

21.01.2025
Court No.23
DL/Item No.-1
[Milan, A.R. (Ct.)]

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 29026 of 2023

Syeda Meherunnesa Begam
versus
Union of India & Ors.

Mr. Rajnil Mukherjee,
Mr. M.F. Rahaman,
Ms. Satabdi Dey,
Mr. Subham Das
....for the petitioner

Ms. Tanushree Dasgupta
....for the ECL

Mr. Kalyan Chakraborty,
Mr. Partha Chakraborty
....for UOI

Mr. Indranuj Dutta,
Ms. Benazir Sk.
....for the Respondent No.6

The petitioner claims to be the second wife of Syed Kiamat Hossain, who was an employee of Eastern Coalfields Limited (in short, “ECL”). The petitioner prays for inclusion of her minor daughter’s name born out of the wedlock with the deceased employee in the service book of the deceased employee. The daughter out of the first marriage of the deceased employee is respondent no.6 and her name is recorded in the service book. The first wife had died before the second marriage as per the marriage registration certificate produced by the petitioner.

After hearing the parties and considering the materials on record including the report in the form of an affidavit filed by ECL, it appears that the deceased employee after the death of his first wife had married the petitioner. Neither the name of the petitioner nor the name of the minor daughter born out of the wedlock between the deceased employee and the second wife are recorded in the service book of the deceased employee.

It is correct that the entries in the service book in connection with the matters relating to service of an employee have to be given weightage. However, simply because, the name is not recorded in the service book, does not also eliminate a genuine claimant from receiving the benefits. The law has been discussed in details in the judgment report in **2000 (2) SCC 431 (Rameshwari Devi vs. State of Bihar & Ors.)**. In the said judgment, it has been categorically held that if there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required it was incumbent upon the employer to hold an inquiry as to the rightful claimant.

In the instant case, the employee professed the faith of Mohammedan where the law inheritance is not the same in case of an hindu under the Hindu Succession Act, 1956 which fell for consideration in Rameshwari Devi (supra) but the fact remains that the employer has to conduct an inquiry as relegating the

matter to Civil Court, will be a long drawn process and the issuance of terminal benefits as also the pensionary benefits cannot wait for so long as the whole object of granting the same to support family financially on having lost its sole bread earner will get frustrated. A Division Bench Judgment of Gauhati High Court while dealing with an employee professing the faith of Mohammedan. The Division Bench held that more than one wife of a Mohammedan employee, are each entitled to a share in the pension. In this context, we may refer to a judgment reported in **2012 (5) Gauhati Law Reports 15 [Sirazun Nessa vs. State of Assam & Ors.]**.

Taking into consideration all these aspects, I relegate the matter to ECL. The Senior Manager (personnel), ECL being the respondent no.3 shall conduct an inquiry regarding the claims by the petitioner in the light of the documents that has been produced or that may be submitted to establish the petitioner's claim and the claim of her minor daughter to be entitled to share of the terminal benefit and the pensionary benefits of the deceased employee. The respondent no.3 in course of enquiry can take necessary assistance of police authorities, the death and birth register, the registrar of Muslim marriage, etc. to ascertain the correctness of the documents and veracity of the claim and counter claim, if any. The respondent

no.3 shall give a personal hearing to the petitioner as also the respondent no.6 being the daughter out of the first wife of the deceased employee and permit them to provide any further documents in support of their respective claims and decide the issue as to whether the petitioner is entitled to the pensionary benefits and the minor daughter of the petitioner entitled to share of the terminal benefits and dispose of the same by passing a reasoned order. The same should be communicated to the petitioner and the respondent no.6.

It is made clear that I have not gone into the merit of the matter and the respondent no.3 shall be free to decide independently to give his findings on the issues that may be raised before him without being influenced in any manner by any observation made in this matter.

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.)