

19.04.2022
SL No. 6
Court No. 24
(P.M)

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

**WPA 9493 of 2016
with
IA No. CAN 1 of 2022**

**Jamini Mohan Datta
Vs
The State of West Bengal & Ors.**

Ms. Bratati Dutta
... for the petitioner.

Mr. Amal Kr. Sen, A.G.P.
Ms. Ashima Das (Sil)
.... For the State

The sole writ petitioner, Jamini Mohan Datta, expired on 27th August, 2020. His wife Shibani Datta has filed the instant application for substitution.

It has been submitted that she is the only heir and legal representative of the deceased writ petitioner.

It has further been submitted that the cause of action for filing the writ petition survives even on the death of the petitioner.

The applicant being the widow of the deceased teacher is entitled to the financial reliefs which the teacher ought to have been paid during his lifetime.

In view of the above, the application for substitution stands allowed.

CAN 1 of 2022 is disposed of.

The issue to be decided in the present writ petition is whether an employee will be entitled to receive pension on and from the date following retirement or from the date of refund of the employer's share of contribution.

The husband of the petitioner retired from service on attaining the age of superannuation on 30.03.2002 and he died on 27.08.2020.

In response to the notification published by the School Education Department being No. 79-SE(L)/SL/5S-56/13(Pt-V) dated 13th June, 2014 issued in compliance of the direction passed by the Hon'ble Special Bench of this Court in the judgment dated 16th July, 2013 in the matter of District Inspector of Schools (S.E.), Kolkata -vs- Abhijit Baidya the husband of the petitioner exercised option to switch over from CPF to GPF and refunded the employer's share of contribution with interest and additional interest on 08.09.2014.

Pension Payment Order was issued in favour of the husband of the petitioner with

effect from the date of refund of the employer's share of contribution.

The petitioner claims that pension ought to have been released on and from the next date of retirement of the husband of the petitioner and not from the date of refund of the employer's share of contribution.

A similar issue has been decided by this Court in the matter of WPA No. 964 of 2022 (Sitala Mandal (Chaudhuri) –vs- State of West Bengal & Ors.).

The judgment passed in the aforesaid matter on 8th February, 2022 will cover the present writ petition.

As the teacher died in the meantime accordingly the revised pension payment order is required to be issued in favour of the widow of the deceased employee.

Instant writ petition is disposed of by directing the Director of Pension, Provident Fund and Group Insurance and the concerned Treasury Officer to verify the records, and in the event, it is found, that the husband of the petitioner exercised option and refunded the employer's share of contribution within the time specified in the notification dated 13th June, 2014, then steps shall be taken to issue Revised

Pension Payment Order in favour of the petitioner with effect from the date following the date of retirement on superannuation and to release the pension in accordance with the Revised Pension Payment Order. Such steps shall be taken within a period of twelve weeks from the date of communication of a copy of this order. Payment shall positively be released immediately upon issuance of the Revised Pension Payment Order.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)