

Court No.
26.4.2023

(Item No. 83)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 3874 of 2023

Samima Khatun
VS
The State of West Bengal & Ors.

Mr. Bidhan Biswas
.... For the petitioner
Ms. Tuli Sinha
... For the State

Affidavit of service filed in Court today is taken on record.

Ms. Tuli Sinha, learned advocate represented the respondent Nos. 1, 3, 4 and 5.

The petitioner is the wife of late Abu Talha, since deceased, who was an Assistant Teacher at Madrasah. The deceased teacher died on November 2, 2019. The deceased teacher initially received an appointment for the post of **Assistant Teacher (Graduate Category)** at **Jalalpur High Madrasah (H.S.), District Malda (for short, the first Madrasah)**. The appointment was made and approved in 2009. The deceased teacher served the said Madrasah during the period **October 24, 2009 to July 31, 2011**. The deceased Teacher enhanced his qualification and after obtaining Post Graduate degree had further gone through a fresh selection process and was appointed as an **Assistant Teacher (Post Graduate Category)** at **Basuria Senior Madrasah (Fazil), District – Dakshin Dinajpur (for**

short, the second Madrasah). While appearing for the second selection test the deceased Teacher had obtained necessary permission from the first Madrasah which could be seen from the **Annexure P-2** at **page 23** to the writ petition. The deceased Teacher then served the second Madrasah since his appointment from **August 1, 2011 till November 2, 2019, he died.**

The widow being the petitioner herein lodged her claim to receive family pension and the allied death benefits of the deceased Teacher. Representations were made time and again before the appropriate authority, no heed was paid thereto.

Mr. Bidhan Biswas, learned counsel appearing for the petitioner drawing attention of this Court to **Annexure P-7** at **page 31** to the writ petition submitted that, all the necessary formalities had already been done from the end of the respondent No. 4 and the necessary communication was also made to respondent No. 2 to release the benefits in favour of the petitioner. However, no step had been taken yet. Drawing attention to the documents at **pages 29 and 30** to the writ petition learned counsel submitted that, the second Madrasah had also made communication to the respondent No. 4 in support of the petitioner. Learned counsel for the petitioner in support of his contentions had relied upon provisions provided under **Chapter – III, Clause 7(K) to the West Bengal**

**Recognized Non-Government Educational
Institution Employees (Death cum Retirement)
Scheme 1981 (for short, 1981 Scheme).**

The petitioner claimed the benefits on account of the deceased Teacher as his widow.

Ms. Tuli Sinha, learned advocate appeared for the State respondents submitted that, since the necessary formalities and procedural part had not been complied with by the second Madrasah by forwarding the records and documents after obtaining from the first Madrasah the continuous benefit of the service rendered by the husband of the petitioner in the first Madrasah could not be considered. She supported the grounds for rejection as appearing from the communication of the respondent No. 4 dated **August 18, 2022, Annexure P-7** at **page 31** to the writ petition.

Considering the rival contentions and considering the materials on record, it appeared to this Court that, some procedural formalities are required to be complied with, if not complied by this time.

In view of the above, to sub-serve justice, the respondent No. 2 is directed upon giving a seven days prior hearing notice to the petitioner, respondent Nos. 3, 4, 5, 6 and 7 and then after hearing them shall decide the issue and come to a reasonable conclusion by passing a reasoned order in accordance with law.

The respondent Nos. 3, 4 and 5 may be represented through their appropriate authority at the time of hearing. The petitioner may also be represented through her authorized representative at the time of hearing.

While hearing the issue the respondent No. 2 shall also consider the provisions of the said **1981 Scheme** as referred to above.

The entire exercise as directed above shall be carried out and completed by the respondent No. 2 positively within a period of six weeks from the date of communication of this order. The respondent No. 2 shall then communicate its reasoned order to all the parties within a further period of two weeks from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the rival claims of the parties and the parties shall be at liberty to urge whatever points they wish to urge before the respondent No. 2 by relying upon whatever documents and records they wish to rely upon.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

After complying all the formalities, all consequential and necessary steps shall be taken by the appropriate authorities to enable the petitioner to receive her claim positively within a period of six

weeks from the date of communication of the reasoned order.

It is made clear that, this order shall not create any equity or right in favour of the petitioner if the petitioner is not otherwise eligible to receive her claim strictly in accordance with law.

The petitioner shall serve a copy of this order upon all the respondents and the respondent No. 3 shall assure to serve of notice of hearing upon the respondent No. 2.

On the above terms, this writ petition being **WPA 3874 of 2023** stands disposed of.

There shall, however, be no order as to costs.

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

(Aniruddha Roy, J.)