

18.04.2023
DL-64
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 23381 of 2019

Rudrani Mishra
Vs.
Union of India & Ors.

Mr. Rachit Lakhmani,
Ms. Afreen Begum

....for the petitioner.

Mr. Ajit Kumar Chaubey

....for the respondents.

The writ petitioner's father was an employee under the Military Engineering Services, an agency for providing infrastructure to Armed Forces under the Ministry of Defence, Government of India.

The writ petition was filed in 2019 and since then several adjournments have been taken by the respondents to take necessary instructions in the matter. Since 2019 no point of maintainability was urged on behalf of the respondents. The matter was taken up for hearing by this Court on September 16, 2022 when the respondents were not represented. Thereafter, again it was taken up for hearing on September 21, 2022 by this Court when Mr. Chaubey, learned counsel appearing on behalf of the respondents submitted that he needed time to take necessary instructions in the matter. Even on that day, no prayer was made for keeping the point of

maintainability of the writ petition open. This Court upon hearing the learned counsel directed report on affidavit and exception thereto to be filed. Finally, while filing the written instruction in Court on November 16, 2022, he prayed for urging the point of maintainability of the writ petition.

Since a considerable time has elapsed between the filing of the writ petition and till date, this Court is not willing to dismiss the writ petition on the ground of maintainability.

This Court finds after filing the written instruction on behalf of the respondents, the point of maintainability has been sought to be urged.

Mr. Lakhmani, learned counsel appearing on behalf of the writ petitioner submits that her father retired from service on November 30, 2000. The petitioner who was a married daughter started living with her father since December, 2009 along with her minor daughter who was born in December, 2005. The writ petitioner's mother pre-deceased her father on December 25, 2016. Her father/retired employee died on January 31, 2017. Since the writ petitioner was living with her father since 2009, she was completely dependent on her father for her livelihood. A matrimonial proceeding was initiated by the writ petitioner against her husband, being MAT 23 of

2013. The said proceedings were bitterly contested. After the death of the petitioner's father, her ex-husband decided to settle the issue mutually. By an order dated February 20, 2017, the petitioner prayed for withdrawal of MAT 23 of 2013 as the disputes were recorded to be amicably settled and the same was dismissed for non-prosecution. Thereafter, a matrimonial suit, being MAT 315 of 2017, was filed for divorce on mutual consent and the same was decreed on mutual consent on November 3, 2017.

Despite several representations, the petitioner's prayer for family pension was not considered even though the petitioner was squarely covered by the office memo dated July 19, 2017 issued by the Under Secretary to the Government of India, Ministry of Personnel, P.G. & Pensions. Under the said memo as long as the divorce proceedings of a daughter of a Government employee/pensioner was instituted in a competent court of law during the life time of one or both of them and the decree of divorce was granted by the competent authority when none of them were alive, a decision was taken to grant family pension to the divorced daughter in such cases. However, the divorced daughter had to fulfil the conditions under Rule 54 of the Central Civil Services (Pension) Rules, 1972 for grant of such family pension.

Mr. Chaubey, learned counsel appearing on behalf of the respondents submits that this Court has no jurisdiction to entertain the writ petition relying on the decision of **L. Chandra Kumar vs. Union of India and others** reported in (1995) 1 SCC 400. He further submits that since the petitioner was granted divorce by mutual consent in MAT 315 of 2017 and the matrimonial suit MAT 23 of 2013 filed during the lifetime of the father was withdrawn immediately after the death of the retired employee her case cannot be considered for family pension. Had she been granted divorce in MAT 23 of 2013, the case could have been different.

Considering the rival submissions of the parties and the materials placed on record, this Court is not inclined to dismiss the writ petition on the ground of maintainability as stated hereinabove since the same was not urged by the respondent authorities prior to filing of their written instruction. The said point of maintainability has been urged 3 years after the filing of the writ petition, for the first time.

This Court is also of the view that MAT 23 of 2013 was pending during the life time of both the petitioner's father and mother. The petitioner's father was the pensioner and the matrimonial suit was filed during his life time. The petitioner has been staying

separately since 2009 and there has been no dispute to such claim of the petitioner. Even if the said suit was withdrawn and the disputes were resolved by way of a decree of divorce upon mutual consent upon filing of MAT 315 of 2017, the petitioner cannot be disentitled from receiving family pension if she fulfils the other conditions of Rule 54 of 1972 Rules. No where in the office memo dated July 19, 2017, has it been specified that in the event the divorce is obtained by way of mutual consent, the divorced daughter will be disentitled from receiving family pension. Therefore, whether or not the divorce proceedings have resolved amicably, the petitioner's eligibility for receiving family pension cannot be denied as long as the other conditions of Rule 54 of the 1972 Rules are fulfilled.

In the light of the findings made hereinabove, let the representation of the petitioner annexed at page 51 of the writ petition be considered by the respondent no.3/the Principal Controller of Defence Accounts (Pension) within six weeks from date upon giving a personal hearing to the petitioner and upon consideration the Office Memorandum dated July 19, 2017. The said representation shall be disposed of with a reasoned order and the same be

communicated to the writ petitioner within two weeks of passing thereof.

With the directions aforesaid, **WPA 23381 of 2019** is **disposed of**.

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.)