

16.06.2022
Sl. No.155
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 5318 of 2018

Mithu Rani Das @ Mithu Das & Ors.
Vs.
The Board of Trustees for the Port of Kolkata & Ors.

Mr. Swapan Kumar Mallick,
Mr. Sabyasachi Mondal,
Ms. Sudeshna Das
....for the petitioners.

Ms. Sujata Mukherjee
...for the respondent nos.1-5.

Mr. Pradip Kumar Chakraborty,
Mr. Soumitra Banerjee
...for the respondent nos.6-9.

The petitioner no1. claims to be the wife of Chandan Kumar Das @ Chandan Das, a former employee of Kolkata Port Trust (in short “KoPT”), now known as Syama Prasad Mookerjee Port. The said Chandan Kumar Das died-in-harness on 30th May, 2017. The petitioner nos.2 and 3 are said to be respectively the daughter and son born out of the wedlock between the petitioner no.1 and the said Chandan Kumar Das. The petitioner no.1 says that despite her name being recorded in the service book of Chandan Kumar Das, she has not been paid family pension and other terminal benefits of her husband, Chandan Kumar Das. The petitioners had filed a previous writ petition, being W.P. 25181(W) of 2017, which was disposed of by an order dated 2nd

November, 2017. By the said order, the representation of the petitioner no.1 was directed to be considered by KoPT within a period of eight weeks from the date of communication of the said order. KoPT has disposed of the representation of the petitioner no.1 by an order dated 26th December, 2017. By the said order dated 26th December, 2017, the claim for family pension and other terminal benefits made by the petitioner no.1 was rejected.

In the instant writ petition, the petitioners have challenged the said order dated 26th December, 2017 and sought for grant of terminal benefits and family pension to the petitioners.

After going through the order dated 26th December, 2017, I find that several factual issues have been noted by the competent authority while passing the said order. There has been a counter claim from the side of the respondent no.6, who also claims to be the wife of the said Chandan Kumar Das @ Chandan Das. The respondent nos.7, 8 and 9 are claiming to be the daughters born out of the wedlock between the said Chandan Kumar Das and respondent no.6. The respondent no.7 has died on 4th June, 2020 and her death has been recorded by order dated 12th May, 2022.

The dispute as to which marriage is valid and legal and who is entitled to get the family pension and

other terminal benefits, that is, the petitioner no.1 or the respondent no.6 is dependent on consideration of several facts which cannot be gone into by a writ Court and requires to be decided by competent civil Court. This is more so because a second marriage during the subsistence of the first in case of a Hindu is invalid in view of the provisions of Hindu Marriage Act, 1956 and only the children out of the second marriage are entitled to receive the proportionate share of benefits till attaining majority. The order dated 26th December, 2017 cannot be interfered with for these grounds and there is no scope of any further enquiry from the side of the employer at this stage.

The writ petition is disposed of granting the petitioner no.1 liberty to approach the appropriate civil forum to establish her claim as the wife of Chandan Kumar Das @ Chandan Das and thereafter claim the benefits as also family pension.

The respondents should be served with a notice if any civil proceeding is instituted by the petitioners.

Nothing further remains to be adjudicated in this writ petition.

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

(Arindam Mukherjee, J.)