

1
01.03.2022
adeb

WPA 26108 of 2013
(Via Video Conference)

Puspita Roy
Vs.
The State of West Bengal & Ors.

Mr. Arnab Saha
Mr. Somnath Ghosal

..for the petitioner

Mr. Amal Kr. Sen
Mr. Lal Mohan Basu

...for the State

Ms. Lina Majumder
Mr. Arijit Dey

..for the respondent nos. 2 & 3

Affidavit-of-service filed on behalf of the petitioner is taken on record.

Petitioner Puspita Roy being the first wife of one Swapan Kumar Roy, claims family pension and other benefits in view of death of said Swapan Kumar Roy on 29th May, 2012. Said Swapan Kumar Roy was an employee of Bidhan Chandra Krishi Viswa Vidyalaya and who was superannuated from service on 30th June, 2007. Thereafter, he received retiral dues including pension till the date of his expiry on 29th May, 2012. Dispute crops up relating to release of family pension and other benefits in favour of heirs of said Swapan Kumar Roy.

The present writ petition has been filed by the petitioner claiming to be the first wife. According to the petitioner, being the first wife she is entitled to receive family pension and other benefits irrespective of the fact that there is another lady, namely, Parul Roy who is claiming to be the second wife of said Swapam Kumar Roy. In support of the contention of the petitioner, reliance has been placed on the documents at pages 24 & 25 of the writ petition which according to the petitioner, is the invitation card relating to the marriage of the petitioner with Swapam Kumar Roy which was solemnized on 5th May, 1981 and also the birth certificate of the petitioner's daughter who was born in the wedlock of the petitioner and Swapam Kumar Roy, which is at page 27 of the writ petition. According to the petitioner, these documents go long way to show that petitioner was legally wedded wife of Swapam Kumar Roy.

Mr. Arijit Dey, learned advocate appears on behalf of the Bidhan Chandra Krishi Viswa Vidyalaya and has brought to the notice of this Court the relevant part of affidavit-in-opposition affirmed on behalf of the University whereby it has been stated that though previously nomination was filed in favour of the petitioner being the first wife on 17th February, 1995 but subsequently, the deceased employee filed nomination in favour of his alleged second wife being Parul Roy on 11th January, 2007. But again the deceased employee by writing a letter dated 29th

October, 2007 addressed to the Registrar of the University requested to release family pension in favour of the writ petitioner and not to said Parul Roy and University Authority was requested to take necessary steps in this regard.

It has been submitted on behalf of the University that long back though claims have been lodged by both the ladies claiming to be the wife of Swapan Kumar Roy for release of family pension, the University is in dilemma and forwarded the issue to the higher authorities for necessary instruction in the matter of releasing family pension to one of these two ladies.

The matter has been heard on number of occasions when this Court has also made an endeavour to hear Parul Roy and leave was granted to the learned advocate-on-record of the petitioner to add said Parul Roy as respondent in the writ petition. Pursuant to the order passed by this Court on 15th February, 2022, present petitioner made an attempt to serve copy of the writ petition with notice upon Parul Roy after being supplied with the address of Parul Roy by the learned advocate of the University on amendment of the cause title of the writ petition whereby Parul Roy has been added as respondent.

Today, one affidavit-of-service is filed on behalf of the petitioner wherefrom it appears that the envelop containing the writ petition and notice which was sent to Parul Roy has

returned with an endorsement “addressee cannot be located”.

Mr. Arnab Saha, learned advocate appearing for the petitioner has relied upon a judgement of the Hon’ble Division Bench of this Court dated 10th June, 2019 passed on writ petition being W.P.S.T. 154 of 2018 (Champa Roy Vs. The State of West Bengal and Ors.) in order to fortify the claim of the petitioner being the first wife of the deceased employee. On perusal of the relevant paragraphs of the said judgement dated 10th June, 2019, it appears that the Division Bench, where I was part of the said Division Bench, placing reliance on Supreme Court Judgement reported in AIR 2015 SC 2697 (Raj Kumari & Anr. Vs. Krishna & Ors.) came to the finding that the deceased employee being a Hindu and since the marriage was solemnized with his first wife according to Hindu Rites & Customs it was not open to the deceased husband of the petitioner to remarry when his marriage with another lady was subsisting. Paragraph- 8 of Champa Roy (supra) is quoted below:-

“8) There is no material on record to dispute the marriage between the deceased constable and Smt. Barnali Roy. There is also no dispute that the deceased constable was a Hindu. His marriage had been solemnized with Smt. Barnali Roy, according to Hindu rites and customs, whereafter such marriage was registered in terms of the provisions of the Hindu Marriage Act, 1955. In view of the same, it was not open to the deceased constable to remarry when his marriage with Smt. Barnali Roy was subsisting. For all intents and purposes, the marriage of the deceased constable with the petitioner is void and the tribunal did not commit any error in returning such finding.”

The ratio of Champa Roy (supra) in the present facts of the case is squarely applicable since the deceased employee Swapam Kumar Roy was Hindu and during the subsistence of first marriage with the petitioner, he did not have legal right to remarry with another lady.

In the aforesaid conspectus, it appears that the petitioner has established her right to receive family pension and other benefits due to death of her husband who was an employee of Bidhan Chandra Krishi Viswa Vidyalaya being the first wife of the deceased employee and accordingly, the concerned respondent authorities are directed to release family pension and other benefits to the writ petitioner within a period of 8 (eight) weeks from the date of communication of this order.

With the above direction and observation, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Saugata Bhattacharyya, J.)