

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE ARINDAM MUKHEREJEE

W.P.A 15977 of 2021

CHAYNA SAHA @ SAHA CHAYNA

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	:	Mr. Prosenjit Mukherjee, Mr. Saptarshi Chakraborty	Advocates
For the State	:	Ms. Sudipa Roy, Mr. Srinath Singha Roy	Advocates
For the NBSTC	:	Mr. Amal Kumar Sen, Mr. Sabyasachi Mondal	Advocates
Heard on		22.11.2021 and 17.12.2021.	
Judgment on	:	22nd December, 2021.	

Arindam Mukherjee, J.:

- 1) The petitioner claims to be the wife of Nanda Kumar Saha, a retired employee of North Bengal State Transport Corporation (in short, NBSTC), who retired from services on 30th November, 2015 and died on 9th February, 2021. The petitioner says that being a legally wedded wife, the petitioner is entitled to the family pension after the death of her husband. The petitioner has made several

representations, one of which is dated 15th February, 2021. As no family pension has been issued to the petitioner, the instant writ petition has been filed claiming the same.

- 2) On behalf of the NBSTC, it is submitted that as per the declaration in the service records made by the deceased employee, Nanda Kumar Saha, one Soma Saha is declared to be his wife. After being approached for family pension by the said Soma Saha, the papers were processed and Pension Payment Order (in short, PPO) has been issued, bearing no.4022/Pen. According to the NBSTC, Soma Saha is given family pension month by month pursuant to issuance of PPO. The copy of the PPO and the appended documents handed over to the Court were taken on record. The respondent further refers to the death certificate of Nanda Kumar Saha, the deceased employee, appearing at page 23 of the writ petition and submits that even in the death certificate of Nanda Kumar Saha and relied upon by the petitioner, the name of the wife as will appear there-from is Soma Saha. NBSTC says that this fact has not been stated in the writ petition which is countered by the petitioner on the ground that she had no knowledge prior to the date of filing of the declaration by NBSTC about receipt of family pension by one Soma Saha.
- 3) The issue which now falls for consideration is as to which of the two marriages i.e. marriage between Nanda Kumar Saha and the petitioner or that between Nanda Kumar Saha and Soma Saha is the legally valid marriage.

- 4) It is submitted on behalf of the petitioner that writ Court can look into the dispute as to the validity of the marriages and make a declaration to that effect and further pass consequential orders on the basis of the same. The petitioner relies upon a judgment of this Court delivered in **(W.P.C.T 135 of 2016) ALIA BEWA @BIBI vs. Union of India and Ors.)** the petitioner has also relied on the judgment reported in **(2000 (2) SCC 431) Rameshwari Devi vs. State of Bihar and Ors.** to elucidate the same point to contend the validity of the marriages can be gone into in writ jurisdiction by this Court.

- 5) After hearing the parties and going through the records, I find that the core issue which requires to be decided for allowing the petitioner's claim for family pension is whether Soma Saha or the petitioner is the legally and validly married wife of Nanda Kumar Saha, since deceased. This issue falls for consideration in view of assertion by the petitioner and prior claim of Soma Saha lodged with NBSTC on the basis whereof NBSTC has already sanctioned the family pension to Soma Saha and is regularly paying the same to her. This issue is, therefor, on disputed question of fact. Either the claim of Soma Saha or that of the petitioner has to go on this issue being decided. This disputed question of fact and a declaration as to which of the two marriages is valid cannot be decided by the writ Court. The judgments placed before this Court are not relevant in this instant case as the High Court under its writ jurisdiction is not a fact finding court in Rameshwari Devi (supra) the Hon'ble Supreme Court

approved the judgment of the High Court allowing a share of family pension to the minor children out of the second marriage till they attained majority but clearly approved the view that the second wife is not entitled to anything. This was done, however, on the basis of an enquiry report conducted by the State Government being the employer after the death of the employee and was based on evidence. This judgment, therefor, has not application to the facts of the instant case. In *Alia Bewa (supra)* though the employee had married twice but only the second wife made a claim for family pension which was not countered by anyone else. The second wife produced evidence in support of her marriage but the employer (Railways) did not consider the claim of the second wife. The facts on the basis whereof the said judgments were delivered, are completely different from the case in hand.

- 6) Here on the basis of the claim of one wife, the employer (NBSTC) has sanctioned family pension. Only subsequent thereto claim has been made by the petitioner. The employer, therefor, cannot be held to have failed in processing the family pension of the petitioner. That apart and in any event a Division Bench of this Court in **2019(2) CHN (CAL) 143 M/s UNIVERSAL CONSORTIUM OF ENGINEERS (P) LTD. AND ANR. vs. STATE OF WEST BENGAL & ORS.** has held that declaration in the service record has to be given weightage. In the instant case Soma Saha and not petitioner has been declared as wife by the employee during his life time. In such circumstance, the decision of the employer (NBSTC) cannot be held to be flawed at this

stage unless there is a contrary finding as to the marriage by a Competent Civil Court. The issues involved as the claim of family pension by the petitioner, therefor, requires to be decided by a Competent Civil Court on the basis of evidence.

- 7) The petitioner is, therefor, directed to approach the Competent Civil Court by making Soma Saha who is not a party to this proceedings as a party. Apart from the service of summons, as required after the filing of a case, before a Competent Civil Court, the petitioner shall on institution of a case before the Competent Civil Court inform the said Soma Saha and NBSTC within seven days therefrom with number and particulars.

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 judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(ARINDAM MUKHERJEE, J.)