

Court No.22

11.7.2023

(Item No. 82)

(AB)

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

W.P.A. 19235 of 2017

Arun Kumar Maiti

VS

The State of West Bengal & Ors.

Mr. Arijit Pradhan

.... For the petitioner

Mr. Pinaki Dhole

Mr. Avishek Prasad

.... For the State

This is a hearing matter.

The office report dated September 20, 2017 showed that, despite direction being made by a co-ordinate bench on August 17, 2017 no affidavit-in-opposition was filed.

The petitioner claimed to be the son and a legal heir of one **Manishi Nandan Maiti**, the deceased father. It was submitted that, the deceased father died on **May 4, 1969**. The mother of the petitioner i.e. the widow of the deceased employee died on September 12, 1999. The petitioner claimed that, the death-cum-retiral benefit had not been received by the deceased employee being the father of the petitioner and despite several demands the same was not paid to the legal heirs of the deceased employee.

Mr. Arijit Pradhan, learned advocate for the petitioner drawing attention to **Annexure P-5** at **page 47** to the writ petition submitted that, this was a

representation dated **June 26, 2017** submitted by the petitioner before the respondent No. 3 and the same had not yet received the attention of the state authority.

Mr. Pinaki Dhole, learned State counsel appeared for respondent Nos. 1, 2 and 3. He prayed for an extension of time to file affidavit-in-opposition which had not been filed since 2017. Today the writ petition had appeared under the heading **“For Dismissal”**. Since the parties are present today and agreed to proceed with their respective submissions, this writ petition was taken up for consideration, as this Court thinks it fit that considering the issue involved in this writ petition pending for about last more than six years any further pendency would not serve any useful purpose and would merely cause prejudice to the claim of the legal heirs of the deceased State employee in the event they succeed to their claim.

Learned State counsel submitted that, the respondent No. 3 had sought for the relevant documents and records from the relevant school authorities way back on September 1, 2017 but due to non-co-operation on the part of the school authority not sending such records, the respondent No. 3 could not proceed any further.

Considering the rival contentions raised by the parties and upon perusal of the materials on records,

it appeared to this Court that, to sub-serve justice the respondent No. 3 shall consider the representation of the petitioner dated **June 26, 2017, Annexure P-5** at **page 47** to the writ petition and then shall pass a reasoned order in accordance with law.

The respondent No. 3 shall issue a prior hearing notice of at least seven days to the petitioner and the respondent No. 5 and after hearing them shall pass his reasoned order. The respondent No. 3 to his wisdom must satisfy itself that whether any rival claim exists on account of any other legal heirs in so far as dues of the deceased father is concerned as claimed in this writ petition. The respondent No. 3 shall be free to proceed for his satisfaction as to the identity of the petitioner and any other legal heir, if exists of the deceased employee, in the manner and mode he shall think fit and then shall proceed to decide the claim of the petitioner.

In so far as the merits of the claim is concerned, this Court has not gone into the same in any manner as to the eligibility and legality to receive the claim by the legal heir/heirs of the deceased employee and the respondent No. 3 shall be free to decide the issue strictly in accordance with law.

The respondent No. 5 and/or the relevant school authority shall produce all records, documents, papers and relevant materials for deciding the issue

before the respondent No. 3 without any plea or pretext.

In the event, the respondent No. 3 comes to a finding that, there are existence of other rival claims, he shall issue notice to them as per the particulars to be furnished by the petitioner. In the event, any newspaper publication is required, the cost thereof shall be entirely borne by the petitioner and only thereupon the respondent No. 3 shall publish such notice in the newspaper once in a widely circulated Bengali and once in a widely circulated English newspaper in West Bengal.

The petitioner, respondent No. 5 and/or the relevant school authority and, if any, rival claimant is found, all such relevant parties shall participate in the hearing before the respondent No. 3 and shall be free to urge whatever points they wish to urge by relying upon whatever documents and records they wish to relying upon.

The entire exercise as directed above, shall be carried out and completed by the respondent No. 3 within a period of **ten weeks** from the date of communication of this order.

In the event, the petitioner and/or the rival claimants succeed to their claim in-law and the reasoned order goes in their favour then the respondent No. 2 shall take all necessary and consequential steps to make the necessary payment

in favour of the petitioner and/or the rival claimants either fully or in equal proportion as the case may be positively within a period of four weeks from the date of communication of the said reasoned order.

It is also made clear that, if it appeared before the respondent No. 3 that, the delay had occurred on the part of the respondent No. 5 and/or the school authority then the school authority shall pay interest @ 8% p.a. on the accrual payable to the petitioner and/or the legal heirs of the deceased employee since the date of their eligibility and in the event, it appeared to the respondent No. 3 that the delay caused due to the office of the respondent No. 3 then the appropriate authority of the State shall pay the same rate of interest @ 8% p.a. to the petitioner and/or the other legal heirs as observed hereinabove.

If any formalities required to be carried out by the respondent No. 4 he shall do the same with utmost expedition.

It is made clear that, this order shall not create any equity or right in favour of the petitioner and in favour of any other legal heirs of the deceased employee as the case may be and they shall receive the claim only to the extent of their eligibility to receive strictly in accordance with law.

On the above terms, this writ petition being **WPA 19235 of 2017** stand disposed of.

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

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)