

28.07.2025
Ct. No.3
Sl. No.7
akd

W. P. A. 14748 of 2023

[Shibani Dey & Anr. -Vs- The State of West Bengal & Ors.]

Mr. Tirthankar Dhali
Mr. Parvej Alam

... ... for the petitioners

Mr. Subhasis Bandyopadhyay

... ... for the Municipality
[Burdwan Municipality]

Mr. Anand Farmania

... ... for the State

1. Affidavit-of-service filed in court today is taken on record.
2. The petitioners, in the present writ petition, are challenging the alleged inaction of the respondent-Burdwan Municipality in not releasing the Death-cum-Retiral benefits of late Manik Lal Dey.
3. It is the case of the petitioners that Manik Lal Dey was an employee of the respondent-Burdwan Municipality and had passed away on 10.09.2009. Petitioner nos.1 and 2, claiming to be the wife and daughter respectively, of late Manik Lal Dey, applied for disbursement of his Death-cum-Retiral benefits. However, respondent no.7, citing herself to be the lawful wife of the deceased, also submitted claim of the said benefits. Similarly, respondent no.8, claiming to be the mother of late Manik Lal Dey, also sought entitlement to the said benefits, contending that her son had died unmarried.
4. Consequently, petitioner nos.1 and 2 as well as respondent no. 8 had filed separate writ petitions being W.P. No. 22834 (W) of 2009, W.P. No. 21309 (W) of 2009 and W.P. No. 20359 (W) of 2009 respectively, seeking disbursal of the Death-cum-Retiral

benefits. This Court vide order dated 03.02.2011, disposed of these three writ petitions directing the Chairman, Burdwan Municipality to adjudicate upon the claims of the competing claimants. This Court further clarified that in the event of any serious factual dispute, the respective parties would be at liberty to approach a court of competent civil jurisdiction for appropriate reliefs.

5. Pursuant to the aforesaid direction, the Chairman, Burdwan Municipality heard all the concerned parties and, by an order dated 29.06.2011, disposed of the matter by advising the parties to approach the competent civil court to determine their respective rights and to submit the resultant order for further action.

6. Thereafter, respondent no.8 filed a suit being Title Suit No. 38 of 2014 before the Court of Civil Judge (Senior Division), Burdwan, arraying the petitioner no.1 as a party respondent to the said suit, inter alia, seeking a decree entitling her to receive the Death-cum-Retiral benefits of late Manik Lal Dey. However, the said suit was dismissed for default on 19.12.2016.

7. It is the submission of the petitioners that no steps were taken by the Respondent No.8 for restoring the same. The petitioners have made several representations before the respondent-Burdwan Municipality after the dismissal of the said suit. However, no response has been received till date. Being aggrieved, the petitioners have filed the present writ petition.

8. This Court has heard the arguments advanced by the learned Advocates for the respective parties and has carefully examined the materials placed on record.

9. A perusal of the materials on record reveals that there exists a serious of unresolved dispute among the petitioners, respondent no.7 and respondent no.8 with regard to their legal heirship and entitlement to the Death-cum-Retiral benefits of late Manik Lal Dey. In the earlier round of litigation, this Court, while disposing of the connected writ petitions, had expressly granted liberty to the contesting parties to approach the competent civil court for adjudication of any factual disputes arising out of such competing claims. Pursuant thereto, the Chairman, Burdwan Municipality, by an order dated 29.06.2011, observed that in the absence of any conclusive declaration from a civil court, the respondent-Municipality was not in a position to proceed with the disbursal of the Death-cum-Retiral benefits of late Manik Lal Dey and accordingly advised all the claimants to obtain a decree from a competent civil court.

10. It is pertinent to note that the said order passed by the Chairman, Burdwan Municipality has not been challenged. Although the respondent no.8 had instituted a civil suit being Title Suit No. 38 of 2014, seeking a declaration for her entitlement, the said suit was dismissed for default on 19.12.2016, and no adjudication from a civil court recognizing her exclusive rights to the said benefit has been obtained.

11. The issue of legal heirship raises complex and disputed questions of fact, including but not limited to the marital status of the deceased, the legitimacy of the claimant's relationship and the existence of dependency which necessarily requires a detailed factual enquiry and appreciation of evidence. These are determinations that fall squarely within the jurisdiction of the

civil court and are not amenable to adjudication in a writ proceeding under Article 226 of the Constitution of India.

12. Under such circumstances, this Court is of the considered opinion that unless and until a competent civil court conclusively determines the rightful claimant to the Death-cum-Retiral benefits of late Manik Lal Dey, the respondent-Burdwan Municipality is not in a position to act upon the representation of the petitioners. In absence of any such adjudication or a declaratory order passed in favour of the petitioners, no relief can be granted in the present writ proceeding.

13. Accordingly, the present writ petition is dismissed, with liberty to the petitioners to seek appropriate remedies before the competent civil forum, if so advised.

14. Since no affidavits have been filed by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

15. There shall be no order as to costs.

16. Let urgent Photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

(Gaurang Kanth, J.)