

01.05.
2023

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 65 of 2023

Smt. Bharati Chatterjee and others
Vs.
The State of West Bengal and others.

Mr. Chitta Ranjan Chakraborty,
Mr. Dip Jyoti Chakraborty,
Mr. Sumit Banerjee.

... for the petitioners.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Ms. Debdooti Dutta.

... for the State.

Mr. Sandip Kumar Bhattacharya,
Mr. Suman Basu.

... for the respondent no. 7.

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee.

... for the private respondent.

The present writ petition is filed seeking leave to file the instant writ petition challenging an order dated 24th February 2022 passed in OA 752 of 2021 by the West Bengal Administrative Tribunal.

The petitioner no. 1 as well as the private respondent is claiming exclusive right in respect of the estate left by the deceased Government employee as legally wedded wife. Since the authorities were not taking any decision on the claim, the private respondent moved before the Tribunal in OA 752 of 2021 for a direction upon the concerned authorities to forthwith take a decision on the representation and declare the candidature of the private respondent as valid for compassionate appointment.

The private respondent further sought for a direction upon the respondent authorities to forthwith release the monitory benefits including the gratuity, interest upon the gratuity from the date of the death till payment and family pension of the deceased Government employee.

By an order dated 24th February 2022, the said proceeding was disposed of directing the respondent authorities to release admissible retiral benefits as per the Rules by way of passing a speaking and reasoned order with follow up action and communicate the same within a specified time.

According to the learned Advocate for the petitioners, the petitioner no. 1 being the legally wedded wife and was nominated in the service record to receive all such service benefits and, in fact, the authorities proceeded to prepare the files and papers so that the petitioner no. 1 will get all such benefits and cannot be deprived of any such right. It is further submitted that the heirship certificate has also been issued by the District Magistrate, which would show that the petitioner no. 1 was legally wedded wife and, therefore, the authorities cannot ignore the aforesaid fact and deny the legitimate claim.

In course of hearing, the private respondent informs that pursuant to the impugned order, the authorities took up the issue and sensing the complexity thereof directed the parties to obtain succession certificate from a competent Court so that all such retiral benefits can be disbursed to the rightful claimant.

Learned Advocate for the petitioners is very much vocal that the moment the nomination has been done, the petitioner no. 1 is entitled to receive the same. The nomination is not a third kind of succession recognized under the law. The law recognizes two kind of

succession, namely, inter-testate or testate succession. The nominee is always regarded as custodian of the corpus and does not have an inchoate right or vested right in respect thereof towards the heirs and legal representatives of the deceased in absence of any express or specific provision under the statute. The concept of nomination is to ensure the disbursement of money by a nodal employer as a valid discharge, but the moment the heirs have disputed the entitlement, there is no fetter on the part of the nodal employer to seek a document creating an entitlement on such heirs irrespective of the fact that the nomination has already been done.

We do not delve to go deep into the aforesaid aspect as the order dated 7th February 2023 had been communicated to the petitioners and, therefore, any observation may affect their right to challenge the said decision before the appropriate forum.

Since the impugned order has already been implemented and further decision has been taken by the authorities wherefrom it appears that immediate threat to the invasion of the right is absent, we, therefore, grant leave to the respective parties to take an appropriate steps against the said decision before the proper forum.

With these observations, the writ petition is disposed of.

In view of disposal of the writ petition, the connected application being CAN 1 of 2023 has become infructuous and the same is also disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

