

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

WPCT 314 of 2016
with
C.A.N. 4420 of 2017

Date of decision:- 25.03.2021

Geeta Ghosh

...Petitioner

-versus-

Union of India & Ors.

...Respondents

CORAM: **HON'BLE MR. JUSTICE RAJESH BINDAL**
 HON'BLE MR. JUSTICE ANIRUDDHA ROY

Present:- Mr. Ayan Banerjee,
 Ms. Debasree Dhamali and
 Ms. Debjani Sengupta, Advocates

...for the petitioner

ORDER

1. This writ petition has been filed assailing the impugned order dated September 23, 2016 passed by the Central Administrative Tribunal, Kolkata (for short, 'the Tribunal') in OA No. 350/01353/2016 (Geeta Ghosh vs. Eastern Railway) (for short, the Original Application), where under, the Original Application was disposed of without interfering with the decision of the respondents.

2. The petitioner is the wife of Late. Ajit Kumar Ghosh, who was employed as a Chief Controller/COM, Eastern Railway. The deceased was

then permanently absorbed in F.C.I. He died on August 30, 2005 (as per the death certificate, Annexure P-4) and till then he had received his requisite pension.

3. After the demise of the employee, the petitioner, claiming to be his wife, submitted a representation dated October 28, 2005 praying for grant of the family pension to her. The Railways by its letter dated November 11, 2005 rejected the said claim of the petitioner. The plea for rejection was that, the deceased employee had not mentioned nor submitted any declaration in favour of the petitioner being his wife during his lifetime and did not mention her name with joint photograph while applying for restoration of 1/3rd of his pension on completion of 15 years from the date of receipt of lump sum amount in lieu of full commutation.

4. Subsequently, also representations were made by the petitioner before the Railways and the same were rejected on the same line. The petitioner then in 2016 filed the Original Application challenging the said decision of rejection by the Railways in which the impugned order was passed.

5. Despite notice the respondents were not represented.

6. Mr. Ayan Banerjee, learned counsel, appearing for the petitioner submitted that she is now about 85 years old. She being the widow of the deceased employee has a legitimate claim to receive the family pension on account of her deceased husband and the Railways rejected her claim wholly in an unlawful and illegal manner. In support of the contention that the petitioner is the widow of Ajit Kumar Ghosh, since deceased, several documents have been relied upon which are annexed with the writ petition, such as Railway Medical Attendance Identity Card, the Election

Commission of India Identity Card of the petitioner and the passport of Shankar Ghosh, son of the petitioner bearing the names of his parents.

7. Mr. Banerjee, then submitted that, the doors of the jurisdictional Civil Court is always open for obtaining the appropriate declaration on the disputes involved in this case. However, the Railways are also duty bound to conduct a detailed enquiry and came to a conclusion thereupon in respect of the issues involved herein. If after detailed enquiry the conclusion is arrived at in favour of the petitioner then her claim can be acceded to by the Railways. In support of such contention Mr. Banerjee, had relied upon a judgment of the Hon'ble the Supreme Court *in the matter of: Rameshwari Devi vs. State of Bihar & Ors., reported at (2000) 2 SCC 431.*

8. After hearing the learned counsel for the petitioner and on a perusal of the material placed on record, this Court is of the view that considering the age of the petitioner, and also in view of the law as laid down by the Hon'ble Apex Court in *Rameshwari Devi's case (supra)*, justice would be sub-served if the Railways through its competent official/authority causes a detailed enquiry on the issues involved in the matter and come to its reasoned conclusion and thereupon takes a decision on the claim of the writ petitioner.

9. In *Rameshwari Devi's case (supra)*, the Hon'ble the Supreme Court was pleased to observe as under:-

“15. Rameshwari Devi has raised two principal objections: (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage,

and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi through her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of the marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. The inquiry was quite a detailed one and there are in fact two witnesses, examined during the course of inquiry, being (1) Sant Prasad Sharma, Teacher, DAV High School, Danapur and (2) Shri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. The both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, retired District Judge, Bhagalpur, Smt(Dr) Arun Prasad, Sheohar, Smt S.N. Sinha, w/o Shri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed that Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the

*marriage between Yogmaya Devi and Narain Lal were shown in the records as the sons of Narain Lal. **(Emphasis laid)**”.*

10. In view of our foregoing discussions the impugned order dated September 23, 2016 passed by the Tribunal stands set aside. The competent official/authority of the Railways being the respondents herein, must conduct a fact finding detailed enquiry on the issues involved after giving an adequate opportunity of hearing to the petitioner or through her authorized representative upon a prior notice of hearing and to come to a reasoned decision thereupon. The decision so taken be communicated to the petitioner. It is made clear that in course of such hearing the petitioner will be at liberty to produce whatever documents, she wishes to rely upon. Entire exercise must be carried out by the competent authority within a period of two months from the date of receipt of this order.

11. In the event the Railways come to a conclusion on the issue in favour of the petitioner then the respondents must regularize and release the family pension in favour of the petitioner positively within a further period of four weeks from the date of the reasoned order.

12. The present writ petition stand disposed of accordingly.

13. There shall, however, be no order as to costs.

(Rajesh Bindal)
Judge

(Aniruddha Roy)
Judge

Kolkata
25.03.2021
.....
P.A. (RM)

1. 27.4.2021

WPCT 314 of 2016

with

CAN 4420 of 2017

(Through Video Conference)

Geeta Ghosh

Vs.

Union of India & Ors.

Mr. Prosinjit Mukherjee (Through VC)

..for the Petitioner

The aforesaid writ petition was disposed of vide order dated March 25, 2021.

Today, the case was listed before this Court under the heading 'To Be Mentioned'.

Learned Counsel for the petitioner pointed out that there are typographical errors in the order as year of CAN 4420 has been typed as 2015 as against 2017. Further towards the end of the order, the date of decision has been typed as 13.04.2021 instead of 25.03.2021.

From perusal of the order, the aforesaid typographical errors are noticed in the order. The same are being corrected under our initials. The corrected order may be uploaded on the website along with the present order, which shall always form part of the order passed on 25.03.2021.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)