

02.02.2022
SL No. 10
Court No. 24
(P.M)

WPA 19309 of 2017

**Nilmani Chakraborty
Vs
The State of West Bengal & Ors.
(Via Video Conference)**

Mr. Chandan Dutta
... for the petitioner

Mr. Bhaskar Prasad Vaisya,
Mr. Niloy Baran Mondal
... for DPSC.

Mr. K. N. Nabi
... for the State

The petitioner is aggrieved by the order dated 2nd February, 2017 issued by the Director, Pension, Provident Fund and Group Insurance rejecting the claim of the petitioner for setting aside the Pension Payment Order and re-fixing the pension.

Fact remains that the wife of the petitioner was an Assistant Teacher of a primary school. She retired from service on attaining her normal age of superannuation on 30th June, 2002. Pension Payment Order was issued in favour of the retired teacher on 30th November, 2004 and the teacher died on 26th April, 2005. After the death of the teacher the petitioner being the spouse is receiving family pension.

Presently the grievance of the petitioner is that the pay of the teacher was not fixed properly in accordance with ROPA 1998.

The petitioner prays for re-fixation of the pay and the pension by setting aside the Pension Payment Order which the teacher received as well as the family pension which the petitioner is presently receiving.

The petitioner approached the respondent authority to re-fix the pension by filing a representation on 28th October, 2015 before the Director, Pension, Provident Fund and Group Insurance. As the said representation of the petitioner was not taken up for consideration, the petitioner approached this Court by filing a writ petition being W.P. No. 7768 (W) of 2016 (Nilmani Chakraborty – Vs – The State of West Bengal & Ors.) which stood disposed of by an order dated 7th October, 2016 wherein the Court directed the respondent authority to consider the representation made by the petitioner on 28th October, 2015.

The impugned order has been passed upon consideration of the petitioner's representation dated 28th October, 2015 and the prayer of the petitioner for re-fixation of the pension of the deceased teacher has been rejected on the ground of delay.

According to the petitioner the ground of delay ought not to be taken by the respondent authority as the same is a recurring cause of action and the prayer

of the petitioner ought not to be disallowed on the said ground.

The petitioner has relied upon an unreported order dated 7th January, 2022 passed by the Hon'ble Division Bench of this Court in MAT No. 363 of 2020 with CAN 2 of 2021 (Sarwari Begam – Vs. – The State of West Bengal & Ors.) in support of his case.

The respondents oppose the prayer of the petitioner.

I have heard the submissions made on behalf of both the parties and perused the documents annexed to the writ petition as well as the order dated 7th January, 2022 passed in Sarwari Begam (supra).

It appears that the teacher concerned retired on 30th June, 2002, Pension Payment Order was issued in favour of the teacher on 30th November, 2004 and she expired on 26th April, 2005. The teacher concerned never raised any objection with regard to the wrong fixation of her pay. After the death of the teacher the petitioner being the spouse of the deceased teacher received family pension. It is for the first time on 28th October, 2015 the petitioner made an application for re-fixation of the scale of pay of his deceased wife. The said prayer of the petitioner stood rejected on the ground of delay.

I am of the opinion that the prayer of the petitioner has been rightly rejected. Had the teacher concerned being aggrieved with the pay that was fixed, she ought to have approached the competent authority by making appropriate application in proper time. After nearly 10 years of death of the deceased teacher her husband has approached the authority praying for re-fixation of pay in respect of the deceased teacher. The same is impermissible in law.

Judgment relied upon by the petitioner in Sarwari Begam (supra) will certainly not be applicable in the present case. In Sarwari Begam (supra) the dispute pertained to re-fixation of pension in terms of the circulars, which were applicable. The present case is not the same. The teacher concerned never ventilated her grievances, if any, during her life time. After nearly 10 years of death the issue regarding wrong fixation of pay cannot be permitted to be reopened. There has been inordinate unexplained delay in approaching the authority for re-fixation of the scale of pay.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

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

(Amrita Sinha, J.)