

WPA 1501 of 2023
Giraja Devi
Vs.
The Kolkata Municipal Corporation & Ors.

Mr. Debdutta Basu

...for the Petitioner

Mr. Alak Kr. Ghosh,
Mr. Swapan Kr. Debnath,
Ms. Tanushree Dasgupta

...for Kolkata Municipal Corporation

The petitioner in this writ petition claims to be the second wife of Umesh Rajwar, who was an employee of Kolkata Municipal Corporation and passed away on August 10, 2012. The petitioner claims the family pension and other retiral benefits.

The petitioner asserts that Umesh Rajwar's first wife severed her matrimonial ties and subsequently married Umesh's elder brother. Umesh then married the petitioner in 1995, and the couple had three children from their marriage.

The petitioner contends that a second wife should not be excluded from receiving the family pension, arguing that the first marriage of the deceased was unsuccessful and that, in reality, the petitioner was his legitimate spouse.

The petitioner has submitted a certificate issued by the Mukhiya of Gram Panchayat Nagwan, Fatehpur,

Gaya (Bihar) to support her claim.

The Corporation, however, argues that according to the applicable rules, only the legitimate wife of a male employee is entitled to the family pension. In this case, the deceased employee had nominated his first wife, Girja Devi, to receive the retiral benefits. Girja Devi asserted her claim for the pension before the Corporation and provided an affidavit from her father-in-law to support her claim. However, the Corporation asked for some additional documents from Girja Devi, which she could not provide, leading to the withholding of family pension and other terminal dues.

Despite being served, Girja Devi has not appeared in these proceedings.

The Supreme Court and this Court have, on multiple occasions, recognised the right of a second wife to receive the retiral dues of a deceased employee. However, there is no uniform criterion for recognising the rights of second wife, as it depends on the specific facts and circumstances of each case.

In the case reported at **(2008) 2 SCC 238 (Vidhyadhari v. Sukhrana Bai)**, the Supreme Court affirmed the right of a second wife to receive the terminal benefits though she herself was not a legally wedded wife.

In the present case, however, the status of the

petitioner as the second wife is disputed. The affidavit submitted by Girja Devi to the Corporation specifically denies the petitioner's status as the second wife.

This Court is unable to reach a definitive conclusion regarding the factual aspects of the petitioner's marital status. Therefore, this writ petition is disposed of with the following directions:

1. The Superintendent of Police, Gaya District, is directed to conduct an inquiry into the alleged second marriage of the deceased employee with the petitioner and also regarding the alleged marriage of Girja Devi with elder brother of Umesh. Upon conclusion of inquiry, the Superintendent shall submit a report to the Commissioner, Kolkata Municipal Corporation. This exercise shall be completed within four months from the date of communication of this order.

2. After receiving the report from the Superintended of Police, the Commissioner, Kolkata Municipal Corporation, shall issue a notice upon the petitioner, Girja Devi, respondent no.5, and all other concern for hearing to decide the claim of the petitioner.

3. After hearing the parties and considering the report of the Superintendent of Police, as outlined above, if the Commissioner of the Kolkata Municipal Corporation concludes that the deceased employee, Umesh Rajwar, did indeed enter into a second marriage

and have children from that marriage, as asserted by the petitioner, he shall treat the petitioner and her children also as the legal heirs of the deceased employee and disburse the family pension and other terminal dues in accordance with the applicable laws.

The entire exercise shall be completed by the Commissioner within a period of three months from the date of receipt of the police report.

The petitioner is directed to serve a copy of this writ petition along with a copy of this order to the Superintendent of Police, Gaya District.

WPA 1501 of 2023 is disposed of.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)