

24.01.2025
(D/L-23)
Ct. No.4
(Naba)

W.P.C.T. 346 of 2024

**Shipra Maitra
Vs.
Union of India & Ors.**

Mr. Suresh Chandra Manna
...for the Petitioner

1. The petitioner claims to be the first wife of the deceased, Biplab Kumar Maitra, who was earlier working under the Post and Telegraph Department as a wireman under the Calcutta Telephones. According to the petitioner, her husband died on 17th December, 1983. She is claiming the post-retirement benefits admissible to the said Biplab Kumar Maitra. It is the petitioner's case that she had filed a Title Suit seeking the relief of declaration that she was the first wife of the deceased employee and a direction for the pensionary benefits of the deceased being paid to her. The suit bearing Title Suit No. 618 of 1986 filed by the petitioner was dismissed on contest but without any cost. The plaintiff was held not entitled to a decree as prayed for. The petitioner thereafter went in appeal. The Title Appeal No. 145 of 1990 was finally heard and a judgment passed thereon allowing the appeal in

part against the respondents with costs *ex parte*. The judgment of the Trial Court was set aside and the suit was decreed against the respondent no.2. The petitioner / appellant / plaintiff was held entitled to get benefit of family pension and opportunity to serve on compassionate ground. She was held to be the legally married wife of deceased, Biplab Kumar Maitra. This judgment was carried in Second Appeal by the Union of India. S.A. No. 523 of 1995 filed by the Union of India was allowed.

2. This Court while dismissing the second appeal has observed as follows:

“The first appellate Court in course of discussion in the judgement had made some contrary and inconsistent observation. It is stated as below:

"I am not going into the dispute if Gopa and Deep, the son of Biplab as alleged are the legal heirs to the Estate of Biplab. I am also not going into the dispute if Gopa and Deep has acquired the right in view of the succession certificate in dispute. But in view of the available materials and as Sipra has come before Court for redress and as her marriage with Biplab has been established. I have no hesitation to hold that she is entitled to the family pension benefit as the service benefit on

compassionate ground from the respondent No.2."

Once it was held that Gopa as the widow of Biplab Moitra and out of their lawful wedlock, a son was born. Then they shall represent not only the estate of the deceased but also all other service benefit accrued to him. Thus, findings of the first appellate Court that in so far as the property of the deceased is concerned, it will devolve upon Gopa and her son but in respect of service benefit the plaintiff has acquired a right seems to be incongruous and inharmonious. If Gopa is accepted as the widow to whom Biplab Moitra had married for the first time, all the service benefit would go to her. In this case, apparently, the mother-in-law of Gopa has affirmed an affidavit suggesting the marriage with Biplab on 9.3.1981. Thus, even assuming the plaintiff's marriage was held on 31st January, 1983, this marriage being for the second time held undoubtedly it is Invalid. Therefore, the plaintiff cannot claim any right muchless as regard service benefit though the deceased Biplab.

Thus, on a careful cogitation of the facts and circumstances of the case and on perusal of the evidence on record, I find that the findings of the first appellate Court are not valid and in the result, the appeal is allowed and accordingly the plaintiff's suit is dismissed but however, without costs."

3. We find that there is a clear and explicit finding by this Court in Second Appeal that the present petitioner who was the plaintiff in the suit therein cannot claim any right much less as regards service benefits through the deceased, Biplab Kumar Maitra. In the face of such findings, the petitioner has sought a review of the second appeal judgment. The Review No. 2895 of 1998 was dismissed. The Court while dismissing the review has directed vide its order dated 19.01.2001 as follows:

“But, however if any application is filed by the petitioner before the authority for giving her employment on sympathetic consideration, such application shall be considered within thirty days from the date of filing such application in accordance with law.”

4. The petitioner thereafter has filed an original application before the Central Administrative Tribunal, Kolkata Bench (hereinafter referred to as CAT). The prayer made in O.A. 1335 of 2016 was as follows:

“(a) To issue direction upon the respondent to give settlement dues along with other benefits may be given forthwith.

(b) To issue further direction upon the respondent to give settlement dues along with other pension and/or pensionary benefits.

(c) To issue further direction upon the respondent to give pension and pensionary benefit at the rate of 12% interest forthwith.

d) Any other order or orders as the Ld. Tribunal deem fit and proper.

(e) To produce connected departmental record at the time of hearing of the application.”

5. The prayer therefore in the Original Application was with respect to the petitioner's claim to the pensionary benefits on account of the deceased (Biplab Kumar Maitra). As extracted above there is already a finding in a civil suit by this High Court in S.A. No. 523 of 1995 (*supra*) that the petitioner cannot claim any right much less as regards service benefit through the deceased, Biplab Kumar Maitra.
6. The C.A.T., however, acceding to the prayer of the petitioner has disposed of the Original Application in the following terms:

“5. At hearing, ld. Counsel for the applicant would submit that he would be fairly satisfied if a direction is issued to the competent authority to consider her representation in a time bound manner.

6. Since an innocuous prayer has been made and seeking identical relief, the applicant had already preferred a representation to the appropriate Respondent authority which is yet to be

disposed of and as no fruitful purpose would be served by calling for a reply in this matter, unless the representation is decided by the competent authority, I would dispose of the OA with a direction upon the competent authority to consider the representation, decide the claim of the applicant and issue a reasoned and speaking order in accordance with law within a period of 3 months from the date of receipt of copy of this order.

In the event the applicant is found entitled to the relief as prayed for, an appropriate order in accordance with law be issued within the said period.

7. It is made clear that I have not entered into the merit of this matter and, therefore, all points are kept open for consideration.

8. The OA accordingly stands disposed of. MA consequently stands disposed of. No costs.”

7. It is this order which is the subject matter of the present proceedings.
8. The learned counsel for the petitioner has tried to convince the Court that the petitioner is the first wife of the deceased and that the private respondent does not have the status of a wife.
9. Upon going through the order passed by the C.A.T., we find that since a limited prayer was made by the learned counsel for the petitioner, the

order directing consideration of the petitioner's pending representation was passed.

10. Whether such order should have been passed by the C.A.T., in view of the findings in this Second Appeal, extracted above is an issue, we do not propose to go into for the present.
11. Since the order has been passed on the asking of the petitioner, we find no reason to interfere with the order.
12. The Writ Petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)