

18
11.03.2022
Court No. 23
d.g.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 2706 of 2022

Sushila Thapa Kami
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Arun Kumar Paul,
Ms. Shikha P. Chowdhury.

... for the petitioner

Mr. Debjit Mukherjee.

... for the W.B.S.E.D.C.L.

The supplementary affidavit affirmed on 8th March, 2022 by the petitioner is taken on record.

The petitioner claims to be the second wife of Chandra Kami a deceased employee of West Bengal State Electricity Board, subsequently, known as West Bengal State Electricity Distribution Company Limited (in short “W.B.S.E.D.C.L.”). The petitioner says that the first wife of Chandra Kami namely Bishnu Maya Kami expired on 9th November, 2001. Subsequent to the death of the first wife, the petitioner got married to Chandra Kami who expired on 18th August, 2006. The petitioner’s marriage will be a valid one if it has taken place after the death of Bishnu Maya Kami subject to the petitioner establishing the solemnization of the marriage. The petitioner does not say on which date the petitioner was married to Chandra Kami. The petitioner is claiming the retiral benefits of Chandra Kami by virtue of being his second wife.

On behalf of WBSEDCL, it is submitted that from the declaration given by the employee in the service record on 24th July, 1978, the names of Bishnu Maya Kami and Ganesh Bahadur Kami appeared. WBSEDCL further says that despite being called on to submit the Marriage Registration Certificate, the petitioner has failed to do so. The petitioner was thereafter, asked to produce the Succession Certificate from a competent Civil Court. The petitioner has also failed to produce the same. The document relied upon by the petitioner as appears from the writ petition is a heirship certificate said to have been issued by a Councillor. According to WBSEDCL, such document does not have any value while considering the petitioner's claim. On the contrary, according to WBSEDCL, the children from the first wife have produced a heirship certificate from Siliguri Municipality which shows that the petitioner's name does not figure as a successor of the deceased employee.

The petitioner was, therefor, given liberty to produce the Marriage Certificate to demonstrate the date of her marriage with the deceased employee. In the supplementary affidavit filed today, no Marriage Certificate is annexed but an affidavit sworn in before the Executive Magistrate, Raiganj, Uttar Dinajpur has been produced. This affidavit was sworn in on 3rd March, 2022. This affidavit produced by way of the supplementary affidavit does not change the scenario from the position, the

matter was on 22nd February, 2022 when the same was last heard. The petitioner in order to claim family pension from the employer on account of death of the employee who she claims to be her husband has to establish the marriage and its validity before a competent Court of law particularly when she claims to be the second wife. This is more so because a second wife, if the first wife is alive or in the event the second marriage had taken place during the subsistence of the first marriage, the second wife is not entitled to the family pension.

In absence of such proof, even the employer will not be in a position to accept the petitioner as validly married second wife of the deceased employee and that the petitioner is entitled to family pension. The employer is also not in a position to hold whether the marriage between the petitioner and the employee since deceased took place after the death of the employee's first wife as claimed by the petitioner.

The writ petition, therefor, is disposed of giving liberty to the petitioner to approach the competent Civil Court to establish the date, legally and validity of her marriage with Chandra Kami since deceased, a former employee of West Bengal State Electricity Board.

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 by the respondents.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)