

WPA 14123 of 2023

Bela Ray @ Bela Chakraborty
vs.
The Airport Authority of India & Ors.

Mr. Kalyan Kumar Panda
Mr. Nirmalya Dhara

...for the petitioner

Mr. Anup Kanti Puddar
Ms. Khushboo Ruia

...for the for respondent Nos. 1 to 4

The petitioner has prayed for family pension after the death of her husband, who was working with the Airport authority of India (AAI). The petitioner's husband retired from service. After retirement, the petitioner's husband was receiving pension in accordance with Pension Payment Order (PPO) No.414900407540 as an employee of AAI. The petitioner's husband filed a Matrimonial Suit being MAT Suit No. 6 of 1991 before the Additional District Judge at Barasat for a decree of divorce. The said suit was dismissed on contest on September 14, 1998. It was clearly held that the petitioner's husband was not entitled to get a decree of divorce.

The petitioner's husband filed an appeal before this Hon'ble Court being FAT 719 of 1999.

However, he died on April 21, 2022, during the pendency of the appeal. The said appeal became infructuous due to the death of the petitioner's husband.

Thereafter, the petitioner prayed for release of family pension being the legally married wife of the deceased ex-employee of the AAI. Pursuant to her representation on August 8, 2022, the petitioner was requested to submit certain documents by the Assistant Manager (HR) on September 16, 2022. The petitioner submitted such documents on September 26, 2022. Thereafter, no steps were taken by the respondents /AAI to dispose of the petitioner's representation. The petitioner again made a representation on December 20, 2022 vide her advocate's letter.

Thereafter, on February 23, 2023, the Joint General Manager(HR), AAI refused the prayer of the petitioner that was made on August 8, 2022. The reason for such refusal is that the appeal being FAT 719 of 1999 is still pending adjudication in the Hon'ble High Court at Calcutta.

It is submitted on behalf of the AAI that the petitioner's name does not find mention in the service records. This Court finds no merit in such

submission, when the petitioner undisputedly is the wife/heir of the deceased employee as it appears from the order dated September 14, 1998.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that there is complete non-application of mind in the decision making process of the order dated February 23, 2023. The decision making authority failed to take into consideration the relevant factors and took into consideration wholly irrelevant factors. The Joint General Manager (HR), AAI was of the opinion that since the appeal was pending, no order of family pension could be made in favour of the petitioner. However, she failed to take into consideration that the appellant itself has died and no *lis* can be carried on by a dead person.

In such view of the matter, the impugned order dated February 23, 2023 is set aside and/or quashed.

The Joint General Manager (HR), AAI/the respondent No. 3 shall again consider the representation dated August 8, 2022 of the petitioner, in accordance with law. In consideration of such representation, undisputed position of the petitioner being the wife of the deceased employee and the order passed by the

learned Additional District Judge at Barasat, 3rd Court dismissing the suit on contest by holding that the deceased employee is not entitled to a decree of divorce should be taken into consideration along with the other relevant documents showing the pendency of the marriage. Such representation will be disposed of within four weeks from date upon giving a personal hearing to the petitioner. A reasoned order shall be passed and communicated to the petitioner within two weeks thereafter.

The provisions of Section 18(1) of the Airports Authority India Act, 1994 will be taken into consideration while disposing of such claim.

Since no affidavits have been called for in the writ petition, the allegations contained therein be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Lapita Banerji, J)