

(2009) 05 CAL CK 0007

Calcutta High Court

Case No: Writ Petition No. 26854 (W) of 2006

Jaleswari Kolkamar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: May 12, 2009**Acts Referred:**

- Constitution of India, 1950 - Article 21, 226

Hon'ble Judges: Indira Banerjee, J**Bench:** Single Bench**Advocate:** Anami Sikdar and Ms. Ahana Sikdar, for the Appellant; Bhudeb Bhattacharya and Ms. Arati Ghosh, for the Respondent

Judgement

Indira Banerjee, J.

This writ petition is directed against the action of the respondents in not releasing family pension to the petitioner who claims to be the widow of one Ramua Kolkamar, Group "D" employee (peon) of Khanpur High School, hereinafter referred to as the school, who died in harness on 21st February, 2004, about seven days before the date of his retirement.

2. The petitioner unfortunately is not the first wife of the said Ramua Kolkamar. According to the petitioner, the said Ramua Kolkamar married the petitioner after the death of his wife.

3. There can be no doubt that the writ Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, cannot determine the factual issues of whether the said Ramua Kolkamar actually married the petitioner and if so, whether the marriage took place before or after the death of the first wife.

4. This Court might, however, in exercise of its power of judicial review of administrative action, examine whether the respondents have acted legally in denying the petitioner family pension, when admittedly the said Ramua Kolkamar had, during his lifetime, nominated the petitioner for family pension, declaring that

the petitioner as his wife. The decision making process is amenable to the security of Court.

5. Living together as husband and wife and declaration of a woman as wife in official records certainly gives rise to presumption of marriage. Late Ramua Kolkamar also left a son, who was born through the petitioner.

6. In denying family pension to the petitioner, the authorities concerned have proceeded on the basis of a totally vague letter written by the children of late Ramua Kolkamar, born through his first wife.

7. Ramua Kolkamar had seven children through his first wife, four sons and three daughters. Some of the children had grown up, by the time he remarried.

8. In the letter, written by the children of the first wife, it is stated that the petitioner was brought into the family by Ramua Kolkamar after the death of his first wife. It is further alleged that Ramua Kolkamar's father did not accept the marriage. It is nobody's case that Ramua Kolkamar remarried while his first wife was still alive.

9. The validity of the marriage of an adult is not dependent on acceptance of the marriage by the parents, or anyone else. Having regard to the socio-economic background of a Class IV employee in India, it is not unnatural that a second marriage late in life should be opposed by the family and in particular by the grown up children.

10. In the letter, relied on by the respondent authorities to deny the petitioner pension, there is no specific or categorical assertion that late Ramua Kolkamar had not married the petitioner.

11. The relationship between the petitioner and her step children is apparently not cordial. There is also pecuniary interest involved, for elimination of the petitioner would mean a larger share for the remaining heirs in the property left by the late Ramua Kolkamar.

12. Normally this Court does not adjudicate disputes of this nature in exercise of its writ jurisdiction. However, in the facts of this case, the action of the respondents is totally whimsical. The decision making process is vitiated by arbitrariness and non-application of mind.

13. This Court has a duty to enforce compliance of the right to life enshrined under Article 21 of the Constitution, which has been judicially interpreted to include the right to livelihood and/or the right to a decent standard of living. Family pension is the only source of livelihood of the petitioner, widow left by a Class IV employee.

14. This Court also cannot but take judicial notice of the difficulty of proving a second marriage which is usually bereft of much ceremony. The said Ramua Kolkamar had about seven children at the material time. Even otherwise the marriage of a class IV employee and that too, a second marriage is not expected to

be performed with much pomp.

15. The respondent authorities have acted illegally in ignoring the presumption in favour of a marriage between the petitioner and the said Ramua Kolkamar by reason of their having lived together as husband and wife and having proclaimed and represented themselves as such to the world at large. Admittedly, Ramua Kolkamar has left a son through the petitioner and has further declared the petitioner as his wife in official records.

16. Ramua Kolkamar being a widower, there was no bar in law to his contracting a second marriage. The fact that Ramua Kolkamar lived with the petitioner declaring her as his wife and had a child through her gives rise to inference of marriage between the petitioner and Ramua Kolkamar.

17. A widow cannot be denied family pension on flimsy grounds. Family pension cannot be refused unless there are cogent reasons for the authorities concerned to be satisfied that there was no marriage between the deceased employee and the woman claiming family pension alleging herself to be the widow and that the declaration made by the deceased employee of the woman being his wife was false. Family pension would have to be released to the woman named by the deceased employee as wife.

18. To relegate the petitioner to a suit, to establish her claim to widow pension, as submitted on behalf of the respondents would, in my view, be a travesty of justice. The authorities might relegate an applicant for widow pension to a suit to establish her claim only when it is essential to do so having regard to cogent materials and/or evidence on record. For example the authorities might refuse to release pension in favour of a woman named as wife if it is found that the employee concerned had actually been married to someone else. Similarly, when there are conflicting claims from different women claiming themselves to be the widow, the dispute may have to be resolved by a suit.

19. There are no cogent grounds for denial of widow pension to the petitioner in the facts of this case. Undoubtedly, the children of late Ramua Kolkamar through his first wife are also heirs of late Ramua Kolkamar and entitled to their share in the property of late Ramua Kolkamar in accordance with law including arrear salary payable on account of Ramua Kolkamar and other terminal/death benefits except those to which only widows and minors are entitled. However, family pension, if at all payable, can only be paid to the widow and minor children.

20. The respondent authorities are directed to take a decision with regard to release of widow pension and including arrears of widow pension to the petitioner at the earliest and in any case, positively within 60 days from the date of communication of this order, in the light of the observations made above. Other dues of Ramua Kolkamar not payable exclusively to widows and minors may equally be divided between all the heirs of late Ramua Kolkamar.

The writ application is disposed of.