

Item- 06-07-2021
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WP.CT 23 of 2020

Union of India & Ors.
Versus
Rinku Chakraborty & Ors.

sg Ct. 16

(Through Video Conference)

Mr. Debapriya Gupta, Adv.
Mr. Sourav Mondal, Adv.
...for the petitioners

Mr. Ujjal Ray, Adv.
Mr. Arpa Chakraborty, Adv.
...for the respondents

This writ petition is directed against an order passed by the learned Administrative Tribunal on 19th September, 2019 in connection with an application filed by the private respondent for an order directing the present petitioners to grant family pension in favour of the private respondent under the modified circular. The applicant in the said proceeding has also challenged the order of the competent authority dated 12th June, 2018 by which her application for pension was denied on the ground that, at the time of filing of the matrimonial suit in the year 2013, the father of the original applicant was dead.

Mr. Debapriya Gupta, learned Counsel appearing on behalf of the writ petitioners has submitted that, having regard to the fact that the father of the original applicant was dead at the time of filing the matrimonial suit in the year 2013, the petitioner cannot be considered for pension in terms of clause-3 of the Office Memorandum dated 19th July, 2017, which reads as follows:

“3. It was clarified, vide this department Office Memorandum of even number, dated 11th September, 2013, that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes.”

Per contra, the learned Counsel appearing on behalf of the private respondent has drawn our attention to clause-6 of the same Memorandum and submitted that having regard to the fact that when the same matrimonial suit being MAT Suit No. 31 of 2013 was filed, the appeal against the original proceeding was pending before the Division Bench and accordingly it should come under the aforesaid clause and qualifies the private respondent for consideration for pension. Clause-6 of the said Memorandum reads as follows:

“6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death – provided the claimant fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

It is not in dispute that the husband of the original applicant filed a matrimonial suit in the year 2001, being MAT 63 of 2001 for dissolution of marriage and the said suit was dismissed on 30 June, 2011 without giving any decree for divorce. The appeal was pending against the said decree. During the pendency of the appeal, the father of the original applicant died. It was during the pendency of the appeal, Anupam Banerjee and the present applicant decided to bury their differences by filing an application for mutual divorce and accordingly, MAT Suit 31 of 2013 was filed in which a decree was passed on 4th April, 2014 permitting them to be legally separated from that date. It may be true that on the basis of the decree passed on 4th April, 2014, the appeal before the Hon'ble High Court becomes infructuous but the fact remains that on the date of filing of MAT 31 of 2013, the decree of the Civil Judge in MAT Suit No. 63 of 2001 was under consideration before the Appellate Court and on the principle that the appeal is a continuation of the original proceeding, it cannot be said that no proceeding for divorce was pending at the relevant time to take away the benefit of clause-6 of the said Memorandum.

We are of the view that clause-6 of the aforesaid Memorandum is applicable to the aforesaid case for the reasons stated by us above as also the reasons furnished by the learned Tribunal in favour of the original applicant.

On such consideration, the writ petition fails.

However, we extend the time to comply with the order of

the learned Tribunal by two months from date.

With the above observations, WPCT 23 of 2020 is dismissed.

All parties shall act on the basis of the server copy of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)