

24.08.2023
Court No.13
Item No.6
AP

FMA 620 of 2018
With
IA No.: CAN 1 of 2017 (Old No.: CAN 7452 of 2017)

State of West Bengal and Ors.
Vs.
Sefali Jana and Ors.

Mr. Anirban Ray, G.P.
Mr. Pinaki Dhole
Mr. Avishek Prasad

... For the Appellants/State.

Mr. Sakti Pada Jana
Mr. Subhajyoti Das

... For the Respondents/Writ Petitioners.

1. The instant appeal has been preferred by the State against a judgement and/or order dated 16th March, 2017 passed by the learned Single Judge of this Court in WP No.9534 (W) of 2015.

2. By the said order the writ petitioners, who are widows of the teachers who have served under the State, were allowed to obtain benefit of family pension on account of the service of their deceased husbands in terms of the decision of the Full Bench of this Court in the case of ***District Inspector of Schools (SE), Kolkata Vs. Abhijit Baidya*** reported in ***(2013) 3 CHN 711***.

3. The brief facts relevant for the purpose of consideration of this appeal are that the husbands of each of the petitioners were teachers under the Howrah District Primary School Council. Some of the teachers died in harness and some died after the age of superannuation.

Each of the teachers concerned opted for revised scale under ROPA 1990 and become entitled to pension and gratuity by virtue of Para 17 of ROPA 1990.

4. By introduction of an amendment to Para 17 of ROPA 1990 and introducing Sub-para 2 on 16th May, 2007 the State required such employees to exercise option afresh for switching over from PF to pension cum gratuity scheme. Consequently, Para 13 of ROPA 1998 also came to be amended in effect from 13th July, 1999. The fresh option for pension notwithstanding acceptance under the original Section 17 was required to bring the employees under the DCRB Scheme of the State.

5. The requirement of exercise of fresh options and amendment of Para 17 of ROPA 1990 and Para 13 of ROPA 1998 was held to be bad in law, illegal and arbitrary in the said Full Bench decision ***Abhijit Baidya (supra)***.

6. Pursuant to the three-month period granted in Para 76 of the ***Abhijit Baidya (supra)*** decision to all teachers in the State, the writ petitioners/widows of the said teachers, went to the authorities to exercise options for pension on account of the service of their deceased husbands. The authorities refused to entertain the writ petitioners and turned them down. The State held that the ***Abhijit Baidya (supra)*** decision and the notification issued by the State pursuant thereto, applied only to the living teachers and not to their family members.

7. It is a well-settled proposition of service jurisprudence that pension includes family pension. The pension is aimed at securing the family particularly the widow and persons lawfully entitled to benefit from the service of a deceased employee.

8. The respondents are therefore entitled to family pension on account of their deceased husbands/employees. They shall exercise option therefor. The petitioners are entitled on the ground that the husbands had opted for to come under Para 17 of ROPA 1990 and also in view of the dicta in the decision of ***Abhijit Baidya (supra)***.

9. In view of the above, this Court does not find any infirmity in the impugned decision of the learned Single Bench and the same is upheld.

10. The respondents shall be entitled to refund the entire PF amount received by their husbands, together with any interest as has been specified under the circular of the State, issued pursuant to the ***Abhijit Baidya (supra)*** judgement, within a period of three months from date.

11. Upon refund of the said sum of money, the District Inspector of School, Howrah, is directed to forward the recommendations to the DPPG for issuance of pension payment order within a period of two weeks of each case.

The DI of Schools, Howrah and the DPPG shall do so with urgency.

12. The family pension shall be payable the respondents from the date of actual superannuation and/or the death of the concerned teacher as the case may be. Let arrears of pension be paid to the writ petitioners respondents, within a period of three months of issuance of the Pension Payment Order.

13. With the aforesaid observations, the appeal is disposed of.

14. In view of the disposal of the main appeal, connected pending application, if any, shall also stand disposed of.

15. There shall be no order as to costs.

16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)