24 18.10.2023
Sc Ct. no.22

WPA 5742 OF 2018

Madhu Chanda Mukherjee

Vs.

The State of West Bengal & Ors.

Mr. Subhendu Roy Choudhury
Ms. Shila Chatterjee.
....For the Petitioner
Mr. Bhaskar Prasad Vaisya
Mr. Sagnik Chatterjee.
....For the Respondent
Nos. 1 to 5

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

As the law is well settled by the Larger Bench, this Court is of the view that, no fruitful purpose will be served by keeping this writ petition pending any further, accordingly, the Court proceeds with the writ petition for its disposal.

Ms. Shila Chatterjee, learned counsel led by Mr. Subhendu Roy Choudhury, learned counsel appear for the petitioner.

Mr. Sagnik Chatterjee, learned counsel led by Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader appear for the respondent nos. 1 to 5.

The petitioner claims to be the unmarried daughter of one ***Sri Probodh Kumar Mukherjee (since deceased)***. The deceased was an ***Assistant Teacher*** at ***Rampurhat Jitendralal Vidyabhaban, Birbhum*** and retired in ***the year 1974***. The mother of the petitioner died on ***January***

27, 1976. The father of the petitioner was receiving pension as per the old pension scheme and the father who was the employee, died on ***November 18, 1993***. The ***petitioner being the unmarried daughter claims family pension***.

The law is now well settled under the judgment of a Larger Bench dated ***June 20, 2023*** rendered, *inter alia*, ***In the matter of: The State of West Bengal and Others Vs. Sabita Roy, MAT 1518 of 2019***. Under the said judgment in the facts and circumstances as in this writ petition, the petitioner being the unmarried daughter is eligible to receive her claim on account of family pension.

Drawing attention to ***Annexure-P3 at page 25 to the writ petition*** learned counsel for the petitioner submits that, the respondent no.5 has already forwarded all the relevant records and materials before the respondent no.3. The same has not yet received attention of the respondent no.3.

Considering the submissions made on behalf of the parties and upon perusal of the materials on records, the facts are admitted to the extent that, the father of the petitioner died on ***November 18, 1993*** and the ***DCRB 1981 Scheme*** came into effect on and from ***April 1, 1981***. All these factors were considered and dealt with by the Larger Bench ***In the matter of***: ***Sabita Roy (Supra)***. In fact, the said ***memo dated April 13, 2010*** which has been referred to by the learned State Counsel was also considered and dealt with ***In the matter of: Sabita Roy (Supra).*** After considering all these, the Larger Bench has decided and settled the law that, in the given fact situation the petitioner is eligible to receive her claim. The relevant observations of the Larger Bench made in the matter of ***Sabita Roy (Supra)*** are quoted below:

> ***"As we find, though the Memorandum dated 01.11.2010 extends the benefit to the living ex-employees as mentioned under Para III above or their living widows, as the case may be, but by the said Memorandum the previous memoranda being No. 39-SE dated 10th January, 2008, No. 95(80)-SE dated 13.04.2010 and No. 96-SE dated 13.04.2010 as mentioned above had not been superseded. Initially, as noticed in the Memorandum dated 15.06.1990, pensionary benefits were extended to those employees who retired prior to 01.04.1981 and not covered by the DCRB Scheme, 1981. What we perceive, by the memorandum dated 01.11.2010 the pensionary benefits was not only restricted to the living employees who either retired prior to 01.04.1981 or after 01.04.1981, but the beneficial scope was extended to their living widows. The pensionary benefits as extended to divorced/widowed daughter of a teaching and non-teaching staff/pensioner vide Memo No. 39-SE dated 10th January, 2008, the pensionary benefits extended to an***

unmarried daughter even after attaining the age of 25 years till their marriage or death vide Memo No. 95(80) SE dated 13th April, 2010 and the pensionary benefits extended to unmarried/widowed/divorced daughter under the DCRB scheme, 1981 prescribing a mechanism to apply for family pension vide Memo No. 96-SE dated 13.04.2010 was neither superseded nor affected by the subsequently published memorandum dated 01.11.2010.

The golden rule as postulated by Hon'ble Apex Court in D.S. Nakara (supra) was that the provision of a pensionary rule /law being beneficial to a homogenous class of pensioners, should be interpreted liberally in their favour. Furthermore, the classification within the Homogeneous class, though permissible, must pass the muster of intelligible differentia. The classification within the class should be reasonable, rationale and manifest the laudable object sought to achieve. Any attempt to create separate class segregated from the Homogeneous class must stand on the test of reasonableness. In such backdrop and in the absence of any provision in the memorandum dated 01.11.2010 affecting or restricting the beneficial memoranda as above, by extending the pensionary benefits to unmarried /widowed/divorced daughters of retired employees or family pensioner, we hold that the aforesaid memoranda still occupy the field relating to granting pensionary benefits to those classes of women.

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 of 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 observations 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.

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 and from 1st April, 1981."

Since the law is now well settled as discussed above, there is no further reason for remanding the issue back before the respondent No. 3 for consideration.

In view of the above, the respondent no.3 is directed to accord necessary ***Family Pension*** payable to the petitioner strictly in accordance with law and shall issue the necessary ***Pension Payment Order*** (for short the PPO) ***positively*** within a period of ***three weeks*** from the date of communication of this order. The said ***PPO*** then shall be transmitted by the respondent no.3 to the respondent no.4 ***positively*** within a period of ***one week*** from the date of issuance of the said ***PPO*** and a copy of the said ***PPO*** shall also be furnished to the petitioner within such period of time ***positively***.

The ***respondent no.4 then shall release the necessary payment with all arrears*** in accordance with law in favour of the petitioner after receiving the necessary bank details from the petitioner ***positively*** within a period of three weeks from the date of receiving the said ***PPO*** from the respondent no.3.

On the above terms and with the above directions this writ petition, ***WPA 5742 of 2018*** stands ***allowed***. There shall be no order as to costs.

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

The parties are to act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)