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28.2.2023
S.D.

W.P.A. 22801 of 2022

**Indresh Devi
Vs.
Syama Prasad Mookherjee Port & Ors.**

Mr. Sourav Sengupta
Mr. Avirup Roy Sanyal
... For the Petitioner

Mr. Kallol Kumar Basu
Ms. Sujata Mukherjee
...For the Respondent Nos. 1 to 3

Report on affidavit and exception thereto filed in Court
today are retained with the records.

The petitioner claims to be the wife of the deceased employee of Syama Prasad Mookherjee Port/Kolkata Port Trust. The petitioner's husband passed away on November 18, 2018. The deceased employee was married previously and his first wife passed away on January 15, 1992. The petitioner claims that after the passing away of the first wife, the petitioner got married in August 1992. Therefore, she is the legally married wife of the petitioner. The petitioner has prayed for disbursement of family pension in her name along with the accrued arrears thereon.

Mr. Sengupta, learned counsel appearing on behalf of the petitioner submits that the petitioner was the legally

married wife of the deceased employee on the date of death of her husband. Therefore, the petitioner's claim for family pension should be allowed.

Mr. Basu, learned counsel appearing on behalf of the Port Trust submits that there are discrepancies in the service records of the deceased employee. The service records show that the deceased employee had two wives. Furthermore, by a communication received by the Port Trust on September 21, 2022, the petitioner herself has submitted that she got married in the year 1975 and the first wife of her deceased husband died in January 1992. Therefore, it is clear that the deceased employee contracted the second marriage during the subsistence of the first marriage as no decree of divorce has brought on record to show that the marriage of the deceased employee with his first wife ceased to exist on the date when the petitioner got married to her husband.

Therefore, the marriage of the petitioner to the deceased employee is void and she is not entitled to family pension after the death of the deceased employee.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that there are several discrepancies in the documents that have been placed before this Court. On one hand, the petitioner is

claiming to be married to the deceased employee since August 1992 and on the other hand, she has made an application for grant of family pension whereby she has stated that the sons were born in 1990. The petitioner in the writ petition has stated that the deceased employee had no children born from the wedlock with his first wife.

The petitioner in her application for family pension has stated that she was married since 1975 and in the writ petition affirmed true to her knowledge stated that she got married in August 1992. From a declaration given by her deceased husband on October 6, 1993 for commutation of pension it appears that her husband has declared that one of his sons was 14 years old and the other son was 12 years old in 1993. Therefore, the petitioner getting married to the deceased employee in August 1992 is seriously doubted.

Since serious disputed questions of the facts arise in the present writ petition, this Court is of the view that the Writ Court is not the appropriate forum for resolution of the same.

In the light of the discussions above, **W.P.A. 22801 of 2022 is dismissed.**

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