
(2015) 06 CAL CK 0038

In the Calcutta High Court

Case No : Writ Petition No. 17176 (W) of 2007

Mira Rani Mahato

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-06-2015

Acts Referred:

Citation : (2015) 06 CAL CK 0038

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : Dinendra Nath Chatterjee and Madhusudan Mondal, for the Appellant

Final Decision : Dismissed

Judgement

Arindam Sinha, J.—The petitioner claims to be the wife of late Nal Kishore Mahato, who died on March 7, 2006. It is the case of the petitioner that her husband died-in-harness and he is survived by herself and two daughters. In this writ petition she has prayed for issuance of a writ of mandamus commanding the concerned respondent to release the pension, provident fund amount and other benefits accrued on the death of her husband to her and to offer a job to the younger daughter on compassionate ground.

2. Mr. Dinendra Nath Chatterjee, learned advocate appearing on behalf of the petitioner, relied on the judgment in the case of Vidyadhari and Others Vs. Sukhrana Bai and Others, AIR 2008 SC 1420 : (2008) 105 CLT 833 : (2008) 1 SCALE 582 : (2008) 2 SCC 238 : (2008) 1 SCC(L&S) 451 : (2008) 1 UJ 224 : (2008) AIRSCW 910 : (2008) 1 Supreme 460 , wherein the Supreme Court in the facts and circumstances of that case had held as follows:--

"12. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the succession certificate. The High Court almost presumed that succession certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted

situation that this succession certificate was for the purposes of collecting the provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the succession certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed."

3. Mr. Chatterjee, also, relied on a notification dated January 13, 1997 issued by the Government of West Bengal, Finance Department, Audit Branch: Pension Cell, by which an amendment was made to the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. By the amendment in the said Rules, the note below of Rule 104 was substituted to provide for situations where a deceased Government servant or pensioner is survived by more than one widow.

4. Mr. Saikat Banerjee, learned advocate appearing on behalf of the added private respondent, submitted that the issues relating to the prayers made by the petitioner stood decided in a subsequent writ petition being W.P. No. 13255(W) of 2012, which was at the instance of the said younger daughter and the present writ petitioner. By order dated August 10, 2012, the said writ petition was dismissed for the reasons recorded therein:--

"Counsel for the private respondent No. 5 submits that she is the first wife of the deceased teacher while the petitioner No. 2 is the second wife. In this application the petitioners besides seeking consideration of the petitioner No. 1's application for compassionate appointment are also seeking to restrain all pensionary benefits which has been paid and is continuing to be paid till date to the private respondent. As the private respondent No. 5 is issueless and the petitioner No. 1 is a child of the deceased-teacher, she has no grievance as regards consideration of the application for compassionate appointment but the restraint order in respect of payment of pensionary benefits is objected by her as in the service records the name of the private respondent No. 5 has been shown as a legal heir and representative of the deceased teacher and in the Pension Payment Order also she has been named as his legal heir and representative. Therefore, in respect of the pensionary benefits no order need be passed.

Having considered the submissions of the parties, the teacher died on 7.3.2006 when the petitioner No. 1 was a minor. The unamended Rule-14 postulates that at the time of death of the teacher his dependent must be not only 18 years of age but also educationally qualified. The petitioner No. 1 was a minor. Therefore, she did not satisfy the age criteria postulated in the unamended Rule-14. An application for compassionate appointment for the first time was made in 2011, that is beyond the time specified in the relevant Rule. Therefore, the application of the petitioner No. 1 for compassionate appointment does not warrant any order to be passed. The restraint order sought in respect of payment of pensionary benefits to the private respondent No. 5 can also not be allowed as the private respondent No. 5 has been mentioned in the Pension Payment Order

as the legal heirs and representative of the deceased teacher on the basis of the service records of the petitioner."

5. Mr. Jayanta Mitra, learned advocate appearing on behalf of the District Primary School Council, the employer of the deceased government servant, submits that his instructions are that the client of Mr. Chatterjee is the recorded wife of the deceased government servant.

6. This Court finds substance in the submissions of Mr. Banerjee. The issues relating to the prayers made by the writ petitioner stood decided by the said order dated August 10, 2012. There does not appear to be any appeal preferred therefrom by the present writ petitioner, who was the second writ petitioner in the said writ petition already decided. Those findings on the issues raised in this prior writ petition but taken up for hearing subsequently, stands already decided.

7. In the circumstances it is not necessary to advert to such issues or as to whether or not the decision of the Supreme Court applies to the facts and circumstances alleged by the petitioner. So far as the amended notification is concerned, the same ought to have been brought to the notice of the court at the time of hearing and making of the said order dated August 10, 2012. This Court is not inclined to reopen the issues already decided.

8. For the reasons aforesaid, the writ petition is dismissed.

9. There will be, however, no order as to costs.