

21.03.2024
Item No.
M/L-29 & 32
Court No.5
Saswata

W.P.A. 20266 of 2012
Arati Ojha
-vs-
West Bengal State Electricity Distribution Company
Ltd. & Ors.
with
W.P.A. 12536 of 2013
Usha Rani Ojha
-vs-
West Bengal State Electricity Distribution Company
Ltd. & Ors.

Mr. Himadri Sikhar Chakrabroty
Mr. Sk. Samsul Arefin

...For the petitioner
in W.P.A. 20266 of 2012

Mr. S.S.Koley

...For the WBSEDCL

Mr. Biswajit De
Ms. Mallika Manna

...For the petitioner
in W.P.A. 12536 of 2012

1. The present writ petition (WPA 20266 of 2012) has been filed, *inter alia*, challenging a communication dated 18th May 2012 issued by the West Bengal State Electricity Distribution Company Limited, whereby, a direction was issued for withholding of the family pension in respect of PPO no. 18568/16249/06197.
2. The petitioner in WPA No. 20266 of 2012, Arati Ojha claims to be the legally married wife of the deceased Tapan Kumar Ojha. According to her, the marriage was solemnized on 27th December 1992 and was registered on 22nd October 2010. Certificate to that effect had also been disclosed in the writ petition. The petitioner and deceased Tapan Kumar Ojha had been living as husband and wife. Out of the wedlock a son was born on 22nd October, 2003. According to Arati Ojha, her deceased husband, Tapan Kumar Ojha was an

employee of West Bengal State Electricity Distribution Company Limited and while in service, said Tapan Kumar Ojha (since deceased) had signed a declaration-cum-nomination form under rule 5 of the West Bengal State Electricity Distribution Company Ltd, General Provident Fund Trust Rules, and had nominated the petitioner, Arati Ojha as his wife to be entitled to GPF benefits.

3. According to Arati Ojha, her husband Tapan Kumar Ojha died on 17th March 2011. Such fact would corroborate from the death certificate issued by the Medinipur Medical College Hospital, Paschim Medinipur. In the interregnum a PPO dated 29th September 2010 was issued in favour of Tapan Kumar Ojha whereby, the competent authority had sanctioned a gratuity amount of Rs.3,50,000/- and retirement pension of Rs. 8,315/-.
4. Subsequent to the death of the said Tapan Kumar Ojha a family Pension Payment Order no. 18568/16249/06197 dated 30th May, 2011 was issued. It is the petitioner's case that consequent upon issuance of the family PPO, she had been receiving regular pension in terms of the PPO dated 30th May, 2011 until the order dated 18th May, 2012, whereby the family pension of Arati Ojha was provisionally withheld on the basis of a claim by Usha Rani Ojha (hereinafter referred to as the "objector").
5. Mr. De, learned advocate appearing for the objector, the petitioner in WPA 12536 of 2012 submits that Usha

Rani Ojha, the objector is the first wife of deceased Tapan Kumar Ojha. In support of his contention he has placed reliance on a certificate issued by the Pradhan of 8 number Amrakuchi Gram Panchayat. He also placed reliance on an order dated 28th July 1989 issued by the Learned Judicial Magistrate, 6th Court Medinipur to inter alia, contend that Usha Rani Ojha is the first wife of deceased Tapan Kumar Ojha.

6. Mr. De Submits that although, the name of Arati Ojha is recorded as the nominee however, the nominee is only entitled to receive pension and other terminal benefits as a trustee and the amount so received is to be distributed according to the law of succession. In support of his contention he has placed reliance on a judgment of the Hon'ble Supreme Court delivered in the case of ***Shipra Sengupta versus Mridul Sengupta & Ors.***, reported in **(2009) 10 SCC 680**.
7. Admittedly, in this case I find that the name of the petitioner, namely, Arati Ojha is recorded in the nomination form duly countersigned by deceased Tapan Kumar Ojha. It is true that the nominee is only entitled to receive the money for and on behalf of the rightful owner and is bound to distribute the same in favour of the rightful owner. In the instant case, however, nothing has been placed before this Court to demonstrate that Usha Rani Ojha, the objector is the first wife of Tapan Kumar Ojha. Although, an order of maintenance passed by the learned Judicial Magistrate, 6th Court, Medinipur on 27th July 1989 has been relied on, the said order, in

my view, cannot establish claim of Usha Rani Ojha as regards her marital status as the first wife of Tapan Kumar Ojha. The certificate issued by the Pradhan also cannot establish her marital status especially when admittedly Tapan Kumar Ojha accepted and acknowledged Arati Ojha as his wife.

8. Although, the writ petition has been pending for about a decade, no steps have been taken by Usha Rani Ojha to establish herself as the legal heir of deceased Tapan Kumar Ojha by filing any proceedings under the Indian Succession Act. No steps have also been taken to establish that she is the first wife of Tapan Kumar Ojha. There is also no contemporaneous complaint lodged with the employer, during the life time of Tapan Kumar Ojha.
9. Having regard to the aforesaid, I am of the view that this Court is unable to entertain the claim made on behalf of Usha Rani Ojha. The objection fails.
10. The aforesaid order, however, shall not stand in the way of Usha Rani Ojha from establishing her claim as legal heir of deceased Tapan Kumar Ojha by taking appropriate steps as may be advised.
11. Insofar as the order of provisional withholding of family pension dated 18th May 2012 is concerned, I am of the view that the respondents ought not have withheld the family pension payable in favour of Arati Ojha on the basis of an objection without insisting for proof from the objector and without objector, establishing her claim as the first wife and legal heir of Tapan Kumar Ojha.

12. Having regard to the aforesaid, I set aside the order dated 18th May 2012 issued by the West Bengal State Electricity Distribution Company Limited and I direct the respondent authorities to forthwith release the family pension along with arrear in favour of Arati Ojha upon obtaining an indemnity from her, along with interest at the rate of 9 per cent for the period the same has been withheld.
13. With the above observations and directions, both the writ petitions stand disposed of.

(Raja Basu Chowdhury, J.)

L A T E R

1. After the judgment is delivered, Mr. Dey, learned advocate appearing for the petitioner in WPA 12536 of 2013 prays for stay of the operation of the order.
2. The same is considered and refused.

(Raja Basu Chowdhury, J.)