

(2010) 01 CAL CK 0021
In the Calcutta High Court
Case No : Writ Petition No. 4661 (W) of 2009

Smt. Sandhya Biswas

APPELLANT

Vs

Kolkata Metropolitan Water and Sanitation Authority and
others

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 125 FLR 25

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Sk. Mujibar Rahaman, for the Appellant; Dehabrata Mandal, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this Article 226 petition dated March 3, 2009 is questioning the undated decision of the Officer-on-Special Duty, K.M.W. & S.A., a copy whereof was forwarded to her by the Personnel Officer, K.M.W. & S.A. by his memo dated December 11, 2008, Annexure P3 at p.80.

2. The petitioner and the third respondent, Snehalata Biswas, both claim that they were legally married to one Sunil Kumar Biswas. Sunil was working in Kolkata Metropolitan Water and Sanitation Authority (in short K.M.W. & S.A.) as Pero Printing Operator, Grade I (p.65). Having reached the age of superannuation he retired from service on June 30, 2003 (p.54). His pension was sanctioned from July 1, 2003 (p.65). He died on November 23, 2003 (p. 50). After his death both the petitioner and Snehalata claimed right to family pension.

3. The petitioner claimed that Sunil nominated her to receive his service benefits. She applied for succession certificate before the District Delegate, Tehatta in Nadia. Her petition was registered as Succession Certificate Case No. 38 of 2005. By an order dated July 24, 2006 the District Delegate issued the succession

certificate. Snehalata's case is that having reached an out of Court settlement she did not contest the succession certificate case. Alleging inaction on the part of K.M.W. & S.A. the petitioner moved W.P. No. 1486 of 2008 under Article 226.

4. The petition was disposed of by an order dated September 9, 2008 (p.77) directing the authority to give an appropriate decision. It was recorded in the order dated September 9, 2008 that according to the petitioner her marriage "took shape on consent of the first wife of the said Sunil Kumar Biswas". After hearing the parties the authority has held that Snehalata was Sunil's legally married wife. He has ordered that since substantial amounts were paid to the petitioner previously it will be appropriate to grant Snehalata family pension with effect from October 1, 2008. This has made the petitioner aggrieved.

5. According to Mr. Rahaman, Counsel for the petitioner, in view of the nomination submitted by Sunil and the succession certificate, there was no scope for the authority to grant Snehalata monthly family pension treating her as Sunil's legally married wife. He has relied on Vidyadhari and Others Vs. Sukhrana Bai and Others, . According to Mr. Mandal, Counsel for Snehalata, the authority was; justified in granting Snehalata monthly family pension, especially when the; petitioner was given all other benefits, though she was Sunil's illegally married second wife.

6. The question, therefore, is whether the authority was justified in holding and ordering that as Sunil's only legally married wife Snehalata should be given the monthly family pension.

7. The question whether Snehalata was Sunil's first legally married wife has not been decided by any Court, and in my opinion, the question can be adjudicated and determined only by a competent Civil Court, not by the high Court under Article 226 or the authority giving the impugned decision. The question was not examined even by the District Delegate who issued the succession certificate. I am unable to accept the argument that in view of the succession certificate and the nomination, the authority was under an unqualified obligation to grant the petitioner monthly family pension treating her as Sunil's only legally married wife.

8. It is evident that cognizance of the dispute has already been taken by this Court and the authority. In the previous case this Court did not decide whether the petitioner was Sunil's legally married wife. This Court just noted that the petitioner's case was that she was married to Sunil with Snehalata's consent. Now Counsel for the petitioner submits that that was an incorrect recording of the fact. The authority giving the decision has held that Snehalata was Sunil's only legally married wife. He has granted Snehalata the benefit of monthly family pension on this basis.

9. The authority did not have jurisdiction to decide between the petitioner and Snehalata who was Sunil's legally married wife. This Court, while directing him to consider the petitioner's representation and give a decision, did not and could

not confer on him any power to decide the question. As I have already said the question could be and can be decided only by an appropriate Civil Court, Hence until the question is decided, I am unable to see how the benefit of monthly family pension can be given to anyone.

10. On the facts, I am unable to accept the case of the petitioner that in view of the succession certificate and the nomination, even in the absence of determination whether she was Sunil's legally married wife, the authority is bound to give her the benefit of monthly family pension. In my opinion, the petitioner can claim the benefit only if the Civil Court holds that she was Sunil's legally married wife.

11. For these reasons, I partly allow the petition, set aside the impugned decision and order as follows. The authority shall give the benefit of monthly family pension to the person who gets the requisite decree from the Civil Court. Until an occasion arises for payment, the authority shall keep the monthly family pension in a deposit account at a nationalised bank. No costs. Certified Xerox according to law.