

42 **14.11.
2022**

Ct. No. 04

Ab

WP.ST 104 of 2022

Probal Chaudhuri

Vs.

The State of West Bengal and others.

Mr. Debrup Bhattacharjee.

... for the petitioner.

Mr. Tapan Kumar Mukherjee,

Ms. Tuli Sinha.

... for the State.

The dispute pertains to the settlement of admissible death-cum-retirement benefits including the provident fund of the deceased Government employee, who lastly breathed on 17th April 1994.

It is undisputed that the said employee had a surviving widow, who could not pursue the claim during her lifetime. After the death of the widow and the fact that there was no child born from the said wedlock, the petitioner being the full blooded brother applied for settlement of the said retiral benefits.

It is contended by the petitioner that apart from him, there are other two brothers survived on the date of the death of the said Government employee, who gave no objection in favour of the petitioner. Since there was no nomination recorded in the service book, the insistence was made to obtain an heirship certificate from the competent authority. Pursuant to the same, the heirship certificate was obtained yet there was no disbursement of the said retiral benefits in favour of the petitioner.

The approach before the Tribunal could not yield fruitful result as the Counsel appearing for the State submitted that the petitioner has to approach the

appropriate forum for succession certificate and till such time the right cannot be fructified. Solely on the basis of such statement, the tribunal application came to be disposed of granting liberty to the petitioner to ventilate the grievance before the appropriate authority.

On the date of motion, we enquired from the learned Advocate appearing for the petitioner whether there is any provisions or the Government Order pertaining to the issuance of the heirship certificate by the authority. Today, our attention is drawn to a Government Order dated 25th April 2005 issued by the Deputy Secretary in relation to Form 2 (Foreigners' & NRI's) Department, Government of West Bengal where the issue relating to issuance of the heirship certificate was under active consideration of the Legal Remembrancer, Government of West Bengal and ultimately such power was conferred upon the Collector on proper enquiry and/or undertaking in favour of the incumbent to obtain his due from respective authorities until the necessary Rules are framed in this regard.

We have not been apprised of the fact that any such Rule has been framed in this regard and in view of the said Government Order, the Collector has been bestowed with the power to issue heirship certificate if the eventuality so warrant.

Mr. Tapan Kumar Mukherjee, learned Senior Advocate and the Additional Government Pleader, showed his inability to disclose whether such Government Order has been superseded by any other further Government Order nor is in a position to divulge whether any Rules have been framed in this regard.

Be that as it may, we take it that the said Government Order is still operative, which can, however,

be envisioned from the fact that the concerned department insisted for such heirship certificate, which was ultimately obtained.

The Government department cannot approbate and reprobate at the same time. The moment the Government department insisted for the heirship certificate to be issued by a competent authority, it cannot fall back to its decision and take a plea that in absence of any succession certificate, the disbursement of the retiral benefits cannot be processed nor be given to the petitioner.

By virtue of the said Government Order dated 25th April 2005, the competent authority issued the heirship certificate, obviously upon making an enquiry and the contingencies enumerated therein and, therefore, it is too late in a day to take a rebound and insisted upon the succession certificate.

Normally, the succession certificate granted by the competent Court would have been the safest course but we cannot overlook the fact that the moment the Government has taken a conscious decision and intended to release the retiral benefits on the basis of the heirship certificate issued by the competent authority, such modalities having been adopted for due discharge of the obligation cannot be undermined nor to be treated as mere piece of paper.

In view of the special facts appearing in the instant case, the Tribunal ought to have granted the relief in favour of the petitioner instead of relegating him to the other forum for ventilating the grievance.

The order of the Tribunal is, thus, set aside. The concerned department is directed to release and/or

disburse the retiral benefits including the provident fund in favour of the petitioner provided an undertaking is given by the petitioner that in the event of any claim in respect thereof is made before the competent authority he shall recompense the Government the entire money, which he received on account of retiral benefits admissible to the deceased Government employee. Such disbursement shall be made within four weeks from the date of communication of this order and upon fulfillment of the conditions made herein before.

With these observations, the writ petition is disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)