

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

W.P.C.T. 6 of 2023

**Chhakina Bibi @ Sakhina Bibi
Vs.
Union of India and others**

For the petitioners	:	Mr. Haradhan Mondal
For the respondent nos.1 to 4	:	Mr. Sukumar Bhattacharyya Ms. Puja Sonkar
For the respondent no.5	:	Mr. Uttam Kumar De Ms. Writi De Ms. Riya De
Heard on	:	25.08.2025
Judgment on	:	25.08.2025

Sabyasachi Bhattacharyya, J.:-

1. The present writ petition has been filed under peculiar circumstances.
2. The writ petitioner, claiming to be the second wife of one Noor Ali Khan, since deceased, stakes a claim to the death benefits of the said Noor Ali Khan on his demise from the

respondent/employer of the deceased, being the Eastern Railway.

- 3.** The petitioner apprehended that the employer of her deceased husband was about to disburse the death benefits, on his demise, in favour of the private respondent no.5, one Farida Bibi, who claims to be the third wife of the husband. Accordingly, an original application was filed before the Central Administrative Tribunal, Kolkata Bench, which was turned down, upon which the present writ petition has been preferred, assailing the same.
- 4.** It is contended that at best, the respondent/employer can distribute the death benefits of the deceased employee equally among the petitioner and the respondent no.5.
- 5.** Learned counsel for the respondent no.5 files an undertaking authored by the respondent no.5, whereby the respondent no.5 agrees to disburse half share of the death benefits of late Noor Ali Khan to the writ petitioner, upon receiving the same from the employer of the said deceased.
- 6.** Such undertaking be kept on record.
- 7.** Learned counsel appearing for the respondent/employer of the deceased Noor Ali Khan raises an objection on the strength of the affidavits-in-opposition filed by the respondent nos.1 to 4 to

the writ petition as well as the written undertaking filed by the respondent no.5.

8. Learned counsel for the employer argues that the respondent no.5 was neither a petitioner before the Tribunal nor the writ petitioner before this court and as such, does not have the *locus standi* to author an undertaking.
9. It is also contended that upon internal enquiry, the respondent authorities have come to know that late Noor Ali Khan has left several heirs, including one Sawkat Ali Khan, the son of the deceased Noor Ali Khan through his first wife Katoo Khatun and daughter Manoja Bibi, also through the deceased first wife.
10. Apart from them, it is contended that there are no other legal heirs in the sense that the writ petitioner Sakhina Bibi, claiming to be the second wife of the deceased employee, had her previous husband living at the time when she allegedly married late Noor Ali Khan.
11. Farida Bibi, the respondent no.5, claiming to be the third wife of late Noor Ali Khan, also had her previous husband living at the time she allegedly entered into matrimony with the deceased employee.
12. Thus, it is argued that neither the writ petitioner, Sakhina Bibi nor the respondent no.5, Farida Bibi have any *locus standi* to agree upon the death benefits of late Noor Ali Khan being

distributed among themselves, thereby depriving Sawkat Ali Khan and Manoja Bibi, the actual heirs of Noor Ali Khan.

13. However, a nomination form submitted by the deceased employee with his employer, annexed to the affidavit-in-opposition of the respondent/employer, indicates that the deceased employee himself indicated, in the column of nominee, Farida Bibi (present respondent no.5) and Sawkat Ali Khan as his family, describing them respectively as his wife and son.
14. As per the said nomination, Farida Bibi would get one hundred per cent of the death benefits in the case of demise of the employee and in case of prior demise of the wife Farida Bibi, the son Sawkat Ali Khan would get the entire death benefits.
15. It is, thus, argued that in view of the complications created due to conflicting claims, the respondent/employer Eastern Railway is apprehensive of suffering legal consequences in the event disbursement is made either in favour of the petitioner or the respondent no.5, who do not have any *locus standi* to get such benefit, not being family members of the deceased employee.
16. Learned counsel for the Eastern Railway relies on the relevant Rules governing the service of the deceased employee in that regard.
17. Learned counsel for the private respondent no.5 also highlights the provisions of Rule 70 of the Railway Services (Pension)

Rules, 1993, since the deceased employee was employed under the Eastern Railway.

- 18.** It is argued that Clause (4) of Rule 70 categorically provides that for the purpose of the said Rules, in relation to a railway servant, “wife” or “wives” come within the purview of “family”.
- 19.** Since the respondent no.5 was mentioned by the deceased employee in his nomination as his wife, and as per the Rules the death benefits, pension etc. are to be paid to the family of the deceased employee, it is argued that the respondent no.5 is entitled to get the entire amount of death benefits as per the nomination made by the employee himself.
- 20.** However, it is submitted that out of graciousness, the respondent no.5 has undertaken to share half such death benefits with the second wife Sakhina.
- 21.** A peculiar conundrum has arisen in the present case.
- 22.** Rule 70(4) of the 1993 Rules specifically enumerates the family of a deceased employee of the railways to include, *inter alia*, his wife.
- 23.** By obvious connotation, a “wife” has to be construed as a legally married wife of the deceased employee.
- 24.** In the present case, the employer of the deceased, upon an internal enquiry, has arrived at the conclusion that neither the

writ petitioner nor the respondent no.5 were legally married wives of the deceased employee.

- 25.** Again, Rule 21 of the 1993 Rules, which has also been relied on by the respondent authorities, provides that no railway servant shall enter into or contract a marriage with a person having a spouse living, although carving out an exception in the proviso thereto, where it is provided that the Government may permit a railway servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2) of the Rule, if it is satisfied that such marriage is permissible under the personal law applicable to such railway servant and other party to the marriage and there are other grounds for so doing.
- 26.** The question which arises is, on a composite reading of Rules 21 and 70(4), what would be the implication in the event a particular person is mentioned as the wife by the employee himself in his nomination, whereas the employer disputes that such person is the legally married wife of the deceased employee.
- 27.** It is well-settled that even the writ court cannot enter into disputed questions of fact which require detailed evidence to be assessed, let alone the employer (in the present case, the Eastern Railway).
- 28.** It is entirely beyond the domain of the employer to decide the question as to whether a person is a legally married wife of the

deceased employee or not or even the heirship of any person vis-à-vis the employee.

- 29.** Only a competent civil court has the jurisdiction to conclusively decide such issues upon considering evidence.
- 30.** However, if in every matter, wherever a dispute as to disbursement of death benefits arise, the dispute is to be thrashed out before a Civil Court before the death benefits are disbursed, it would be extremely cumbersome for the beneficiaries to avail of such benefits. In most cases, the employer would merely have to raise an issue or objection regarding the heirship of the nominee and refuse to disburse the death benefits to the claimant, thereby flouting the very purpose of the nomination left by the deceased employee.
- 31.** That, in our opinion, cannot be a reasonable solution to the problem at hand.
- 32.** As such, on a composite reading of the Rules cited before us, we are of the clear opinion that Rule 21, insofar as the same mandates an employee of the Railways to obtain a prior permission from the Government before contracting a second marriage even if it is permissible under the personal law applicable to such railway employee, is directory and cannot be mandatory at all.

- 33.** In any event, even if such absence of permission might have an effect on the employment of the particular employee, such Rule cannot override the personal law of the person concerned and affect the validity of a marriage contracted between a railway servant and/or third party in any manner whatsoever.
- 34.** Thus, for the purpose of disbursal of death benefits of a deceased employee of the Railways to a person who comes within the ambit of “wife” under Rule 70(4) of the 1993 Rules, Clause (a) of the proviso to Rule 21 is entirely redundant.
- 35.** Rule 21 does not circumscribe in any manner the definition of “family”, which includes a wife, in Rule 70(4).
- 36.** It is only for the civil court to decide, if the dispute arises, as to whether a person is a wife or not of the deceased employee.
- 37.** In any event, the employer of the deceased husband, being a third party to the marriage, does not have the *locus standi* even to raise such dispute before a civil court.
- 38.** Therefore, in order to decide the question of entitlement to death benefits of a deceased employee, as in the present case, we have to go by the thumb rule that whoever was named by the deceased employee as his wife or other relation in his nomination shall be deemed to be his “family” for the limited purpose of ascertaining as to who would be the receiving hands of the death benefits of the deceased employee.

- 39.** In the instant case, it is to be noted that despite the Rules providing for penalty being imposed against an employee who contracts a second marriage without permission of the Government, no such action was alleged to have been taken against the deceased employee during his lifetime by his employer.
- 40.** Hence, such point cannot be raised *post facto*, after the demise of the employee, by the employer.
- 41.** Thus, since Farida Bibi was mentioned as the wife of the deceased employee in his nomination form and was granted by the employee one hundred per cent rights to get the pension and a notarial affidavit affirmed before the concerned Magistrate has *prima facie* been produced by the petitioner and the respondent no.5 to *prima facie* indicate that Sawkat, the son of the deceased employee had conceded to the death benefits of the deceased employee to be shared among the writ petitioner and the private respondent no.5, we do not find any reason as to why the employer should withhold the disbursal of the amount, particularly since respondent no.5 and the writ petitioner, the two rival claimants to the death benefits of the deceased employee, have agreed among themselves to share the death benefits.

- 42.** However, we make it amply clear that since the writ court does not have the jurisdiction to decide on merits as to the status of either the writ petitioner or the respondent no.5 as legally married wives of the late Noor Ali Khan, such question is not being decided conclusively by us.
- 43.** The above observations have been rendered for the limited purpose of deciding as to how the death benefits of late Noor Ali Khan, an employee of the Eastern Railway, shall be disbursed, regarding which we give primacy to the disclosures made by late Noor Ali Khan during his lifetime in his nomination form, which was never challenged during his lifetime by the employer.
- 44.** Accordingly, WPCT 6 of 2023 is allowed, thereby setting aside the impugned order dated February 3, 2020 passed by the Central Administrative Tribunal, Kolkata Bench in O.A No. 350/511/2019 and directing the respondent nos. 3 and 4 to disburse the death benefits of late Noor Ali Khan, an employee of the Eastern Railway, in favour of the private respondent no.5 as expeditiously as possible, preferably within two months from this date.
- 45.** The respondent no.5 shall, within seven days of receiving such amount, pay half of the amount to the writ petitioner in terms of the undertaking given by the respondent no.5 before this court.

- 46.** It is reiterated that this court has not decided the respective right, title and interest or legal status of either the writ petitioner or the respondent no.5 or any third party to the writ petition vis-à-vis the deceased Noor Ali Khan and it would be open to any contender to the heirship of late Noor Ali Khan to file a regular civil suit before the competent civil court, if otherwise maintainable in law, to thrash out such claims of heirship and/or to claim a share in the death benefits of late Noor Ali Khan by way of a money claim.
- 47.** There will be no order as to costs.
- 48.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

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