second wife while the respondent no.6, to be the first wife.

The writ petition of the respondent no.6 was disposed of in the following manner:-

“Without going into the merits of the claim of the petitioner or the respondent no.6 herein at this stage, the present writ petition is disposed off with a direction upon the respondent no.2 to pass final order in accordance with the Rules applicable, as expeditiously as possible, preferably within a period of two months from the date of filing a copy of this order before the respondent no.2.

The writ petition stands disposed off in terms of the said direction.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order”.

Hearing the parties and going through the records including the order of the Allahabad High Court, I find that the core issue which requires to be decided as to whether the respondent no.6 or the petitioner is the legally and validly married wife of Vinod Kumar, since deceased. Going by the dates, the date of marriage between Vinod

Kumar, since deceased and the respondent no.6, is prior to the date of marriage between the petitioner and the said Vinod Kumar, since deceased. It is therefor required to be seen whether the marriage between Vinod Kumar, since deceased and respondent no.6, is a valid marriage and the respondent no.6 is the legally married wife of the said Vinod Kumar, since deceased. If the marriage between Vinod Kumar, since deceased and the respondent no.6 is declared valid and to have been solemnized on a date prior to the date of marriage asserted by the petitioner, then the petitioner's marriage during the subsistence of a valid marriage cannot be considered to be a valid marriage. This issue cannot be decided either by the writ Court or by the employer. This issue requires to be decided by a competent civil Court.

The petitioner is, therefor, permitted to agitate the issue of the validity of her marriage vis-à-vis the marriage between her late husband and the respondent no.6 before a competent civil Court. I am also alive to the order passed by the Allahabad High Court. I cannot sit on appeal over the order passed by a learned Single Judge of the Allahabad High Court. The order of the Allahabad High Court only directs the employer to pass final order in accordance with the Rules applicable as expeditiously as possible, preferable within a period of two months from date of filing a copy of the order dated 29th July, 2021 before the respondent no.2. The respondent/employer

shall be free to decide the matter as directed by Allahabad High Court but shall not disburse any money either to the petitioner or to the respondent no.6, unless the issue as to the validity of the marriages is adjudicated by a competent civil Court.

The petitioner has to approach the competent civil Court within a period of three weeks from date, failing which the order restraining the employer from disbursing the terminal benefits of Vinod Kumar as per their decision will automatically stand discharged.

The petitioner apart from the service of summons, as required after the filing of a case, shall on institution of a case before the competent civil Court inform the respondents in this writ petition within seven days therefrom about the filing of the case with number and particulars. I am also not inclined to grant any relief to the respondent no.6 in a writ petition not filed by the said respondent.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavit, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if

applied for, be given to the parties upon compliance of necessary formalities.

(Arindam Mukherjee, J.)