

Constitutional Writ  
*Present: The Hon'ble Justice Jayanta Kumar Biswas.*  
Judgment on: June 11, 2010.  
W.P. No.11711 (W) of 2010  
Shambhu Jeswara  
v.  
Board of Trustees, for the Port of Kolkata & Ors.

**POINTS**

Family pension – Kolkata Port Trust did not pay her on the ground that she could not prove that she was the wife of the deceased employee – Lady died during pendency of the matter before the port trust – Her only son, made a representation requesting the port trust to release the family pension – Whether the petitioner's mother was the wife of the deceased employee, was to be decided by the port trust in terms of the order of this court made in the previous Art.226 petition that was filed by the lady – Service law.

**FACTS**

The petitioner's mother claimed family pension. Kolkata Port Trust did not pay her on the ground that she could not prove that she was the wife of the deceased employee. During pendency of the matter before the port trust the lady died. The petitioner, her only son, made a representation requesting the port trust to release the family pension. Alleging that the port trust has not done anything, he has brought this art.226 petition.

**HELD**

Unless her identity was established, there was no scope for paying her family pension. The petitioner is entitled to benefit, if at all, only if it is found by the port trust that his mother was the wife of the deceased employee. He does not have any independent right to claim family pension.

Para 3

When the port trust was examining the question whether the petitioner's mother was the wife of the deceased employee, by making a fresh representation and then alleging inaction on the part of the port trust, the petitioner could not create a cause of action for moving The High Court under art.226 once again.

Mr Upen Roy, advocate, for the petitioner.

Mr. Kishore Dutta & Mrs. Sumita Saha,  
advocates, for the KPT.

**THE COURT:** 1)The petitioner's mother claimed family pension. Kolkata Port Trust did not pay her on the ground that she could not prove that she was the wife of the deceased employee.

2)She moved W.P. No.7946 (W) of 2005 under art.226. By an order dated September 5, 2008 it was disposed of directing the port trust to give appropriate decision. During pendency of the matter before the port trust the lady died. The petitioner, her only son, made a representation requesting the port trust to release the family pension. Alleging that the port trust has not done anything, he has brought this art.226 petition dated May 19, 2010.

3)The question whether the petitioner's mother was the wife of the deceased employee was to be decided by the port trust in terms of the order of this court made in the previous art.226 petition that was filed by the lady. Unless her identity was established, there was no scope for paying her family pension. The petitioner is entitled to benefit, if at all, only if it is found by the port trust that his mother was the wife of the deceased employee. He does not have any independent right to claim family pension.

4)When the port trust was examining the question whether the petitioner's mother was the wife of the deceased employee, by making a fresh representation and then alleging inaction on the part of the port trust, in my opinion, the petitioner could not create a cause of action for moving the high court under art.226 once again. He is not entitled to any relief.

5)For these reasons, the petition is dismissed. No costs. Certified xerox.  
sh ( Jayanta Kumar Biswas, J )