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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 9507 of 2021

Gayatri Tripathi
Vs.
Union of India & Ors.

Mr. Sankar Paul,
Mr. Sujan Das
.... For the petitioner.

Mr. Nilanjan Bhattacharjee
... For Union of India.

Mr. Biswabrata Basu Mallick,
Mr. Sayak Ganguly
... For the State.

The petitioner claims to be the second wife of Ratan Tripathi, who retired from the service of Central Reserve Police Force (in short, CRPF) on 1st October, 2009 and died on 16th December, 2019. The petitioner is claiming family pension along with her minor son, Mrinmoy Tripathi. The petitioner says Mrinmoy Tripathi was born on 24th December, 2013, out of the wedlock between Ratan Tripathi and the petitioner. The first wife of Ratan Tripathi, namely, Sujata Tripathi, was named in the service book as the wife along with his daughter Mili Tripathi, born out of the wedlock of the first marriage. Sujata Tripathi was receiving the family pension. The documents produced by the employer shows that the family pension was last credited to the bank account of Sujata Tripathi in October, 2020. Thereafter no family

pension was disbursed by the employer to the said Sujata Tripathi or credited to the bank account of Sujata Tripathi as no "life certificate" was produced by Sujata Tripathi. Sujata Tripathi, despite best endeavour, could not be traced out or served. In such circumstances, substituted service through paper publication was ordered. Even after substituted service, Sujata Tripathi did not appear. The employer says that in the service book there is neither any name of the petitioner nor of Mirnmoy Tripathi, whom the petitioner claims to be the minor son of Ratan Tripathi. Assuming without admitting that the petitioner's version is correct then also Mrinmoy Tripathi was born after about four years from the date of retirement of the employee, namely, Ratan Tripathi. Unless the employee had rectified the service book, the changes are not likely to take place.

In the aforesaid facts and circumstances, it is difficult to ascertain whether any marriage was at all solemnized between the petitioner and Ratan Tripathi as claimed by the petitioner. It is also not possible to ascertain at this stage whether the petitioner is the second wife of Ratan Tripathi. The matter requires to be adjudicated and decided by the Civil Court. Even if I direct the employer to conduct an enquiry about the status of the petitioner then also the same will not amount to a declaration by a competent Court as required for directing the employer to pay family pension and other benefits to

the petitioner or her minor son. The law is well-settled that the second marriage conducted during the subsistence of the first marriage is a void marriage. The second wife in such circumstances, is not entitled to receive anything but any child born out of the second marriage, till he/she attains majority, is entitled to proportionate share of family pension and other benefits. In the instant case, there is also no proof apart from self declaration as to whether Mrinmoy Tripathi is the son of Ratan Tripathi. The petitioner is, therefore, relegated to approach the competent Civil Court for appropriate declaration regarding her marital status as also the status of Mrinmoy Tripathi, whom the petitioner claims to be the minor son born out of the wedlock between Ratan Tripathi, since deceased, and the petitioner.

The writ petition is accordingly disposed of without any order as to cost.

Since I have not called for any affidavits, 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.)

