

03
12.09.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 6545 of 2021

**Ajit Kumar Saha & Anr.
-versus
The State of West Bengal & Ors.**

**Mr. Pankaj Halder,
Mr. Anik Das,
Mr. Sanatan Panja,
Mr. Subhrangsu Maiti.
...For the Petitioners.**

**Mr. Sk. Md. Galib,
Mr. Himadri Sikhar Chakraborty,
Ms. Debdooti Dutta.
...For the State.**

**Mr. Bikash Kumar Chatterjee.
...For the Municipality.**

Learned advocate appearing for the State respondents has produced a written instruction from the Additional Secretary, Department of Urban Development and Municipal Affairs signed on 9th September, 2022 wherein it has been mentioned that :-

“1. It may be stated that Finance Department, Government of West Bengal vide U.O. No. Pension/2022-2023/0045 dated 09.09.2022 has stated inter-alia that

‘We have no objection in extending the benefit of family pension to the Post-retiral spouses of Municipal employees as the same was extended by Finance Department, Govt. of West Bengal for the Government Employees vide order no. 1996-F(Pen) dated 27.09.1991, subject to

compliance of provision under No.9388-F dated 04.08.1983. However, the Administrative Department may be requested to come up to the FD, Pension Branch with the Proposal containing the Procedural Guidelines to be followed by the Admin Department for endorsement of Family Pension entitlement of post-retiral spouse etc. in the Pension Payment Order of Pensioners, for concurrence.”
(Photocopy enclosed.)

2. Department of Urban Development and Municipal Affairs has taken steps for amendment of West Bengal Municipal (Employees Death-cum-Retirement Benefits) Rules, 2003 accordingly.

3. However, the said Rules, 2003 can be amended in exercise of the power laid down in Section 417 read with Section 56(2) of the West Bengal Municipal Act, 1993.

4. Section 417(1) of the Said Act, 1993 state that “(1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.”

5. Section 417 (3) of the said Act, 1993 states *inter-alia* that ‘All rule made under this Act shall be laid for not less that 14 days before the State Legislature as soon as possible after they are made and shall be subject to such modification as the State Legislature may make during the session in which they are so laid. Any modification of the said rules made by the State Legislature shall be published in the Official Gazette, and shall, unless some later date is appointed by the State Government, coming into force on the date of such publication’.”

The petitioner No. 2 is the post-retiral spouse of the petitioner No.1.

Apart from challenging the *vires* of the note appended to Rule 2(1)(g) of the West Bengal Municipal (Employees' Death-cum-Retirement Benefits) Rules, 2003, the petitioners have also prayed for a direction upon the respondent authorities to endorse entitlement of family pension in favour of the post-retiral spouse.

In view of the instruction that has been forwarded by the Additional Secretary, Department of Urban Development and Municipal Affairs, the Panihati Municipality is directed to take necessary steps for revising the service book of the petitioner No.1 and to incorporate the name of the petitioner No.2 as the spouse of the petitioner No.1 so that she may be paid the family pension in the event of death of the petitioner No.1.

The Director of Pension, Provident Fund and Group Insurance being the respondent No. 2 is directed to issue revised Pension Payment Order in favour of the petitioner No.1 by deleting the name of the deceased wife of the petitioner No.1 and to incorporate the name of the petitioner No.2 as the legally married wife of the petitioner No.1.

Steps shall be taken in the matter at the earliest, but positively within a period of four months from the date of communication of a copy of this order.

The instruction given by the Additional Secretary, Department of Urban Development and Municipal Affairs be taken on record.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)