04.09.2020
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WPST No.68 of 2020
CAN 1 of 2020 (Old CAN 5449 of 2020)

(Via Video Conference)

Sufia Begum & anr.
Vs.
The State of West Bengal & Ors.

Mr. Debasish Saha,
Ms. Dipika Banu,
…for the Petitioner.
Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar,
…for the State.

The writ petition is preferred, inter alia, challenging the order of the State Administrative Tribunal dated 20th December, 2019 (hereinafter referred to the "said Tribunal") , whereby the prayer for extending the benefit of widow pension in favour of writ petitioner no. 1 was not allowed since the writ petitioner no.2 being the son of writ petitioner no.1 was in receipt of temporary pension being an unemployed son of the deceased employee.

Being aggrieved by the said order of the learned tribunal rejecting the prayer for extending the benefit of family pension the present writ application is filed.

The father of the writ petitioner no.2 being the husband of the writ petitioner no. 1, namely, Sirajul Haque was a constable under Superintendent of Police, Murshidabad who died on 3rd November, 2015. It is the case of the writ petitioners that after the death of the employee though there was a provision of either to opt for family or temporary pension in favour of the writ petitioner no.2 under compulsion they opted for family pension in favour of the writ petitioner no.2. Though there was payment of temporary pension in favour of the writ petitioner no.2 but the same benefit came to an end upon attainment of age of 25 years by the writ petitioner no.2. The petitioner no.1 being the widow of the deceased employee now prays for payment of widow pension.

Mr. Mukherjee, learned Additional Government Pleader appearing on behalf of the contesting respondents has submitted that since there was a provision for option, to opt for family pension in favour of the son, upon the option being exercised by the members of the deceased employee to get the benefit of family pension there is no further scope to extend the benefit of family pension upon attainment of age of 25 years by the son of the deceased employee, in favour of the widow.

It is brought to our notice that there was a representation dated 9th March, 2016 by the petitioner no.1

addressed to the Superintendent of Police of Murshidabad praying for sanction of family pension due to stoppage of temporary pension in favour of the son. The said representation has not yet been responded to by the concerned respondent authorities.

During course of submissions, Mr. Mukherjee has brought to our notice the relevant provisions of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971, specially Rule 105 which provides for payment of pension to one of the members of the deceased family. The said Rule 105 reads as follows:

> **"105.** Pension payable to one member of the family.- Subject to the provisions contained in the note under Rule 104 the pension awarded under the Scheme shall not be payable to more than one member of the Government servant's family at the same time, It shall fist be admissible to the widow(s)/widower and than to the minor children and thereafter to mother and lastly to father.
>
> In the event – of re-marriage or death of the widow/widower the pension shall be granted to the minor children through their natural guardian. In disputed case however payment shall be made through a legal guardian."
>
> Note – Payment of family pension will not be bar if at the time of entitlement, the widow or widower, or unmarried daughter or son happens to be employed in the State or Central Government or otherwise."

Considering the provisions as couched in the said Rules as quoted above, it appears that there is a requirement for continuation of family pension in favour of an eligible member of a deceased employee. From the factual matrix it appears that admittedly the son who was in receipt of family pension has attained the age of 25 years on 1st August, 2020 resulting stoppage of payment of such family pension which would lead to further financial crisis in the family of the deceased employee.

Mr. Mukherjee has drawn out attention to Rule 104 which prescribed period during which the pension is admissible.

Mr. Mukherjee has submitted that under Rule 104(b) the age limit for admissibility of family pension in respect of minor children has been raised to 25 years with effect from 18th June, 1991. Accordingly, Mr. Mukherjee submits that since the widow has consented to the grant of family pension to her son who was admittedly minor at the time of death of his father, the widow may not be entitled to under Rule 104 and read with Rule 105 to the family pension.

The issue that arises for consideration is that what would be the fate of a widow who may have foregone the pension in favour of the son at the relevant time by exercising option and the economical need persists after the son attains 25 years. The Rule 104 does not speak of any option. It gives right to the legal heirs of a deceased. The said rights are separate but cannot be claimed by all the heirs together. The family pension has to go in favour of one of the legal heirs as mentioned in Rule 104. The stoppage of benefit upon the son attaining the majority may not ameliorate economic need of the family of the deceased employee. The mother is a Home Guard and as such is not entitled to pension. The son attained the age of 25 years and hence is not entitled for pension. In the event the family pension is stopped the meager income of the wife of the deceased will not be sufficient for the family to lead a decedent life. Right to life means to live with dignity. If the financial need is established, in our view the Rule should not stand in the way in extending the family pension to the widow of the deceased employee. To appreciate the argument made by Mr. Mukherjee that Rule 104 stands in the way in extending the benefit we considered the representations and materials on record it appears that the widow since beginning was praying for family pension in her name and may be for compelling reasons had agreed to exercise option in favour of the son.

We have not come across any such provision which could prevent the widow to claim family pension after the son attaining the age of 25 years if it is otherwise admissible. In the instant case, the widow not being a permanent employee and the economic condition justify certain financial benefits to the family in question. We feel the issue needs to be revisited by the authority concerned. The purpose of the family pension is to give benefit, firstly to the widow till his lifetime. Just because the son has attained the age of 25 years and thereby not entitled to the family pension, the widow, in our view, may not be deprived the benefit of family pension. The family is considered to be a one unit for the purpose of family pension and so long the widow survives she has a right to claim the benefit.

On such consideration, we direct the Principal Secretary, Government of West Bengal, Finance Department to consider the representation dated 16th August, 2019 sympathetically taking a holistic view of the matter within a period of 12 weeks from the date of receipt of the pension papers from the Superintendent of Police, Murshidabad. The Principal Secretary shall take into consideration the observation made by us in this order in arriving at a just and fair conclusion. The Principal Secretary is directed to communicate his reasoned order within a period of one weeks from the date of passing of this order.

The Superintendent of Police, Murshidabad is directed to forward all the necessary papers relating to the pension case of the writ petitioners to the Principal Secretary, Finance

Department within two weeks from the date of communication of this order upon intimation to the writ petitioners.

Accordingly, the impugned order is set aside.

The writ petition and the connected application stand allowed

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

Urgent certified website copies of this order, if applied for, be delivered to the parties, upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Saugata Bhattacharyya , J)