

07.03.2024
Sl. No.1
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 28681 of 2023

Smt. Kajari Karmakar alias Kajari Marick
Vs.
The Employees' State Insurance Corporation & Anr.

Mr. Md. Masudur Rahaman Paik
....for the petitioner.

Mr. Subal Maitra,
Mr. Arindam Maitra
...for ESIC.

The petitioner is the widow of a retired employee of the Employees' State Insurance Corporation (in short, ESIC). The said employee, namely Kartick Chandra Marick has superannuated on 31st May, 1997. The said employee was receiving pension under a pension payment order dated 17th November, 1998. The employee subsequently changed his name by affirming an affidavit on 13th September, 2002 and making publication thereof in the newspaper on 28th September, 2002. An affidavit was also affirmed before a 1st Class Judicial Magistrate at Alipore. By dint of such act, the name of the employee was changed from Kartick Chandra Marick to Gopal Chandra Karmakar. On the basis of such changed name, the petitioner's husband was issued a revised pension order on 19th February, 2009. The petitioner's husband died on 1st March, 2012 leaving

behind his widow/the petitioner, two sons and one daughter as his legal heirs and heiress. The petitioner also changed her surname from “Marick” to “Karmakar” by affirming an affidavit before a 1st Class Judicial Magistrate on 3rd August, 2022. The Voter Identity Card of the petitioner was accordingly changed. The petitioner thereafter made an application for family pension with the ESI Corporation (respondent no.4) on 4th August, 2022.

The petitioner’s grievance is that despite such application, no family pension has yet been given to the petitioner though she is entitled to the same.

On behalf of the respondent no.1, it is submitted that the application for family pension was made at a belated stage. Before the application was made and even thereafter due to the discrepancy in the petitioner’s surname the entire exercise has got stalled. The petitioner’s husband after changing his name had the surname “Karmakar”. However, the petitioner continued with her husband’s old surname “Marick”. In the records of ESI Corporation, the name of the petitioner is Kajari Marick and not Kajari Karmakar. Only in August, 2022, the petitioner has affirmed an affidavit before a 1st Class Magistrate to change her surname to “Karmakar” from “Marick”.

There is no contrary claim from any one as to

the family pension. There also appears to be no dispute as to the fact that the petitioner is not the widow of the deceased retired employee. The dispute, if any, is in respect of petitioner's surname. This cannot be a ground for refusing family pension to a deserving candidate.

The respondent no.1 shall take such affidavit into consideration and if otherwise found entitled in law should start paying current family pension to the petitioner with effect from April, 2024. So far as the family pension of the petitioner is concerned, if the petitioner is found entitled for the period from the death of the petitioner's husband (1st March, 2012) till March, 2024, the respondent no.1 shall pay the arrears of pension with interest calculated @ 6% per annum on reducing balance by 3 instalments, first of which shall be by 30th April, 2024 and the subsequent 2 instalments shall respectively be on 30th May and 30th June, 2024. Even though the petitioner had applied for family pension only on 4th August, 2022, no part of the arrear pension can be construed to have been barred by limitation inasmuch as receipt of family pension, if otherwise entitled to in law, is a continuing cause as held in **Asger Ibrahim Amin vs. Life Insurance Corporation of India** reported in (2016) 13 SCC 797.

In the event ESI Corporation/respondent no.1 finds that the petitioner is not entitled to family pension for any cogent reason, the Competent Authority of the respondent no.1 shall, by a reasoned order, communicate to the petitioner the reasons for not allowing the family pension to the petitioner. This exercise should, in case it happens, be completed by 30th April, 2024.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Since I have not called for affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)