

07.08.2023
Item No. 23
Crt.No.22
b.r.

WPA 2408 of 2020

Tanusree Mitra
-vs-
The State of West Bengal & Ors.

Mr. K.M. Hossain
..... for the petitioner.

Mr. Anand Farmania
Mr. Vijoy Agarwal
..... for the State.

Mr. K.M. Hossain, learned counsel, appeared for the petitioner.

Mr. Anand Farmania, learned advocate appeared for the respondent nos. 1 to 4.

The petitioner claimed to be the daughter of one late Harimahan Mitra since deceased who retired as an **Assistant Headmaster** from one **Multy Piary Srimanta Institution, District- 24 Parganas(South)**. He retired on **January 1, 1979**. The petitioner claimed family pension on account of her deceased father employment. The respondent authorities issued the necessary **Pension Payment Order (PPO) in the year 1984** under the **Death-cum—Retirement Benefit Scheme, 1981** (for short, the said 1981 Scheme). The deceased father had received pension in terms of the said PPO **annexure P1 at page 19 to the writ petition**. The father died on **May 8, 1991** while receiving the monthly pension. After

death of the father, the mother of the petitioner, being the widow of the deceased employee did not receive the family pension. The mother of the petitioner, being the widow of the deceased employee **died on January 6, 2003** leaving behind the petitioner and her sister. Both the daughters of the deceased employee were unmarried. But upon compliance of all formalities, the petitioner applied for the family pension as she was and is in dire need for means to survive.

In the above circumstance, the petitioner filed the previous round of writ litigation being **WP No. 18642(W) of 2016**, the same was disposed of by a coordinate Bench by an order dated **November 15, 2016, annexure p 5 page-25** to the writ petition, by directing the respondent no.4 to consider the case of the petitioner by passing a reasoned order.

Respondent no.4 passed its reasoned order dated **February 2, 2017 annexure p 6 at page 26** to the writ petition, under which the claim of the petitioner was rejected. The reasoned order dated February 2, 2017 passed by the respondent no.4 is impugned in this writ petition.

The issue whether an **unmarried daughter is eligible to receive the family pension on account of her deceased father, who was a State employee** had received the consideration of the larger Bench of this

Court in **MAT 1518 of 2019**. The larger Bench had observed as under:-

“ 18. We have no hesitation in mind to hold that the unaltered or unaffected Memoranda as above clearly demonstrate in unequivocal terms that a teaching and non-teaching staff who retired prior to 1st April, 1981 or after 1st April, 1981 was entitled to get the pensionary benefits in terms of the DCRB Scheme, 1981. On the demise of such staff, their widows are entitled to get family pension in terms of the modified provision of the scheme 1981 vide memorandum dated 01.11.2010. The unmarried or widowed or divorced daughter of an employee who retired prior to 01.04.1981 or after 01.04.1981 is entitled to get family pension on fulfilment of the requirements as per the mechanism introduced vide Memorandum no.96-SE dated 13.04.2010. In such legal scenario, we do not concur with the decision rendered in Bela Rani Acharya and Abida Khatun Sk. that an unmarried daughter is not entitled to get family pension till her life ends on the demise of her parent who either received pension or family pension. Though in the decision in MAT 119 of 2014 (Kumari Reba Ghosh –vs- The State of West Bengal), the Division Bench had ruled that unmarried daughter or a pensioner would be entitled to get family pension, but this bench neither referred to nor interpreted

the relevant memoranda relating to extension of family pension to an unmarried/widowed/divorced daughter. That being the position, we though concur with the final decision, but we respectfully disagree with the observation as recorded therein.

From the memoranda as above it is clearly explicit that the legislative intent was to extend the benefits of family pension to unmarried/widowed/divorced daughter of an employee who retired before or after 01.04.1981 or to unmarried/widowed/divorced daughter of a family pensioner. In such premise, the memorandum dated 1st November, 2010 should not stand in the way of extending such benefits in the absence of any express provision therein restricting or affecting the benefits. Socio-economic justice stemming from the concept of social morality, if pressed into service, the memoranda granting social security of livelihood to the aforesaid classes of women by providing family pension should be construed liberally. Some isolated terms in the memorandum dated 01.11.2010 providing pension to living employees or their widows, in our view, cannot restrict the beneficial provisions contained in the memoranda as above.

19. Therefore, we answer the reference to this extent that the benefit of family pension can be extended to

unmarried/widowed daughter of an employee who superannuated or died prior to coming in force of the Death-cum-Retirement Benefit Scheme, 1981, which came into effect on an from 1st April, 1981.

In view of the law settled by the larger Bench as quoted above, the impugned order dated **February 2, 2017 passed by the respondent no.4, Annexure P-6 at page-26 to the writ petition stands set aside and quashed.**

The respondent no.4 is directed to immediately process and disburse the family pension including the arrears payable to the petitioner **since the day immediately after the death of the deceased father of the petitioner who died on May 8, 1991, i.e. May 9, 1991, positively** within a period of **eight weeks** from the date of communication of this order.

The respondent no. 4 while calculating the amount payable to the petitioner shall calculate along with **interest at the rate of 8% per annum on the arrears family pension payable to the petitioner, since the date of the judgement of the larger Bench being June 20, 2023 till the date of actual tendering of the amount to the petitioner in entirety** and shall pay the petitioner accordingly **within the period mentioned above.**

It is further made clear that before disbursing the amount to the petitioner and allowing her to withdraw the family pension henceforth without any interruption, the respondent no.4 shall be at liberty to call upon the petitioner, when the petitioner shall be entitled to appear before the respondent no.4 with her one authorised representative and the respondent no.4 shall arrive at his conclusive satisfaction as to the marital status of the petitioner and her identification on the basis of the relevant documents and proofs to be produced by the petitioner before the respondent no.4 as to her eligibility to receive the family pension on account of her deceased father.

It appeared from the office report dated April 25, 2020 that no affidavit-in-opposition was filed despite there being the direction dated September 15, 2021.

Considering the pure question of law involved and considering that the issue being already decided by the larger Bench, the writ petition has been considered and disposed of.

With the above directions, this writ petition being **WPA 2408 of 2020** stands **allowed**, without any order as to costs.

(Aniruddha Roy, J.)