

Item No.24.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 25.01.2023

DELIVERED ON: 25.01.2023

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

WPA NO.5582 OF 2019

**Ava @ Avarani Bhattacharyya
Vs.
State of West Bengal & Ors.**

Appearance:-

Mr. Ujjal Ray

Mr. Arpa Chakraborty

....

for the petitioner

Mr. Pinaki Dhole

Mr. Avishek Prasad

....

for the State

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA , J.)

1. The petitioner claims to be the daughter of one Biswanath Bhattacharyya, who died on June 5, 1971 while working as a non-teaching Group-D staff in Basirhat Town High School (for short,

'the school'). The mother of the petitioner was extended the benefits of the family pension in view of the Memorandum dated June 15, 1990 whereby the benefits of the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (for short, 'the DCRB Scheme, 1981') was extended to the teaching and non-teaching staffs of the non-Government Educational Institutions and organisations covered by the said Scheme, who retired prior to April 1, 1981. However, the mother of the writ petitioner died on March 15, 2012 and upon her death, the petitioner applied for family pension before the concerned authority. The Director, Pension Provident Fund and Group Insurance, Government of West Bengal returned the papers forwarded to such authority by relying upon a decision in the case of ***Kumari Bijalika Jana vs. The State of West Bengal & Ors.*** in ***W.P. No. 21516(W) of 2013*** whereby it was held with the death of the family pensioner, the extension of the benefit of the DCRB Scheme, 1981 came to an end. The petitioner thereafter submitted another representation dated December 17, 2018 before the Commissioner of School Education, District Inspector of Schools (SE) as well as the Director, Pension Provident Fund and Group Insurance, Government of West Bengal. No decision, however, was taken by the

respondent authorities on the said representation made by the petitioner, which prompted the writ petitioner to approach this Court.

2. Mr. Ray, learned advocate for the petitioner refers to the DCRB Scheme, 1981 and more particularly rule 28 thereof. He submits that rule 28 of the said rules provides for awarding pension under the DCRB Scheme, 1981 with a restriction that pension shall not be payable to more than one member of the employee's family at the same time. He submits that the restrictions imposed in the DCRB Scheme, 1981 with regard to its applicability only to the dependants of persons, who were in service as on April 1, 1981 has been subsequently clarified by issuance of memo dated June 15, 1990, whereby the benefits of the DCRB Scheme, 1981 was extended to the teaching and non-teaching employees, who retired prior to April 1, 1981. He refers to the decision of a coordinate bench in the case of **Bharati Hazra vs. The State of West Bengal & Ors.** reported at **(2018)2 WBLR (Cal.) 138** in support of his contention that the unmarried daughter is entitled to pensionary benefit after the death of the widow of the teacher, who died in harness. He also refers to an unreported decision of a coordinate bench delivered on **December 9, 2019 in W.P. No. 7741(W) of 2018** in the case of

Smt. Kabita Sinha vs. The State of West Bengal & Ors. in support of such contention.

3. Mr. Dhole, learned counsel representing the State submits that the Memorandum No. 539-SE dated November 1, 2010 restricts the benefit of family pension only to the living ex-employees or the living widows and therefore, the petitioner is not entitled to pensionary benefit in view of the restriction imposed in that memorandum. He further submits that the said memorandum being latter in point of time, overrides all other previous memoranda issued from time to time.

4. Heard the learned advocates for the parties and perused the materials on record.

5. The primary objection of the State with regard to the entitlement of the petitioner to pensionary benefit is by placing reliance on the memorandum dated November 1, 2010. A coordinate bench of this Court in the case of **Smt. Kabita Sinha (supra)** while dealing with the issue regarding rules of pensionary benefit to the widowed daughter of the retired teacher even after the death of his widow after taking note of various memoranda issued from time to time with regard to extension of pensionary benefits held that the restriction in para 6 of the memorandum dated November 1, 2010 does not appear

to be reasonable in view of the objective of the memorandum. The coordinate bench also took into consideration the decision of another coordinate bench in the case of ***Bharati Hazra (supra)*** while deciding the issue as to whether the widowed daughter is entitled to pensionary benefit and held that there is no difference between an unmarried daughter and a widowed daughter provided the conditions mentioned in the memorandum dated April 13, 2010 are fulfilled.

6. The petitioner herein is similarly situated with that of ***Bharati Hazra (supra)*** as in the said reported decision, after the death of the petitioner's father, her mother was extended the benefits of family pension. The coordinate Bench was pleased to observe that the Government Order dated 1st November, 2010 was not issued in suppression of the earlier Government order dated 15th June, 1990. The coordinate Bench also placed reliance upon an order dated 28th October, 2014 passed in MAT 119 of 2014 in the case of ***Kumari Reba Ghosh Vs. The State of West Bengal & Ors.*** wherein it was held that the unmarried daughter of the deceased teacher is entitled to get the benefits of the family pension under DCRB Scheme, 1981.

7. Rule 28 of the DCRB Scheme, 1981 only restricts payment of pension to only one member of the employee's family at the same

time. Mr. Dhole, learned Advocate, could not place any Government order / Notification etc. which prohibits extension of the benefits of family pension to an unmarried daughter after the death of the spouse of the deceased employee who also enjoyed the benefits of family pension during her life time.

8. Mr. Dhole, learned counsel appearing for the State could not place any decision expressing a contrary view to that expressed in the decisions of the coordinate bench in the case of **Bharati Hazra (supra)** and **Smt. Kabita Sinha (supra)** and the decision of the Hon'ble Division Bench in **Kumari Reba Ghosh (supra)**. This Court after going through the said decisions as well as the memoranda relied upon by the parties is of the considered view that the aforesaid decisions are squarely applicable to the facts of this case for deciding the issue in favour of the petitioner. However, the entitlement of the petitioner to pensionary benefit as per the DCRB Scheme, 1981 is dependant upon fulfillment of the conditions as mentioned in the Government memorandum dated April 13, 2010 being Memo No. 95 (SE). This Court accordingly, holds that the petitioner is entitled to the benefits of family pension in terms of the DCRB Scheme, 1981 subject to fulfillment of conditions contained in the aforesaid Memorandum dated April 13, 2010.

9. The reasons for not taking any decision on the representation dated December 17, 2018 may be because of the decision dated January 2, 2014 of the Director, Pension Provident Fund and Group Insurance, Government of West Bengal. However, since this Court has already observed for the reasons as mentioned hereinbefore that the petitioner is entitled to the pensionary benefit subject to fulfillment of the conditions as mentioned, the order of Director, Pension Provident Fund and Group Insurance, Government of West Bengal dated January 2, 2014 is hereby set aside and quashed.

10. It has been submitted by Mr. Dhole that the Commissioner of School Education is the appropriate authority to take a decision with regard to the representation of the petitioner dated December 17, 2018. In view thereof, this writ petition is disposed of by directing the Commissioner of School Education being the respondent no.2 herein to consider the representation of the petitioner dated December 17, 2018 after affording an opportunity of hearing to the petitioner or her authorised representative in the light of the observations made hereinbefore and to dispose of the same by passing a reasoned order, which shall be communicated to the petitioner immediately thereafter.

11. The entire exercise shall be completed by the respondent no.2 within a period of four weeks from the date of communication of this order.

12. In the event, the Commissioner of School Education decides in favour of the petitioner, then the said respondent authority shall take further step and / or consequential steps in the matter immediately thereafter.

13. There shall be no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN (AR.C)