

ML 19
03.04.2023
Court. No. 19
GB

WPA 6299 of 2023

Smt. Prabhati Aich
Vs
The State of West Bengal & Ors.

Mr. Tarun Kumar Das,
Mr. Dilip Kumar Shyamal

...for the Petitioner.

Ms. Chaitali Bhattacharya,
Mr. Kartik Ch. Kapas

...for the State.

The order impugned before the Court is a decision of the Director of Pension, Provident Fund, Gratuity and Group Insurance rejecting the claim for family pension made by a widowed daughter of a panchayat karmee.

Such decision was passed pursuant to a direction of the Court. The decision was taken on the basis of the rules applicable with respect to grant of family pension to the 'family' of a deceased employee by taking into consideration, the definition of 'family'.

The ground for rejection was that the DCRB Scheme of 1985 applicable to the panchayat department did not include widowed daughter in the definition of 'family' for the purpose of grant of family pension. Only unmarried daughters were included in such definition.

The petitioner has relied upon the Finance Department's memorandum by which widowed and divorced daughters have been subsequently included in the definition of family for the purpose of grant of family pension, in respect of government employees. According to the petitioner, the same policy had been adopted by various

departments under the Government of West Bengal including the Education Department. The benefit is given to widowed and divorced daughters of employees of non-government aided schools and similar educational institutions, according to the petitioner.

At this stage, this Court is of the view that the Panchayat Department, Government of West Bengal must come up with a policy as to whether the definition of 'family' for grant of family pension has either been changed or amended on the basis of the decision of the Finance Department which was applicable to government employees. The rationale why such benefit had not been extended to the employees of Panchayat Department, is also not before the Court. Thus, the rules cannot be rewritten by the writ Court and the allegation of discrimination can be decided only when there is a finding with reasons as to why the Panchayat Department was excluded from the benefits given to the other departments in case of grant of family pension to the widowed and divorced daughters.

The petitioner is at liberty to approach the Secretary Department of Panchayats and Rural Development, Government of West Bengal, for a decision thereby enumerating the alleged discrimination which has been caused to the employees of the said department. It is a policy decision of the government to bestow the benefit of family pension to widowed and divorced daughters of an employee under the Government of West Bengal. Some departments have also adopted such policy. The panchayat department

stands on the same footing as other departments in so far as it relates to applicability of a beneficial legislation meant for the employees and the staff. The Secretary Department of Panchayats and Rural Development, Government of West Bengal shall dispose of the representation of the petitioner by taking into account the issue of unequal treatment, discrimination and arbitrariness. Prima facie, the Court finds that the benefit should be universally extended. The State cannot pick and choose on the basis of the department in which a deceased employee had been serving.

A reasoned order shall be passed and communicated. The stand of the concerned authority with regard to the issue involved shall be reflected clearly in the order. Such order shall be communicated to the petitioner within a period of three months from receipt of the petitioner's representation. The petitioner will be entitled to be represented by a learned advocate at the hearing.

If the Secretary, Department of Panchayats and Rural Development, Government of West Bengal finds substance in the claim of the petitioner for family pension as the widowed daughter of an employee of the panchayat department, akin to similarly situated persons in other departments of the government and educational institutions, necessary recommendation in this regard should be made to the Finance Department for extension of similar benefit of family pension to widowed and divorced daughters of deceased employees of the Panchayatee Raj institutions. Necessary notification shall be issued.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)