

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1355 of 2022

Smt. Kamala Mistry @ Mangala Das
Vs.
Union of India & Ors.

Ms. Sonam Basu
Ms. Punam Basu
... For the petitioner

Mr. Sauvik Nandy
... For Union of India

Mr. Anil Kumar Gupta
... For the respondents no.2, 3 & 4

Mr. Jatinder Singh Dhatt
... For the Liquidator

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

The petitioner claims to be the widow of Ram Charan Das also known as Ram Chandra Mistry, a former employee of Hindustan Paper Corporation Limited (in liquidation). The petitioner says that as the widow, she was receiving family pension under the Employees' Provident Fund Scheme, 1995. The said family pension has been suddenly stopped without any reason. The petitioner has made a demand for justice on 25th February, 2021, yet the family pension has not been started.

Although the Company is in liquidation, but in view of the provisions of Section 36 read with Section 53 of

the Insolvency and Bankruptcy Code, 2016 (in short “IBC”), the family pension issue is not a subject before the IBC or can be included in the Corporate Insolvency Resolution Process (in short “CIRP”). This fact is also clarified by the Hon’ble Supreme Court in its judgment delivered on 19th April, 2022 in Civil Appeal No.5910 of 2019 (Sunil Kumar Jain & Ors. v. Sundaresh Bhatt & Ors.). This being the legal position, the issue of family pension to be given to the petitioner requires no consideration either under CIRP or by the forum constituted under IBC.

On behalf of the Regional Provident Fund Commissioner, being the respondents no.2, 3 and 4, it is submitted that in the Form No.10D, the declaration was that Mangla Das is the wife of the deceased employee, Ram Charan Das. The Pension Payment Order (in short “PPO”) was issued in the name of Mangla Das and she was receiving the same in her bank account disclosed with the Employees’ Provident Fund Organisation. The family pension, however, could not be given post 2018 for failure on the part of Mangla Das in submitting the Life Certificate. It is further submitted by the respondents no.2 to 4 that unless the Life Certificate is furnished, the said respondents have no obligation to credit the family pension in the account of Mangla Das. That apart and in any event, the petitioner claims herself to be Smt. Kamala Mistry, also known as Mangla Das. There is, as such, a dispute whether Kamala Mistry and Mangla Das is self and the

same person since change of name by the widow after the death of her husband, the employee, is unusual. Unless cogent evidence is produced to demonstrate that Kamala Mistry and Mangla Das is self and the same person, it is also not possible for the Regional Provident Fund authority to disburse the family pension to the petitioner.

The petitioner in counter submits that necessary documents, including an affidavit affirmed before the competent First Class Magistrate declaring that Kamala Mistry and Mangla Das are the selfsame person have been submitted before the Regional Provident Fund authority. Despite the same, the issue of disbursing family pension to the petitioner remains unresolved.

On behalf of the Liquidator of Hindustan Paper Corporation Limited, it is submitted that the Liquidator has no role to play in the instant matter as the same relates to family pension which is excluded from the purview of IBC and CIRP in view of the provisions of Section 36 read with Section 53 of IBC which is also supported by the ratio laid down in the judgment of Sunil Kumar Jain (*supra*).

In the aforesaid facts and circumstances, I direct the respondents no.3 and 4 to inform the petitioner within 20th May, 2022 the documents which are necessary for the respondent no.4 to process and disburse the family pension to the petitioner in view of the dispute as to

whether Kamala Mistry and Mangla Das are the selfsame person and non-submission of Life Certificate.

On receiving the communication as to the documents required to be submitted, the petitioner shall submit only those documents contained in the list which have not been submitted as yet. This exercise shall be completed by the petitioner by 7th June, 2022.

In the event the petitioner furnishes the requisite documents within the time frame, the claim of the petitioner for family pension as the widow of late Ram Charan Das also known as Ram Chandra Mistry shall be considered and decided by the respondent no.4 by 20th July, 2022 after affording the petitioner a reasonable opportunity of hearing through a reasoned order.

In the event the respondents no.3 and 4 are unable to provide the details within 20th May, 2022, the petitioner will be at liberty to mention this matter.

The parties, including the respondents no.3 and 4, shall act on the basis of a server copy of this order without insisting upon production of a certified copy thereof.

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 affidavits, 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.)