

06.05.2025
Item No.50
Ct. No.1
RP/SM

FMA/11/2025
IA NO: CAN/1/2025

**THE BOARD OF TRUSTEES FOR THE SYAMA PRASAD
MOOKERJEE PORT, KOLKATA
VS.
SMT. ALPANA BISWAS & ORS.**

Mr. Saptangshu Basu, Sr. Adv.
Mr. Soumik Chakraborty, Adv.

...for the Appellant.

Mr. Tulsidas Ray, Adv.
Mr. Tapan Ray, Adv.
Mr. Tirthankar Roy, Adv.

...for the Respondents.

1. This intra-court appeal filed by the Board of Trustees for the Syama Prasad Mookerjee Port, Kolkata is directed against the judgment dated 26.09.2024 passed in WPA 10984 of 2011. The said writ petition was filed by the respondent No.1 herein to direct the appellant Port Trust to release the family pension as she claimed to be the widow of a former employee of the Port Trust, namely, Haripada Biswas, who passed away on 29.03.2007, claiming that she is the second and lawfully wedded surviving wife after demise of the first wife of the deceased employee. The learned Writ Court after taking into consideration the documents placed by the writ petitioner took note of certain decisions of the Hon'ble Supreme Court and also certain facts which was stated to have been admitted by the appellant/respondent and allowed the writ petition directing payment of family pension. Aggrieved by the said order the present appeal has been preferred.

2. We have heard the learned advocates appearing for the parties.
3. The first and foremost submission of the learned senior advocate of the appellant is that the Writ Court has no jurisdiction to declare or validate a marriage as claimed by the writ petitioner who state that she is the second wife of the deceased Haripada Biswas, who was admittedly an employee of Port Trust and this issue requires evidence to be adduced and the appropriate forum would be civil court before which the writ petitioner should have sought for a decree of declaration declaring her marriage with Haripada Biswas is a valid marriage and she is the sole surviving wife of the said Haripada Biswas. Further, it is submitted that the decisions, which were relied on by the learned Writ Court, can have no application to the facts and circumstances of the case as in those cases the Court presumed that there was valid marriage as the parties therein were living together for a long period of time and those decisions could not have been relied upon by the learned Single Bench to allow the writ petition. Furthermore, it is submitted that if the order and direction issued by the learned Single Bench is allowed to stand it will set a wrong precedence and there may arise several claims in this regard which will put the Port Trust Authority to a great difficulty.
4. We have heard the learned advocate appearing for the respondent/writ petitioner on the above submission.

5. As a general legal proposition we agree with the learned senior advocate appearing for the appellant that a writ Court cannot declare a marriage to be a valid marriage in a proceeding under Article 226 of the Constitution of India since admittedly evidence is required to establish a valid marriage. However, in the facts and circumstances of the case on hand which, in our opinion, is very peculiar and very rare to arise, we are of the view that the order and direction issued by the learned Single Bench would not call for interference. We support our conclusion for the following reasons.
6. Certain documents were placed by the writ petitioner before the learned writ Court as well as before this Court. Amongst the documents, which were placed by the respondent/writ petitioner is a nomination form in the statutory format issued by the Contributory Provident Fund Commissioner for the Port of Kolkata dated 22.06.1979 is of outmost importance. In the said nomination form it has been stated that Haripada Biswas, who was a carpenter with account No. E/a5506 declares that in the event of his death the amount standing to his credit in the Contributory Provident Fund Commissioner for the Port of Kolkata shall be distributed among the dependents mentioned in the form with their names and that he has declared that he clearly understands that this nomination is not an application to the Special Contribution admissible under rule 8A of the said office. In the said nomination form the name of the

respondent/writ petitioner has been mentioned and the relationship has been shown to be wife and the age of the respondent/writ petitioner has also been mentioned and the quantum to be disbursed has been mentioned "full". This document, being a statutory format, there is a presumption to its validity and it cannot be disputed. There are other signatures which also indicate its authenticity and this can be taken to be a valid document to establish that the respondent/writ petitioner is the wife of the said Haripada Biswas. The other document is the copy of the Pension Book (duplicate) which carries the joint photograph of the writ petitioner and Haripada Biswas. In the said certificate the date of retirement has been mentioned and the designation of the deceased has been mentioned as Carpenter (CME) and it has been signed by the Senior Accounts Officer, Cash & Pay, Kolkata Port Trust. This is also a document issued by the Port Authority containing the valid seal and signature and the same cannot be disputed. That apart the respondent/writ petitioner has also produced pension account which appears to be joint account in which the writ petitioner's name also features. These documents undoubtedly will go a long way to support the claim of the respondent/writ petitioner qua the employer of her late husband, namely, Haripada Biswas. Apart from that, the learned writ Court also rightly noted that there was no rival claim claiming family pension. That apart, the writ petitioner has also

been able to establish that out of the wedlock they had three children and after the demise the family pension was the only source of livelihood for the family.

7. As observed above, the peculiar facts and circumstances of the case persuade us not to interfere with the judgment of the learned Single Bench while accepting the submission of the learned Senior Advocate on the general legal proposition which, in our view, cannot be applied to the facts and circumstances of the case. For the above reasons the appeal and the connected application are dismissed.
8. In the light of the above, the other findings which have been recorded by the learned Single Bench referring to various decisions are not required to be taken into consideration as we have dismissed the appeal and the connected application on the factual aspects noted above.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]