

05.08.2024
Sl. No. M/L. 14
g.b.
Court No.09

WPA 8065 of 2024

Anowara Bibi & Anr.
-Vs-
The State of W. B. & Ors.

Md. Sarwar Jahan
Mr. Pradip Paul
Ms. Renesa Dey
Mr. Maidul Islam Kayal
.....For the Petitioners

Mr. Suman Sengupta
Mr. Tarak Karan
Mr. Sanatan Panja
.....For the State
Mr. Sujay Bandyopadhyay
Mr. Jagajyoti Das
Mr. Pradipta Siddhanta
....For the Respondent No.7

The writ petition has been filed challenging an order dated December 28, 2023 passed by the District Magistrate, Paschim Medinipur. The petitioner has challenged the said order on the following grounds:

- a) The date of birth of the son i.e., the petitioner no.2 would indicate that talaq had not been effected.
- b) The petitioner No.1 was not a divorcee as claimed by the authorities.
- c) Appointment of the respondent no.7 was contrary to the scheme on the basis of which the petitioner No.1 claims compensation and compassionate appointment.
- d) The authority did not take into consideration the birth of the child, at the time of passing of the order.
- e) The Talaq Nama which was produced by the respondent no.7 was a manufactured document.

Learned advocate for the State respondents submits that the petitioner was given ample opportunity of hearing before the authority, but the petitioner could not satisfy the authority with adequate document with regard

to the fact that she was not a divorcee and the child was born out of the marriage between the petitioner and Sk. Munna Ali, since deceased.

Learned advocate for the State respondents submits that the petitioner has not produced any document in favour of the marriage. Learned advocate for the State respondents submits that the petitioner could not prove the factum of marriage at the time when her alleged husband went missing. The birth certificate of the son was not even placed before the authority. Accordingly, the authority passed orders on the basis of an application filed on behalf of Sk. Rejesh Hossain, for compassionate appointment.

The records before the authority revealed that Sk. Munna Ali, alleged husband of the petitioner went missing since 16th May, 2010. The petitioner got married on May 29, 2009 and divorced on March 20, 2010 upon execution of a Talaq Nama as per Muslim Marriage and Divorce Rule in the Kazi's office.

Learned advocate for the respondent no.7 submits that the petitioner was nowhere in the picture when Sk. Munna Ali went missing. The complaint was lodged before the police station by the father. A civil suit is pending on the self-same cause of action. Thus, the writ petition should not be entertained. The petitioner had made a prayer for amendment of the writ petition to include the prayer against the appointment of the respondent no.7.

Having heard the learned advocate for the respective parties, this court finds that a civil suit has been filed by the petitioner for a declaration that the petitioner no.1 was the legally married wife of the deceased husband and the Talaq Nama was illegal and a void of document. There is an additional prayer for declaration that the son was also one of the successors of the

deceased, which entitled the petitioners to financial assistance and employment. It is informed that the civil court already passed an order of injunction restraining the authorities from releasing the money. The question is with regard to who should get the job.

Admittedly, the son is a minor and his right to appointment on compassionate ground did not crystalize at the time of death and also at the time of consideration of the candidature of the family members for compassionate appointment. The authority proceeded on the basis of the Talaq Nama and held that the petitioner no.1 being a divorcee, was not entitled to the job.

There is no reason to keep the writ petition pending by allowing the amendment of the prayer for a writ of Quo warranto. The writ petition is disposed of with the following observations:

(a) The right of the petitioner and whether she was still married to Sk. Munna since deceased would be adjudicated in the suit as per the prayer made in the suit. The issue of appointment in cancellation of the appointment of the respondent No.7 will be dependent on such decision.

(b) The second submission of Mr. Jahan with regard to cancellation of the appointment of the respondent no.7 by a writ of Quo warranto, cannot be decided in this proceeding until prayer 1(b) of the is adjudicated in favour of the petitioner no.1. Such prayer is for a direction that all the property of the deceased and the job and financial assistance should be declared in favour of the petitioner.

(c) Whether Rajesh Hossian being the respondent no.7 was entitled to the job on the basis of the NOCs given by the other family members and strictly in terms of the scheme can only be decided, when the other prayers

of the suit are answered in favour of the petitioner no.1, and the suit is decreed in her favour.

(d) The authority found that the other family members had granted their no-objection in favour of appointment of the respondent No.7.

Under such circumstances the writ petition is accordingly disposed of with liberty to the petitioner No.1 to make all prayers at the appropriate stage if the suit is decreed in her favour.

The disputes raised require trial on evidence. The contention of Mr. Jahan, learned advocate with regard to the dates of the marriage, alleged divorce and the birth of the child would indicate that the divorce could not have taken place during the pregnancy of the petitioner no.1, will have to be proved in the suit, on trial.

All points are left open to be decided by the learned civil court and the factual observations made herein are restricted to the disposal of this writ petition.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after completion of all necessary formalities.

(Shampa Sarkar, J.)