

25-04-2024
ct no. 13
Sl. 606
sp

WPA 23738 of 2023
Anushka Dey
-Versus-

The Union of India & Ors.

Mr. Ashis Kumar Chowdhury,
Mr. Rajib Ghosh,
Mr. B.B. Bera,
Mr. Avisek Chatterjee

..for the petitioner

1. Despite service of notice, the added respondent Raju Dey is not represented before this Court.
2. The brief facts of the case are that the petitioner's mother late Barnali Dey was in the permanent service of the respondent no. 2.
3. During her life time, she had initially made her husband and mother beneficiaries of her terminal benefit.
4. The said Barnali Dey on 05.07.2019 is stated to have changed the nomination of her retirement benefits exclusively in favour of her daughter Anushka Dey the writ petitioner. The petitioner was 16 years of age then.
5. The petitioner's father is stated to have deserted her mother long before she died. The

mother suffered a serious disability during her service and eventually died on 21st May, 2023.

6. Upon the petitioner applying for terminal benefits on account of her mother's service, the respondents denied the same.
7. The respondent Nos. 2 to 5 have used an affidavit in opposition to the writ petition. A copy whereof has been handed over by the counsel for the petitioner.
8. At paragraph nos. 5 and 6 of the said affidavit, it is stated by the respondent nos. 2 to 5 in two places that the application for change of the nomination by the deceased Barnali Dey in respect of GPF, gratuity and LIC has been found in the personal files of late Barnali Dey. The said nomination was however not recorded in the receipt register or endorsed by the then Director of Regional office of the Inland Waterways Authority of India at Calcutta.
9. Let a copy of the affidavit-in-opposition of the respondent nos. 2 to 5 received from the learned counsel for the petitioner and the reply filed thereto be kept on record.
10. Having considered the submission of the learned counsel for the petitioner and having

regard to the averments made by the respondents in the affidavit, this Court is of the view that the change of nomination made by the petitioner in the fresh communication dated 5th July, 2019 having been found in the records of the employer, must be accepted.

11. A mere non-entry of the same in the service records of the deceased employee or the absence of signature of the Regional Director of the employer, could be a casus missus on the part of the respondent. The writ petitioner who is admittedly the biological daughter of the deceased employee cannot be faulted or be deprived for such omission of the respondents.
12. The writ petitioner is, therefore, entitled to the entire terminal benefits payable on account of the service of late Barnali Dey. The respondents shall process the same and make over the same to the petitioner.
13. The mother of the deceased is living with the petitioner. The petitioner's undertaking to take care of the maternal grand mother shall be recorded and kept with the respondent nos. 2 to 5. In the event of breach of such undertaking the grand mother Ajita Moitra

shall be entitle to enforce such undertaking against the writ petitioner.

14. For the aforesaid purpose the petitioner shall visit the office of the Regional Director of the Inland Waterways Authority of India at Calcutta and execute all necessary forms and submit all documents inter alia of identity. Particulars of her bank account shall also be disclosed.
15. Let arrears of pension be paid to the petitioner from the date after the death of the employee. Since the delay in payment of terminal benefits to the petitioner cannot be attributed to the respondents, the same shall carry no interest, if paid, within a period of 2 months from date. In default, the terminal benefits shall carry interest @8% per annum.
16. The writ petitioner shall communicate this order to the respondents forthwith.
17. With the aforesaid directions, the instant writ petition shall stand disposed of.
18. There shall be no order as to costs.
19. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)

