

29.01.2025
Court No.23
DL/Item No.-3
[Milan, A.R. (Ct.)]

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 3589 of 2024

Tripti Thakur
versus
The State of West Bengal & Ors.

Mr. Kingsuk Mondal,
Mr. Partha Sarathi Mondal
Mr. Chiranjit Saha

....for the petitioner

Ms. Rupsha Chakraborty,
Ms. Amrita Tewari

....for the State

Mr. Debasis Kar,
Ms. Tagori Mitra

.... for the Respondent No.5

Mr. S. S. Koley

.... For WBSEDCL

Affidavit of service filed in Court today is taken on record. No one appears on behalf of West Bengal State Electricity Distribution Company Limited (in short, “WBSEDCL”)

Learned advocate, Mr. S. S. Koley who regularly appears on behalf of WBSEDCL is present in Court and is requested to represent WBSEDCL.

The petitioner claims to be the first wife of Bablu Thakur, who died-in-harness on 13th October, 2014 while serving WBSEDCL. The petitioner says that the terminal benefits of her husband have not been released by WBSEDCL till now. The reason for the same,

according to the petitioner, is a counter-claim made by the respondent no.5, namely, Puspa Thakur, who also claims to be the wife of Bablu Thakur and also says that from the wedlock between the said respondent no.5 and the deceased employee, two children were born being respondent nos.6 and 7 respectively. The respondent nos.5, 6 & 7 has filed a civil suit before the Court of Learned Civil Judge, Junior Division at Kalyani, Nadia being title suit no.147 of 2015, inter alia, for declaration of their rights and consequential order of injunction which is pending. The plaint filed in the said suit is annexed to the writ petition.

On perusal of the plaint, I do not find any date has been stated by the plaintiffs therein as to when the respondent no.5 was married to the employee since deceased. On the contrary, the petitioner says that she was married to the deceased employee on 31st January, 1990. No marriage registration certificate has been produced by the petitioner but in support of her claim, the petitioner has produced Aadhaar Card wherein the name of Bablu Thakur is recorded as her husband, cremation certificate of Bablu Thakur and the documents by which the dead body of her husband, who incidentally died in a road accident, was handed over to her.

The law is well-settled in this regard as pronounced in the judgment reported in **2002 (2) SCC**

431 (Rameshwari Devi vs. State of Bihar & Ors.). In Rameshwari Devi (supra), it is clearly held that;

“When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil Court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. The doors of civil Courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of Course, inquiry conducted by the employer cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner”.

The law is also well-settled that family pension does not form part of estate while the terminal benefits form part of the estate of the deceased employee. In this context, we may refer to a judgment reported in **1991 (1) SCC 725[Smt. Violet Issaac & Ors. vs. Union of India & Ors.]** followed in **AIR 2016 SC 4552 [Nitu vs. Sheela Rani & Ors.]**.

If it is proved that the employee had contracted the second marriage during the subsistence of the first marriage then the children out of second marriage will be entitled to a portion of the estate but not the second wife. It will be the first wife, who will be entitled to the family pension.

In the aforesaid facts and circumstances, I direct WBSEDCL to conduct an inquiry by giving a reasonable opportunity of hearing to the petitioner and the respondent no.5 for establishing their respective claim in respect of pensionary benefits of the deceased employee. So far as the terminal benefits of the deceased employee are concerned once it is established that the deceased employee had contracted two marriages then the children out of the second wife will be entitled to claim a share in the terminal benefits.

The entire exercise should be concluded by WBSEDCL within a period of 4 months from the date of communication of this order.

Only after conclusion of the enquiry the parties will be free to claim the terminal benefit and the family pension.

All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy.

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

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

(Arindam Mukherjee, J.)