

07.09.2022

DL-3

(PP)

Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 20941 of 2021

Nabin Kumar Bhowmik & Anr.

Vs.

The Union of India & Ors.

Mr. Anupam Hait

....for the petitioners.

Ms. Sarda Sha

....for the respondent nos.1 to 4.

Ms. Sanjukta Dutta,

Ms. Shagun Baid

....for the respondent nos.5 to 8.

In this writ application, the petitioners claim to be the son and daughter of the deceased employee through second marriage. The petitioners claim for disbursement of pensionary benefit, gratuity and other benefits in proportionate ratio to them, being the legitimate heirs of deceased employee.

Mr. Hait, learned counsel, appearing for the petitioners submits that in the application for succession certificate made by the private respondents before the Court of learned District Delegate at Tamruk in Succession/J. Misc. Case No.07 of 2022, the legitimacy of the writ petitioners has been pleaded. The private respondents have themselves admitted that the writ petitioners are the heirs and legal representatives of the deceased

employee and are entitled to proportionate share of retiral benefits.

Ms. Sarda Sha, learned counsel, appears for the respondent nos.1 to 4 and submits that the entire retiral benefits except RMS have already been disbursed to the respondent no.5, being the first wife of the deceased employee and as such, no claim survives against Union of India/respondent nos.1 to 4. The instruction received by Ms. Sha from Union of India is retained with the records.

Ms. Dutta, learned counsel, appears for the respondent nos.5 to 8 and submits that she has no instructions as to whether the retiral benefits have been handed over to the respondent no.5. Such a submission is not appreciated especially in view of the fact that the benefits have been paid quite sometime back on May 23, 2022 and July 15, 2022 as can be evidenced from the instructions to the learned counsel for the Union of India dated September 6, 2022.

Since the retiral benefits have already been disbursed to the respondent no.5, there is no existing claim of the writ petitioner that can be agitated in a writ petition against the state within the meaning of Act 12 of the Constitution of India/respondents.

The writ petitioners are at liberty to take appropriate steps, in accordance with law, for claiming their proportionate share in recovery of the pensionary benefits.

With the direction aforesaid, this writ petition, being **WPA 20941 of 2021**, is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)