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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 772 of 2023

Laxmi Dey & Anr.
Vs.
Union of India & Ors.

Mr. Puspall Chakraborty,
Mr. Samrat Dey Paul
...for the petitioners

Mr. Dipak Das
For the respondent nos. 2 to 6

The petitioner no. 1 and 2, claim respectively to be the wife and son of the deceased Jagabandhu Dey. The said deceased was an employee of the Bharat Sanchar Nigam Limited (BSNL).

The claim of the petitioners is that the petitioners applied for information under the Right to Information Act, 2005 before the BSNL-authorities, pertaining to queries regarding the deceased predecessor-in-interest of the petitioners, being the employee with the office of the BSNL, and other allied issues.

Such information was refused by the first authority and the first appellate authority under the 2005 Act. However, the second appellate

authority, on a challenge being preferred by the petitioners, passed an order directing the respondent-authorities to furnish all the information as sought.

In fact, in a very sensitive and elaborate order, the second appellate authority took into consideration the fact the employee ID by which the information can be easily verified, whether the employee is in service or not. It was also observed that in case the service record shows the dependant's name as different, a notice under Section 11 of the 2002 Act can be issued to such dependant informing that information is sought in respect of the deceased. The second appellate authority further considered that the privacy right of the deceased is effective till he is alive or is being represented by his legal heir. The present case, it was observed, shows how the applicant (present petitioner no. 2) and his mother (present petitioner no. 1) are running from pillar to post to know whether any pension is being paid to any beneficiary or not. It was observed that the same could be rejected when there is actually a legal heir to present the matter.

It does not transpire from the documents annexed that the BSNL, at any point of time, did anything to ensure the presence of the alleged

nominee of the deceased Jagabandhu, that is, the present respondent no. 7.

It is contended that subsequently the BSNL Authorities did not furnish the information, thereby flouting the direction of the second appellate authority. Moreover, the presence of the respondent no. 7 could not also be ensured by the BSNL authorities.

In the present writ petition, apart from seeking implementation of the second appellate authority's order, the petitioners have claimed that the BSNL authorities be directed to disburse the entire pensionary benefits of the Late Jagabandhu Dey in the name of the petitioner no. 1, being the original nominee of Late Jagabandhu in his service book, treating the petitioners as legal heirs of the Late Jagabandhu.

Despite attempt to serve, although other respondents have been served, the respondent no. 7 could not be served effectively and the envelope sent to the said respondent has returned with the endorsement "No such person at the address". This Court is satisfied, upon perusal of the materials on record, that the petitioners attempted to serve respondent no. 7 at her last known address. Hence, nothing further can be done by the petitioners to ensure appearance of the respondent

no. 7. In fact, the apathetic conduct of the respondent no. 7 is evident, since the said respondent could not be produced or did not appear before the second appellate authority or before the BSNL-authorities at any point of time.

As it transpires from the records, the second appellate authority under the 2005 Act unambiguously directed the BSNL authorities to furnish the information sought by the petitioners. The application, containing the queries made by the petitioner, is annexed at page 84 (Annexure P/10) of the writ petition.

Hence, the BSNL authorities are required to furnish such information immediately. Irrespective of and independent of such furnishing, it is seen that although the said Jagabandhu met his demise as long back as on March 07, 2020, till date no retiral benefits/death benefits of the said employee has been disbursed in favour of anybody, including the petitioners or the respondent no. 7.

The records clearly show that the petitioners have produced a certified copy of a decree passed by a competent civil court in a matrimonial suit instituted by the said Jagabandhu during his life time against the petitioner no. 1, thereby admitting the petitioner no. 1 as his wife.

The said suit, as is clear from the decree, was dismissed on contest by the civil court. Hence, the marriage between the petitioner no. 1 and Jagabandhu continues to subsist.

The petitioners have also annexed a certified copy of a maintenance order passed by a competent criminal court under Section 127 of the Code of Criminal Procedure, which also goes on to establish the matrimonial relationship between the petitioner no. 1 and the said Jagabandhu.

Hence, from the materials on record, it is sufficiently clear that the petitioners are the surviving heirs of the deceased Jagabandhu.

Insofar as the respondent no. 7 is concerned, even if it is assumed that the said respondent was named as a nominee in the salary account of the deceased Jagabandhu, in view of the said respondent having not made any application till date for disbursal of the amount of the benefits accrued to the deceased in her favour, the necessary corollary is that the respondent-authorities, the employer of the deceased Jagabandhu, is to disburse the entire benefits for his service in favour of the present petitioners as the legal heirs of the deceased Jagabandhu.

Although learned counsel appearing for the respondent nos. 2 to 6 seeks an opportunity to file

an affidavit-in-opposition, upon query of Court, learned counsel submits that the reason why the affidavit is sought to be used is to disclose whether any application claiming such amounts was made by the respondent no. 7.

However, as rightly pointed out by learned counsel for the petitioners, in its reply, which is annexed at page 115 of the writ petition, the BSNL-authorities have clearly indicated that no application regarding pensionary benefit has been received in the office of the BSNL from the said respondent no. 7, Smt. Bharati Dey.

At the time of passing the order, learned counsel for the respondent nos. 2 to 6 seeks to contend that he has a copy of a purported marriage certificate between the respondent no. 7, Smt. Bharati Dey and the deceased Jagabandhu.

However, no mention of the said document was made during the entire time when the matter was heard. The marriage certificate, if any, would not, in any event, confer any matrimonial status on the respondent no. 7, since the marriage between the petitioner no. 1 and Jagabandhu apparently subsisted during the latter's lifetime.

That apart, even if the said document is taken into consideration, the fact remains that admittedly, the respondent no. 7, Smt. Bharati Dey,

has not claimed any amount in lieu of the pensionary benefits of the deceased Jagabandhu till date, even as per the admission of the BSNL itself.

Such being the case, even if it is construed that there may be a dispute regarding marital status of Jagabandhu at the time of his demise, between the petitioner no. 1 and respondent no. 7, this is not the appropriate forum for deciding such issue. However, at the same time, BSNL is also not the appropriate authority to decide on the marital status of a person. On the basis of the materials on record, as discussed above, as of today, the petitioners have staked claim as legal heirs of the deceased Jagabandhu, an employee of the BSNL, to the retiral/pensionary benefits of the said Jagabandhu.

On the other hand, the respondent no. 7, who was apparently a nominee of the deceased Jagabandhu, has not yet claimed any such amount. Hence, the BSNL-authorities cannot sit tight indefinitely by withholding the pensionary benefits to which the deceased employee is entitled.

Accordingly, W.P.A. No. 772 of 2023 is allowed, thereby directing the respondent nos. 2 to 6 to ensure that all dues of pensionary benefits and the death-cum-retiral benefits of Late Jagabandhu Dey are disbursed by the said respondents in

favour of the petitioners at the earliest, positively within one month from this date.

It is, however, made clear that nothing in this order shall preclude the respondent no. 7, if the said respondent so desires, to stake claim to the amounts so received by the petitioners, by establishing her entitlement thereto on the premise of marital status with the deceased Jagabandhu before a competent civil court.

If such a suit is instituted, nothing in this order shall unnecessarily influence the civil court in deciding all issues concerned independently.

It is further made clear that the prayer for filing of affidavit-in-opposition has been refused, since all the relevant documents are annexed to the present writ petition and the discussions above deal with all relevant facets in the matter, in the humble opinion of this Court, and no further documents are required to be brought on record.

However, at the same time, since no affidavits are directed, it is deemed that the allegations made in the writ petition are deemed not to be admitted by any of the respondents.

There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)