

21.
24.7.2023
S.D.

W.P.A. 15486 of 2023
Buli Joarder
Vs.
The State of West Bengal & Ors.

Mr. Manoranjan Jana
Ms. Mitali Jana
..For the Petitioner

Mr. Arjun Roy Mukherjee
Ms. Tuli Sinha
...For the Respondent Nos. 1 to 3.

Affidavit of service filed in Court today is retained with
the records.

The petitioner's husband was appointed as a Lower
Division Clerk (LDC) on November 21, 2013 at the Bipradas
Pal Chowdhury Institute of Technology, Haripada Chatterjee
Road, Krishnagar. The petitioner's husband died-in-harness
on May 28, 2022. Thereafter, the petitioner prayed for
appointment on compassionate ground on November 3, 2022,
November 18, 2022 and April 6, 2023.

From a letter issued by the Principal In-charge, B.P.C.
Institute of Technology/the respondent no. 4, it appears that
the husband of the petitioner discharged duties as a LDC and
Cashier. From the preliminary scrutiny of the records, it
appeared that he collected funds in different heads but did not
deposit the same to the Treasury Account, at the instance of

the Cashier. An Enquiry Committee was formed comprising of the Lecturers and Non-teaching staff. From the preliminary enquiry report, it appears that from December 1, 2016 till May 28, 2022, the petitioner's husband collected a sum of Rs.22,48,015/-. The same was not deposited with the Treasury Account concerned.

After the demise of the petitioner's husband, the petitioner being his heir was called to the office, but could not provide satisfactory answer. The authority concerned decided to recover the defalcated amount from the proposed death benefits of the petitioner's husband. The petitioner was directed to take steps for refund of the defalcated amount.

Mr. Jana, learned counsel appearing on behalf of the petitioner submits that a reply to the impugned letter dated August 12, 2022 was given on February 9, 2023. The petitioner demanded to know under which capacity, the respondent no. 4 could deprive/deceive the payment of the death benefits of her husband and the payment of retiral benefits and other funds/family pensionary benefits to the petitioner. Furthermore, the petitioner demanded an answer regarding how the reimbursement for defalcation can be sustainable after the demise of an employee and how the same would be claimed from his widow and children. Since the employer did

not take any steps during the period of employment of the petitioner's husband, the employer could not now blame the heirs of the deceased employee.

Considering the submissions of the parties and the materials placed on record, this Court is of the view that serious disputed questions of facts have arisen in the present writ petition.

The respondent no. 4 has also sought to respond the petitioner's query by a communicated dated April 4, 2023 whereby it has been stated that the signatures in the relevant registers have been put by the petitioner's husband for collecting the said cash amount from the students and false receipts have been issued. Furthermore, before the Enquiry Committee the petitioner admitted that the defalcated amount could be recovered from the death benefits of the petitioner's husband. It is now being argued on behalf of the petitioner that no opportunity of hearing was given to the petitioner whereas the letter dated April 4, 2023 clearly records the admission of the petitioner before the Enquiry Committee.

Furthermore, this Court finds that no opportunity of hearing was prayed for in the letter dated February 9, 2023 or in the present writ petition. No ground regarding breach of principles of natural justice has been made out. In fact, there

is no whisper regarding the petitioner appearing before the Enquiry Committee and admitting the amount of defalcated funds to be deducted.

Considering the seriously disputed questions of facts, this Court is not inclined to entertain the present writ petition. It is a settled principle of law that in case of allegations regarding defalcation of funds/misappropriation of funds being proved, the employer can recover the same even after the retirement/death of an employee, in accordance with law.

In the light of the discussions above, **W.P.A. 15486 of 2023 is dismissed.**

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained in the petition are deemed not to have been admitted by the parties.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

