

24 **16.11.
2022**

Ct. No. 04

Ab

WP.CT 94 of 2022

**Sri Biswajit Biswas and another
Vs.
The Union of India and others.**

**Mr. Aranya Saha,
Mr. Debnath Ganguly.**

... for the petitioners.

Mr. Anirban Datta.

... for the respondent no. 5.

Because of the question being raised over the status of the private respondent whether she was legally married wife of the deceased Government employee, this Court directed the parties to exchange affidavits. Till time, the affidavits have not been exchanged. However, we decided to proceed on the basis of the materials available from the record.

The dispute arose when the Government employee died intestate on 17th June 2016. The private respondent approached the authority for disbursement of the service benefits attributable to the service of the said deceased employee claiming herself to be the only heir and legal representative of the said deceased employee.

In course of the processing such claim, the petitioners approached the authority and divulged the fact that they are the son and daughter of the deceased Government employee from the first wedlock and, therefore, they are entitled to the service benefits attributable to the service of the deceased employee.

It transpires that the mother of the petitioners was married to the said Government employee and there is no dispute to the fact that by virtue of a decree of divorce granted on mutual consent such relationship

was severed. The private respondent claimed to have married the said Government employee after the divorce was granted and a son was born from the said wedlock.

Interestingly, an objection was raised by the petitioners that the so-called wife had a subsisting marriage at the time of the alleged marriage with the deceased Government employee and, therefore, such marriage is invalid, illegal and null and void.

The authority directed an enquiry to be made and a report to be filed. It would reveal from the impugned judgment that such report was filed without arriving at the conclusive decision, as the statements of certain persons including the brother of the private respondent were recorded.

It is important to note that the brother of the private respondent categorically denied that her sister, the private respondent, was never married to a person, namely, Swapan Sarkar. However, the Deputy Secretary, Polba Dalta Panchayat Samity, said that the marriage ties with Swapan Sarkar was subsequently dissolved in 1994-95.

There is no conclusive proof forthcoming in relation to the allegation that the private respondent had a subsisting marriage at the time of establishment of marital tie with the deceased Government employee. There is no dispute that a son is born of the wedlock with the private respondent.

The question really begging an answer whether there was any evidence forthcoming before the authority or the Tribunal on the subsistence of a valid marriage at the time of solemnization of the marriage with the Government employee.

The Tribunal is not the authority to pass a decree for declaration of the status of a person when the serious disputes are raised therein. The report filed by

the concerned authority also did not indicate such status, but what can be gathered from the findings recorded by the Tribunal that the statements of the persons were taken and such statements are being completely and diametrically opposite to one and another.

Though the Deputy Secretary of the Panchayat Samity has said that the private respondent was married to Swapan Sarkar but the same was dissolved in 1994-95, on the other hand the brother of the private respondent categorically stated that there was no marriage ever held.

Apart from the same, it is manifest from the record that the succession certificate was granted by a competent Court in favour of the private respondent and the same has not been canceled and/or annulled and/or revoked as on this date.

Such being the position and there is no other convincing materials and/or evidence before the Tribunal to accept such report, which, in our opinion, is inconclusive, we do not find any infirmity and/or illegality in the impugned order whereby the authority is directed to release the benefits, as stated in paragraph 6.4 of the reply, to the private respondent.

The writ petition is, thus, dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

