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07.01.2021.
d.p.

**W.P.A 7465 of 2020
(Via Video Conference)**

**Mongal Chandra Das
-versus
Kolkata Municipal Corporation & Ors.**

**Mr. Tapas Kr. Bhattacharya,
Mr. Aviroop Bhattacharya.
...For the Petitioner.**

**Mr. Alok Kr. Ghosh,
Mr. Swapan Kr. Debnath.
...For the Respondents.**

The petitioner is a retired employee of the Kolkata Municipal Corporation. He complains that his retiral dues comprising of gratuity and pension have not been released in his favour till date.

The learned advocate appearing for the Kolkata Municipal Corporation submits, upon instructions, that there has been rival claim in respect of the wife of the employee concerned, due to which KMC was not in a position to disburse the retiral dues of the petitioner.

It appears from the documents annexed to the writ petition that he approached this Court on an earlier occasion challenging the illegal action on the part of the municipal authority for deducting certain amount from his salary.

The Court by an order dated 16th June, 2006 passed in W.P. No. 4796 (W) of 2006 directed the employer to refund the entire amount to the petitioner which was deducted from his salary. The Court made categorical observation that the municipality cannot deduct any amount from the salary of the petitioner on

the complaint of a private party who is claiming to be the wife of the petitioner, unless the court of competent jurisdiction declares the status of the parties and the relationship between them in an appropriate proceeding.

The learned advocate for the Corporation submits upon instruction that no order from the civil court has been produced by the private party declaring her marital status.

It has further been submitted that though no order has been passed by the civil court as regard declaration of the marital status but an order has been passed by the Magistrate under Section 125 of the Code of Criminal Procedure for payment of maintenance in favour of the lady claiming to be the wife of the petitioner.

The respondents rely upon a judgment dated 29th May, 2013 passed by the learned Judicial Magistrate, 3rd Court, Barrackpore in M.R. Case No. 284/06, T.R. No. 328/06 whereby the Court was of the opinion that in a case under Section 125 of the Code of Criminal Procedure, strict proof of marriage is not necessary. Cumulative effect of the discussion and the perusal of the evidence on record is sufficient enough to hold that the petitioner is the legally wedded wife of the opposite party.

The aforesaid order passed by the learned Magistrate, in my opinion, cannot stand in the way of KMC from disbursing the retiral dues of the petitioner. In the absence of an order of declaration a marital status passed by the learned civil court, the KMC has to rely upon the marriage certificate and the other

documents produced by the petitioner declaring the name of his wife. The petitioner has annexed document to show that he has already forwarded the papers required for the purpose of disbursal of his retiral dues.

In view of the above, the instant writ petition is disposed of by directing the respondent No. 5 being the Chief Manager, SR & AC Pension Cell to take steps for disbursal of the retiral dues of the petitioner, comprising of the gratuity and pension, in accordance with law, within a period of four months from the date of communication of a copy of this order.

Since the gratuity was payable to the petitioner immediately upon his retirement and there has been considerable delay on the part of employer to release the same, the petitioner shall be entitled to interest on account of such delayed payment @ 5% per annum to be calculated on and from the date of its accrual till the date of actual payment.

W.P.A. 7465 of 2020 is disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)