

38
25.03.2022
d.p.

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

**W.P.A 24595 of 2017
IA No. CAN 1 of 2021
CAN 2 of 2022**

**Nanigopal Sur
-versus
State of West Bengal & Ors.**

**Mr. Ashis Kumar Paul.
...For the Petitioner.**

**Mr. Tapan Kumar Mukherjee,
Ms. Sangeeta Roy.
...For the State.**

Re: CAN 1 of 2021

An application has been filed for substitution of the heirs of the deceased sole writ petitioner.

The sole writ petitioner died on 25th February, 2021 leaving behind the applicants as his heirs and legal representatives.

As it appears that the petitioner was entitled to receive certain financial benefit, accordingly, the heirs of the deceased are required to be substituted and are accordingly substituted in place and instead of the deceased sole writ petitioner for the purpose of proceeding with the writ petition.

Accordingly, the application being IA No. CAN 1 of 2021 stands disposed of.

The original application being CAN 1 of 2021 is not readily available in the records.

Accordingly, a copy of the same which has been handed over by the learned advocate appearing for the petitioner is kept with the records.

The department is directed to transmit the record of CAN 1 of 2021 and tag the same with the present writ petition.

Re: CAN 2 of 2022

The sole writ petitioner died during the pendency of the writ application and his son Alok Sur and daughter Anjana Mitra applied for being substituted. The said application has been allowed.

During the pendency of the said application for substitution, the son of the deceased teacher Alok Sur, being one of the applicants, expired on 1st January, 2022 leaving behind his wife and daughter as his heirs and legal representatives.

In the facts of the case, the widow and the daughter of the deceased Alok Sur are required to be substituted and are accordingly substituted in place and instead of Alok Sur.

Accordingly, the application being CAN 2 of 2022 also stands allowed.

Re: WPA 24595 of 2017

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 teacher retired from service on attaining the age of superannuation on 31st May, 2008 and he died on 17th February, 2015.

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 teacher exercised option to switch over from CPF to GPF and refunded the employer's share of contribution with interest and additional interest on 13.09.2014.

Pension Payment Order was issued in favour of the deceased teacher with effect from the date of refund of the employer's share of contribution.

The applicants claim that pension ought to have been released on and from the next date of retirement of the teacher 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 heirs 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 teacher 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 heirs of the deceased teacher 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.)