

14.
22-12-2021
debajyoti

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

WPA 19510 of 2021
Smt. Gita Mondal
Vs.
The Kolkata Port Trust & Ors.

Mr. Anjan Bhattacharyya,
Ms. Anita Shaw

... For the Petitioner.

Mr. Kallol Basu,
Ms. Sujata Mukherjee

... For the Kolkata Port
Authority.

Affidavit-of-Service filed in Court be
taken on record.

In the instant writ petition, an order dated 13th December, 2019 passed in WPA 534 of 2019 (Smt. Gita Mondal Vs. The Kolkata Port Trust & Ors.) has been annexed. It is clear from the said order that the petitioner has been held to be second wife of Sudhir Mondal, the deceased employee. It has also been held in that order that the petitioner in the said writ petition, who is also the petitioner in the present writ petition, cannot claim herself to be the legally married wife of the deceased employee. It has been further observed in the said order that the respondent authorities shall be at liberty to take steps for disbursement of terminal benefits of the employees in favour of the legal heirs and representatives of the employee upon proper verification. The legal heirs and/or representatives, as per the

declared form submitted by the employee, apart from the petitioner are Saptarshi Mondal, Sanjit Kr. Mondal, Samit Kr. Mondal, Sutapa Mondal, Subhendu Mondal and Bharati Mondal. This declaration was given on 17th March, 1983 and is also annexed to the writ petition.

The petitioner claims that Saptarshi, Sanjit, Samit, Sutapa and Subhendu are the children of the petitioner out of the wedlock between herself and Sudhir Chandra Mondal, the deceased employee. It further appears from the declaration form that the children of the petitioner, claimed to be born out of the wedlock between the petitioner and the said Sudhir Chandra Mondal, are all adults at present. These legal heirs have not come forth to claim their benefit in terms of the order dated 13th December, 2019. They are also not party to the petition. The petitioner is espousing the cause of these adult legal heirs. That apart, the petitioner has not made any statement in the writ petition that she has been already declared to be the second wife of Sudhir Chandra Mondal and is not entitled to any benefit.

In fact, in a judgment reported in **(2000) 2 Supreme Court Cases 431 (Rameshwari Devi Vs. State of Bihar and Ors.)**, the Hon'ble Supreme Court has approved the view taken by the Patna High Court that the second wife is not entitled to the Family Pension and Death-cum-Retirement Gratuity and the Family Pension, but the children born

out of the second marriage, are entitled to all such benefits till they attain majority.

Assuming without admitting that the children of the petitioner were all minors at the time of death of Sudhir and were entitled to the benefits, then also the petitioner cannot make a claim on their behalf since they have all attained majority.

Considering this matter in the light of the judgment of the Hon'ble Supreme Court in Rameshwari Devi (supra), I find that the writ petition is not maintainable at the instance of the second wife being the petitioner for the reliefs claimed therein. The writ petition is, thus, dismissed, without, however, any order as to costs.

Affidavits not having been called for, the allegations in the writ petition shall be deemed not to have been admitted.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Arindam Mukherjee, J.)