

24.11.2021
Sl. No.19
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W.P.A. No. 13890 of 2021
Ranu Banerjee
Vs.
The State of West Bengal & Ors.

Mr. Tarapada Das,
Mr. Suvendu Sekhar Das
...for the Petitioner.

Mr. Pantu Deb Roy,
Mr. Pannalal Bandopadhyay
...for the State-Respondents.

Mr. Tapash Kumar Bhattacharya
...for the Respondent No.2.

Mr. Sourav Mondal
... for the Respondent No.3

The petitioner is a divorced daughter of an ex-employee of Katwa Municipality. The father of the petitioner died and the mother of the petitioner was enjoying family pension. The mother of the petitioner died on April 12, 2015 and the petitioner claimed family pension from the Katwa Municipality as a dependant-divorced daughter of the deceased employee, whose widow/family pensioner died in 2015.

Reliance has been placed on a Memorandum of the Finance Department (Pension Branch) Government of West Bengal vide Memo No.732-F dated November 12, 2008. In the said memorandum, guidelines for payment of family pension to unmarried, divorced and widowed daughters has been laid down. The relevant portion of the said guidelines reads as follows:

“The widowed/divorced/unmarried daughter shall apply to the Head of the office where her deceased father or mother served at the time of retirement. She shall submit as enclosure the following documents:

- a) A proof of her identity e.g. copy of Voter Identity Card, Ration Card etc.
- b) An income certificate from a Gazatted Officer of Central Government or a State Government Officer belonging to Group-A service to the effect that she does not have income of her own or has an income less than Rs.2600/- per month and that she is the widowed /divorced/unmarried daughter of the particular Government employee/pensioner, as the case may be. In this regard Finance Department Memo No. 621-F(pen) dated 18.07.2007 should also be taken into consideration.
- c) Copy of Death Certificate of her deceased father or mother.
- d) Copy of Pension Payment Order of her father or mother.
- e) Copy of Death Certificate of her deceased husband in case of widowed daughter.
- f) Copy of Divorce Certificate issued by the Court of law in case of divorced daughter.
- g) Recent passport size photograph. Specimen signature, Annexure ‘A’ (for drawal of pension

through Public Sector Banks) and descriptive Roll|(4 copies each).”

It is the contention of the petitioner that despite being eligible under the said memorandum, the Katwa Municipality has not accepted the claim of the petitioner for family pension upon death of her mother, who was enjoying the family pension payable in respect of the deceased employee of the Katwa Municipality.

Mr. Deb Roy, learned Additional Government Pleader submits before this Court, that Section 54 of the West Bengal Municipal Act, 1993 categorically provides that apart from the Executive Officers, Health Officers, Engineers and Finance Officers, none of the employees of a Municipality belong to the State Government cadre and as such, the memorandum relied on by the petitioner shall not be applicable.

According to Mr. Deb Roy, the petitioner being the divorced daughter is not entitled to family pension and the pensionary benefits of the municipal employees, who do not belong to the State Government cadre are guided by the West Bengal Municipal (Employees Death-Cum-Retirement Benefits) Rules, 2003 (hereinafter referred to as the said Rules).

Mr. Bhattacharya, learned advocate appearing on behalf of the Municipality submits that the father of the petitioner did not belong to the State Government cadre.

That the definition of the word 'family' for the purpose of family pension does not include 'divorced daughter' and the memorandum relied upon by the petitioner has not been made applicable in case of municipalities. That unless the State Government decides to include divorced daughters within the definition of 'family' in the said Rules, the petitioner's prayer cannot be allowed.

Further reliance is placed on Rule 17 of the said Rules, from which it appears that only unmarried daughters until she attains the age of 21 years or until she gets married, shall fall within the definition of 'family'. Even if the Court reads down the expression 'unmarried daughters' to include divorced daughter, yet the age limit prescribed of 21 years will come in the way and, as such, unmarried daughters cannot be read down to mean divorced daughters, in this case as the petitioner is aged about 51 years.

Rule 19 also clarifies that the family pension shall be admissible only to one dependant member of the deceased family at one point of time. The seriality in which such family pension shall be given has been provided in the said Rules. At first, the family pension shall be admissible to the widow, thereafter to the minor child and then to the mother of the deceased and lastly to the father. Upon the death of the father of the petitioner, the mother of the petitioner being the widow was granted family pension. Thereafter, as none of the

members of the family fell within the definition under Rule 2(1)(g), the same was discontinued. Thus, the prayer of the petitioner for grant of mandamus upon the Katwa Municipality to release the family pension in her favour as a divorced daughter of an erstwhile employee of the municipality cannot be allowed.

The Court is, however, conscious of a discrimination that is being made between the death-cum-retirement benefits given to the families of employees/pensioners of municipalities, vis a vis their counterparts who are in the employment of the state government. The crisis created in a family on the death of an employee, who was otherwise eligible for pension has been taken care of by introduction of the concept of family pension. With the change in society, the situation may so happen that a married daughter ultimately has to return to her parents' house due to matrimonial disputes, which may ultimately end up in a divorce. Such a destitute woman can become dependent on the parents just like a widowed or unmarried daughter.

Considering such situation, the Finance Department (Pension Branch) issued a memorandum relied upon by the petitioner dated November 12, 2008 and added divorced daughters within the definition of 'dependant/members' eligible for family pension. The same situation may arise in case of municipal employees. Thus, a re-look and a re-think over the

matter is necessary in view of the special socio-economic circumstances.

The petitioner is directed to make an elaborate representation before the Secretary, Department of Municipal Affairs, Government of West Bengal. If such application is made, the concerned authority shall seriously consider whether the benefits given to divorced daughters of deceased State Government employees/pensioners with regard to grant of family pension can also be made applicable in case of municipal services.

While considering this aspect, the concerned authority shall also confer with the Finance Department and a reasoned order shall be passed and communicated to the petitioner

The entire issue may be decided and disposed of by the authorities keeping in mind the fast changing social condition. A more liberal and comprehensive interpretation has been given by the courts to the expression 'family'. The differential treatment in this case is apparent and there does not appear to be any rationale in such classification made between state government employees and municipal employees. Grant of family pension does not have any nexus with the nature of work, qualification or responsibility undertaken by such persons.

Let the entire issue be resolved by the authorities of the Government with sympathy, compassion and fairness within six months from date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)