

**06.01.2021**  
**Sl. No.11**  
**akd/as**

**W.P.S.T. 183 of 2019**

*[The State of West Bengal & Anr. -Vs- Smt. Rita Chatterjee & Anr.]*

Mr. Tapan Kumar Mukherjee .. Sr. Advocate  
with Mr. Pranab Halder .. Advocate  
... .. for the petitioners, present in  
court

None for the respondents

An Order dated February 19, 2019 passed by the West Bengal Administrative Tribunal (for short 'the Tribunal') in O.A. 31 of 2019 has been challenged in the present writ petition filed by the State. Vide aforesaid order, the Tribunal had directed that the respondent No.1 be granted family pension on account of the death of her husband in terms of the West Bengal Death-cum-Retirement Benefit Rules, 1971 (for short 'the 1971 Rules') recording the fact that the deceased husband of the respondent No.1, applicant before the Tribunal was getting pension under the 1971 Rules.

The argument raised by the learned senior counsel for the petitioners is that the Original Application filed by the respondent No.1 before the Tribunal was disposed of on the very first date of hearing after notice. Even time was not granted for filing response to the same. He submitted that the deceased husband of the respondent No.1 retired from the service on January 31, 1997. He expired on September 16, 2014. There was a matrimonial dispute between the respondent No.1 and her deceased husband. Original application was filed before the

Tribunal claiming that she being the legally wedded wife (widow at the time of filing of the Original Application) was entitled to receive family pension, as the petition filed for grant of divorce by her late husband was dismissed upto the Hon'ble Supreme Court. The Tribunal while noticing the fact that the deceased husband of the respondent No.1 was getting pension under the 1971 Rules, directed that she should be granted family pension under the aforesaid Rules.

While referring to Rule 194A of the 1971 Rules it was submitted that the family of a deceased employee is entitled to family pension under the Rules of the State Government or the family pension authorised at the time of discharge from the military service, whichever is more advantageous to the family.

In the case in hand the respondent No.1 got family pension sanctioned from the Controller of Defence Accounts (Pensions) Allahabad and is getting the same since September 17, 2014. In support reference was made to the Pension Payment Order placed on record. In terms of Rule 194A of the 1971 Rules family is entitled to receive pension either from the defence authorities or from the State Government. The respondent No.1 may not be entitled to get pension from the State Government in terms of the 1971 Rules, in case, she is getting the same from the defence authorities. Hence, the order passed by the Tribunal is erroneous in law.

When the case was taken up for hearing on February 04, 2020 this court recorded that in case of non-representation of the respondent No.1 on the next date of hearing fixed as March

03, 2020, the matter shall be taken up and disposed of in her absence.

Today when the case was taken up for hearing no one appeared for the respondent No.1.

After hearing the learned senior counsel for the petitioners, we find merit in the submissions made by him to the extent that issue of entitlement of family pension from the defence and State authorities has not been gone into by the Tribunal, especially with reference to Rule 194A of the 1971 Rules. The reason as submitted by the learned senior counsel for the petitioners was that they were not even afforded opportunity to file reply to the Original Application. Had the opportunity been granted they would have placed the entire material before the Tribunal so as to enable the Tribunal to form an opinion whether the respondent No.1 was entitled to get any pension from the State Government, once she was drawing family pension from the defence authorities, ever since her husband died.

For the reasons mentioned above, the impugned order dated February 19, 2019 passed by the Tribunal, is set aside.

The matter is remitted back to the Tribunal to be decided on merits after affording due opportunity to the parties to file their reply to the original application.

The learned counsel for the petitioner herein undertakes to file reply to the Original Application within four weeks from today.

Let the matter be listed before the Tribunal on March 08, 2021 for further proceedings.

The writ petition is accordingly disposed of.

Registry is directed to send copy of this order to the Tribunal for compliance.

***(Rajesh Bindal, J.)***

***(Aniruddha Roy, J.)***