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MAT 1858 of 2019
with
IA No. CAN 1 of 2020 (Old No. CAN 1077 of 2020)

The Director of Pension, Provident Fund & Group Insurance & Anr.

- Versus –

Subhadra Pradhan & Ors.

with

MAT 1526 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 12401 of 2019)

The Director of Pension & Anr.

- Versus –

Subhadra Pradhan & Ors.

with

MAT 1527 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 12408 of 2019)

The Director of Pension & Anr.

- Versus –

Gita Rani Maity & Ors.

with

MAT 1528 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 12410 of 2019)

The Director of Pension & Anr.

- Versus –

Anjana Maity & Ors.

with

MAT 1529 of 2019
with
IA No. CAN 1 of 2019 (Old No. CAN 12414 of 2019)

The Director of Pension & Anr.

- Versus –

Amalabala Das & Ors.

with

MAT 1860 of 2019
with
IA No. CAN 1 of 2020 (Old No. CAN 1079 of 2020)

The Director of Pension, Provident Fund &
Group Insurance & Anr.

- Versus –

Gita Rani Maity & Ors.

with

MAT 1861 of 2019
with
IA No. CAN 1 of 2020 (Old No. CAN 1081 of 2020)

The Director of Pension, Provident Fund &
Group Insurance & Anr.

- Versus –

Amalabala Das & Ors.

with

MAT 1862 of 2019
with
IA No. CAN 1 of 2020 (Old No. CAN 1082 of 2020)

The Director of Pension, Provident Fund &
Group Insurance & Anr.

- Versus –

Ajanta Maity & Ors.

(Through Video Conference)

Mr. Joytosh Majumder, Ld. Govt. Pleader
Mr. Bhaskar Prasad Vaisya
Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
......For the appellants

Mr. Sourav Mitra
Mr. Goutam Maity
Mr. Uttam Kumar Roy
......For the writ petitioner(s)/ opposite party(s)

By consent of the parties all the appeals and the connected applications are heard together and disposed of by this common order as it involves common question of law and fact.

The writ petitioners in all these appeals are the family members of the deceased teachers who retired prior to 1st April, 1981. The writ petitions were filed in the years 2017 and 2018 by the spouses of the deceased to receive interest on the amount released in favour of the writ petitioners by way of arrear family pension on and from 15th June, 1990 till the date of issuance of the Pension Payment Order (hereinafter referred to as 'the PPO').

Learned learned single Judge initially disposed of a group of matters on 24th June, 2019 by accepting the submission made on behalf of the writ petitioners that the writ petitioners as heirs/widows of the retired employees are entitled to interest on such pensionary benefits under the relevant scheme. The pensionary benefits are welfare measures meant to enable a retired employee or the dependants of a deceased employee to live a life of dignity. Hence, it is imperative that such benefits are released to a retired employee or the legal heir of a deceased employee without any delay. If there is delay, interest at a reasonable rate is payable by way of compensation. Accordingly, the argument on behalf of the State that the writ petition is barred by limitation was rejected relying upon the decision of the Hon'ble Supreme Court in Union of India Vs. Tarsem Singh reported in (2008) 8 SCC 648. The learned Judge had taken into consideration the Circular No. 163-Edn(B) dated 15th June, 1990 as a date on which the entitlement to receive family pension accrued in favour of the writ petitioners and directed payment of interest on the arrear family pension @ 9% per annum on and from 15th June, 1990 till the date of issuance of the PPO. Subsequently, appellant filed an application for modification of the said order. It was argued before the learned single Judge that the interest is payable to the writ petitioner not from 15th June, 1990 as was ordered but was from 1st November, 2010. The learned single Judge relied upon the Education Department Memo No. 136-Edn(B) dated 15th May, 1985. The judgement of the learned single Judge in 1989 (1) CLJ 116 and arrived at a finding that by the June, 1990 Circular Death-cum-Retirement Benefit Scheme, 1981 (hereinafter referred to as the DCRB Scheme, 1981) was also extended to the employees who retired prior to 1st April, 1981 and the DCRB Scheme, 1981 clearly contemplates payment of family pension. This would include payment of pension to a widow. Absence of the word 'widow' in the DCRB Scheme, 1981 is neither here nor there and accordingly, the learned single Judge rejected the application for modification. The State has preferred appeal against both the orders.

The learned Government Pleader appearing on behalf of the appellants has reiterated the points argued before the learned single Judge in the modification application and submitted that in absence of any family pension being mentioned prior to the Circular dated 1st Novemer, 2010, the question of extending such benefit of DCRB Scheme, 1981 to the writ petitioners cannot and does not arise. However, it has been fairly submitted that the interest on the arrear family pension, if any, is payable only on and from 1st November, 2010 and cannot be from 15th June, 1990. The learned Government Pleader has drawn our attention to the Circulars dated 1st November, 2010 and 12th July, 2011 and submitted that by the subsequent Circular dated 12th July, 2011, the Governor was pleased to extend the benefits of family pension as a social security measure under the G.O. 539-SE(P&B)/SL-SS-61/10(Pt) dated 1st November, 2010 to the living spouse of the deceased employee as mentioned in paragraph 3 of the said G.O. with effect from 1st April, 1981 or from the date following the death of the employee whichever is earlier.

It is, thus, argued that the grant of interest on the arrear pension from 15th June, 1990 was erroneoous and contrary to the Circular issued by the appelants.

Per contra, Mr. Sourav Mitra, learned counsel appearing on behalf of the writ petitioners submits that the Circular dated 15th June, 1990 was clarified by the Circulars dated 31st December, 1990 and 21st December, 1991. Our attention is drawn to one of the points namely, implementation of the Government decision of extending retirement benefits to the teaching and non-teaching employees of the Non-Government educational institutions and organisations who retired prior to 1st April, 1981 with reference to this Department Memorandum No. 163-Edn(B) dated 15th June, 1990.

Insofar as the Circular dated 21st December, 1991, the point raised and answered in respect of the point no. 1 was also brought to our notice which reads as follows :-

	Points raised	**Clarification**
1	In the West Bengal Recognised Non-Govt. Educational institution Employees (D.C.R.B.) Scheme, 1981, the mode of calculation of Pensionary benefits (viz. Pension, Gratuity & Family Pension) as well as minimum and maximum ceiling thereof, have been prescribed only for those employees who retired on or after 1.4.1981. in this connection it is pointed out that in respect of West Bengal Govt. Employees, guided by W.B.S. (D.C.R.B.) Rules, 1971, calculation of pensionary benefits is made according to the rules/orders which were in force on the dates of retirement. As such, it may be clarified how the calculation of pensionary benefits, contained in the scheme ibid, will be made in respect of these employees coming under the purview of the Memo. Dated 15.6.90 and retired long before 1.4.81. it may also be clarified what emoluments would be taken into account for calculation of Pension, Gratuity and Family Pension and what would be its minimum and maximum limit.	It was already stated in the Memo No. 163-Edn(B) dated 15.6.90 that the retirement benefits, as provided for in the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 shall stand extended to the teaching and non-teaching employees, who retired prior to 1.4.81 “on the same terms and conditions”. However it is clarified again that calculation of pension, gratuity and family pension and maximum and minimum ceiling thereof in respect of these who retired prior to 1.4.81 shall also be made as per the provisions of the aforesaid scheme. The emoluments for the purpose of calculation shall be the average of last ten months of service immediately proceeding the date of retirement of the individual pensioners, vide clause 5(q) of the Scheme. This means that on the above basis pension of this category of pensioners be revised/re-calculated.

Mr. Mitra submits that in the Circular dated 31st December, 1990 by way of clarification it is made clear that employees who retired prior to 1st April, 1981 and died before exercising option, they would be allowed to grant the more advantages of the benefits under paragraph 3(b)(ii) of the Notification dated 15th May, 1985 and having regard to the fact that under the DCRB Scheme, 1981, the widow is entitled to pensionary benefits and as such, similar benefits ought to have been extended to the widow of the writ petitioners.

Similarly, the word “family pension” was inserted in the Government Circular dated 21st December, 1991 which clearly means that the widow of the deceased is entitled to family pension.

Our attention is also drawn to the judgment passed by a learned single Judge in Indu Prava Ghosh Vs. State of West Bengal & Ors. reported in 2010 (1) CLJ (Cal) 114 in justification of the claim for interest since 15th June, 1990. The judgment of the Hon’ble Justice Tapabrata Chakraborty in Bharati Hazra Vs. The State of West Bengal & Ors. reported in (2018) 2 WBLR (Cal) 138 in justification of the aforesaid fact.

In order to appreciate the rival contention it is necessary to refer to the Circular of the School Education Department dated 1st November, 2010. The said Circular was issued after the said department had received the number of representations from the different corners seeking clarification on the entitlement of pension/family pension in respect of the employee under the West Bengal Recognized Non-Government Aided Educational Institutions (hereinafter referred to as employees) who retired or died in harness prior to 1st April, 1981 while working in the West Bengal Recognized Non-Government Aided Educational Institutions. The department also had received several orders passed by the Hon'ble High Court at Calcutta directing the respondent authorities to extend pension/family pension under the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (hereinafter referred to as DCRB Scheme, 1981) to the petitioners who served the West Bengal Recognized Non-Government Aided Educational Institutions and who retired or died in harness prior to 1st April, 1981. The entitlement of family pension under the 'Old Pension Scheme' i.e. the scheme that was in operation prior to DCRB Scheme, 1981 was also addressed. Ultimately, in paragraph 3, the department categorized the employees who would be covered under the DCRB Scheme, 1981. Paragraph 3 (e) concerns the writ petitioners. The said clause is reproduced hereunder :-

> *"3(e) those employees who died in harness prior to 01.04.1981 after rendering approved qualifying service for 20 years or more. In such cases family pension for 5 years was sanctioned as per provision of the 'Old Pension Scheme' but stopped at the expiry of 5 years (before 15.06.1990) from the date of the death of the incumbent."*

Thereafter, in paragraph 4 of the said Circular it was stated that the Governor as a social security measure was pleased to extend pensionary benefit under the DCRB Scheme, 1981 to such widows of those employees who retired or died in harness prior to 1st April, 1981 if the concerned employees rendered at least one year's approved qualifying service in the West Bengal Non-Government Aided Educational Institutions.

The financial benefits towards family pension may be given with effect from 15th June, 1990 or from the date of application for pension/family pension, whichever is earlier as per said G.O. dated 1st November, 2010. This was followed by the subsequent Circular dated 12th July, 2011 where the said benefit was extended with effect from 1st April, 1981. It was on the basis of the Circular dated 12th July, 2011 that the entire arrear pensionary benefits have been released to the writ petitioners. After receiving such benefits in terms of the Memorandum No. 883/SL/SS-61/10 (part) dated 12th July, 2011 several writ petitions have been filed in between 2016 and 2017 praying, *inter alia,* for payment of interest on and from 1st April, 1981 till the date of disbursement. The learned single Judge, however, allowed payment of interest on the arrear family pension dues from 15th June, 1990 till the date of issuance of PPO based on the circular dated November 1, 2020.

It is significant to mention that the writ petitioners did not approach this Court for payment of family pension since 1st April, 1981. The right to receive such pensionary benefits crystalized on 12th July, 2011 by virtue of the Government Memorandum dated 12th July, 2011. The writ petitioners have accepted said Circular and received benefits under the said Circulars.

There is no explanation offered for not challenging the decision not to extend the family pension from 1st April, 1981. The Circular dated 31st December, 1990 has to be read in reference to the Circular dated 15th June, 1990. In the Circular dated 15th June, 1990, there is no mentioning of any family pension. In paragraph 3 of the said Circular, it has been clearly stated that the Governor has now been pleased to decide that the retirement benefits as provided in the DCRB Scheme of 1981 shall stand extended to the teaching and non-teaching employees of the non-government educational institutions and organizations covered by the aforesaid scheme in relation to the employees, who retired on 1st April, 1981 on the same terms and conditions and subject to the adjustment of pension and ex-gratia increases.

However, in the memo dated 31st December, 1990 issued by the Education Department, Government of West Bengal containing clarifications on the point raised whether the case of employees who retired prior to 01.04.1981 and “died” before exercising in option may be allowed to grant the benefits under para 3(b)(ii) of the G.O. no. 136-Edn.(B) dated 15th May, 1995 the case of the employees who "died" before exercising in option was included which apparently was not there in the earlier memo dated 15th June, 1990. Subsequently, the clarification dated 21st December, 1991, the word "family pension" was included but not for the purpose of calculation of pensionary benefits.

We are not unmindful of the fact that in the previous two circulars namely memo dated 15th June, 1990 and 21st December, 1990 there are expressions suggestive of benefits being extended to the legal heirs of the deceased employee but not expressly stated and divergent views existed prior to the issuance of the circular dated 1st November, 2010 followed by the circular dated 12th July, 2011, this time, expressly extending the benefit of family pensions to the spouse of the deceased. This lack of clarity has resulted in writ petitions being filed by the legal heirs and spouse of the deceased employee in which orders have been passed from time to time allowing such claims primarily on the ground that such benefits are to be extended even to the employees who died prior to 1981 or died before exercising option as the discrimination between the two classes of employees who died before and after 1981 cannot be discriminated and there is no intelligible differntia between the two classes and based on such finding benefits were extended to such spouses and legal heirs proceedings involving similar issues are also not consistent with the view expressed now as the government seems to have proceeded on the basis that the DCRB 1981 exclude spouses of the employees who died prior to 1981. The government had extended such benefits only to the writ petitioners who had challenged on the basis of the orders.

In the instant case the State has extended the benefit of family pension to the writ petitioners with effect from 1st April, 1981 based on the memo dated 12th July, 2011. The question is whether the writ petitioners would be entitled to interest as directed by the learned Single Judge. In all the earlier writ petitions in view of the uncertainty prevailing as to the interpretation of the relevant clauses, writ petitions were allowed either by directing the authorities concerned to consider the case of the writ petitioners or to allow the claims of the writ petitions without any interest. In disposing of such a writ petitions authorities were directed to disburse the pensionary benefit within a certain period of time.

The writ petitioners were quiet and silent till the circular dated 12th July, 2011 was issued. This circular has given a positive right as opposed to inferential right on the basis of which rights have been created and benefits extended to the present writ petitioners. Interest is discretionary relief. In the instant case, the State has immediately disbursed all the arrears pensionary benefits to the spouses after issuance of the Circular dated 12th July, 2011. Delay defeats equity. A person who sleeps over his right and did not assert his right cannot now turn around and claim an equitable relief based on orders passed earlier in similar matter. Having accepted that their right to family pension accrued by reason of the Circular dated 12th July, 2011 the writ petitioners cannot now complain that they ought to have been paid the family pension from an earlier period, that is, from 1st April, 1981 and by reason of delay, interest is required to be paid by the State to the writ petitioners. However, we feel that the writ petitioners are entitled to receive family pension from 1st November, 2010 as it has been explicitly stated in paragraph 3(e) of the memo dated 1st November, 2010 that the family pension can be extended to those employees who died in harness prior to 1st April, 1981 after rendering approved qualified service.

On such consideration we modify the order passed by the learned single Judge. The interest on arrear family pension shall be paid @ 9 % per annum from 1st November, 2010 till the date of issuance of the PPO within a period of two weeks from date. We clarify that the interest shall be calculated on the amounts payable towards family pension as on 1st November, 2010 till the date of issuance of the PPO.

The learned Government Pleader has submitted that pursuant to a direction passed in disposing of the applications for condonation of delay costs have been paid to the writ petitioners in terms of an order dated 18th March, 2021. The writ petitioners have confirmed having received such payments.

The appeal and the connected applications are all disposed of by partly allowing the appeal.

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

Urgent photostat certified copy of this order, if applied for, be given to the parties on the usual undertakings.

(Saugata Bhattacharyya, J.) **(Soumen Sen, J.)**