

P.A.
28.06.2023

MAT 2001 of 2022

**With
IA No. CAN 1 of 2022**

**Bani Das Roy
-Vs.
High Court Administration & Ors.**

**Mr. Suddhasatva Banerjee,
Mr. Supratic Roy
..... For the Appellant.
Mr. Siddhartha Banerje
Mr. S. N. Ghosh
..... For the High
Court Administration.
Mr. Ram Mohan Pal
..... For the
Respondent No.4

Mr. Shiv Chandra Prasad,
Mr. Jasobanto Rakshit
..... For the
Respondent
No. 7.**

Party/ Parties is/are represented in the order of their name/names as printed above in the cause title.

The instant appeal has been preferred by the appellant/writ petitioner who is the first wife of Debabrata Bikash Das Roy since deceased. The said Debabrata Bikash Das Roy was posted as a peon in the office of the Additional District and Sessions Judge 1st Court Kakdwip under the Judgeship of South 24 Parganas.

On the death of the aforesaid employee his wife that is the appellant/writ petitioner prayed for disbursement of the entire death benefit in respect of her husband's death, in her favour.

In the meanwhile one Mrs. Swapana Das Roy and Baisakhi Das Roy Pathak claiming themselves to be the second wife and the daughter of the aforesaid employee since deceased have entered the scenario and are praying for the death benefits in respect of Debabrata Bikash Das Roy since deceased.

The Hon'ble Single Bench vide its order dated 21.11.2022 passed in WPA 7840 of 2022 granted 50 % of the death benefits to the appellant/writ petitioner which has accrued upon the death of her husband.

Being aggrieved by and dissatisfied with the aforementioned order the instant appeal has been filed.

The moot point of contention is as to whether the respondent No.6 namely Baisakhi Das Roy Pathak who is major, married daughter of Debabrata Bikash Das Roy since deceased and Swapana Das Roy the second wife of the employee since deceased is entitled to the death benefits of her father or not.

In this regard it is to be mentioned that according to Hindu Law a marriage has to be between a male and a female not having spouse at the time of their marriage, as per Section 5 of the Hindu Marriage Act. In this instant case as the said Debabrata Bikash Das Roy, the employee had a spouse so the marriage between the said Debabrata and Swapana is not a valid one instead it is a void marriage. As per Section 16 of the Hindu Marriage Act children born of a void marriage are legitimate. So the respondent No.6 namely Baisakhi Das Roy Pathak is a legitimate daughter of the employee since deceased.

It is also to be considered as to whether a married daughter after attaining majority will be able to receive the death benefits or not. While considering this point this Court takes into view the definition of family enumerated in Section 7 Note 2 of the West Bengal Services (Death-Cum-Retirement Benefit) Rules, 1971. In the said Note 2 of Section 7 members included in "family" have been laid down which is as follows:

“(e) “family” includes the following relatives of Government servant namely :
(1) for the purpose of a death gratuity,
(i) wife in the case of a male officer,
(ii) husband in the case of female officer
(iii) sons including stepsons,

- (iv)unmarried and widowed daughters (including stepdaughters),*
- (v)brothers below the age of 18 years and unmarried or widowed sisters,*
- (vi)father*
- (vii)mother*

(2)for the purpose of a family pension

- (i)wife in the case of a male officer,*
- (ii)husband in the case of a female office,*
- (iii)minor sons including adopted sons,*
- (iv)unmarried minor daughters including adopted daughters, (v)dependant parents.”*

So from the said Section it reveals that family includes an unmarried and widowed daughters including step daughters but not married daughters.

An authority in this regard is placed being published in *(2013) SCC Online CAL 14299* wherein a coordinate Division Bench of this Hon’ble Court has granted death gratuity to the unmarried daughter and has denied the same to the married daughter.

Being guided by the aforementioned rules this Court is of the view that the adult married daughter namely Baisakhi Das Roy Pathak is not entitled to any share in respect of either the family pension or in respect of retiral/ death benefits.

The first wife namely Bani Das is solely entitled to receive family pension and retiral/ death benefits.

As such **MAT 2001 of 2022** with **CAN 1 of 2022** is thus disposed of.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)