

09.10.2023.
Item No. 65.
Court No. 25
ap

W.P.A. No. 9617 of 2022

**Priyanka Nandi
Versus
Calcutta Dock Labour Board & Ors.**

Mr. Shyamal Kumar Das,
Mr. Prasanta Kumar Banerjee,
Ms. Indrani Nandi,
Mr. Smita Pal.

...For the petitioner.

Mr. Rudra Jyoti Bhattacharjee,
Ms. Debjani Ghosal.

....For the UOI.

Mr. Lakshmi Kumar Gupta, Sr. Advocate,
Mr. Uttam Kumar Mondal,
Ms. Maitree Roy.

...For the Calcutta Dock Labour Board.

The petitioner is a divorced daughter of an ex-employee of Calcutta Dock Labour Board (CDLB). The petitioner's father died on January 14, 2016. The petitioner's mother, thereafter received family pension. The petitioner's mother died on May 4, 2021.

The petitioner's marriage was dissolved by way of a decree of divorce dated 3rd July, 2019. The petitioner claims to be a dependent of her mother and therefore, entitled to family pension.

Mr. Das, learned counsel appearing on behalf of the petitioner submits that the petitioner is eligible for family pension under Rule 54(6) of the Central Civil Services (Pension) Rules, 1972. Rule 54(6) of CCS Rules is set out hereinafter:

“(ii) The family pension is payable to the unmarried/widowed/divorced daughters above the age of 25, after all unmarried children have attained the 25 years of age or started earning their livelihood whichever is earlier. If the deceased government servant/pensioner has survived by any disabled child, the widowed/divorced/unmarried daughter will be eligible to receive family pension only after the turn of disabled child.”

Mr. Gupta, learned Senior Advocate appearing on behalf of the CDLB submits that the eligibility of a divorced daughter to family pension is not in dispute. However, due to severe financial constraints suffered by CDLB, the divorced daughters cannot be brought under the purview of the word ‘dependants’, who are eligible for grant of family pension.

Mr. Gupta also refers to the resolution No.8 of the Board Meeting dated March 30, 2015 to submit that as per Wage Revision Committee (WRC), 2007, the Category-II dependants comprising of unmarried/widow/divorced daughters and parents as applicable has been brought under the purview of “*family pension*” but such order has not been implemented by the Board of CDLB till date due to the absence of affordability. As per WRC, 2007, Category-I dependants comprising of widow or widower upto the date of death or remarriage are being granted “*family pension*”. Therefore, he submits that the “*family*

pension” for the divorced daughters should not be directed to be paid at present by CDLB.

Mr. Gupta, also relies on an order dated April 7, 2017 passed in CPAN 780 of 2015 by the Hon’ble Division Bench of this Court to submit that the contempt proceedings have been dropped against the officials of CDLB since it was held that the said officials do not have the money or access to the money to make necessary payment to the applicant, who was one of the thousands of retired employees of CDLB, seeking benefit of a revised scale of pension.

Since it was apparent that CDLB does not have the means to pay the pension at the enhanced rate, the violation of the order of the Court appeared neither to be wilful nor deliberate. Therefore, the Hon’ble Division Bench dropped the contempt proceedings.

Mr. Bhattacharjee, learned counsel appearing for the Union of India was permitted to bring necessary instructions as to the funds that may be provided by the Union of India to CDLB for payment of family pension to widowed/divorced daughters but till date no instructions have been brought on record.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that by resolution no.19 dated March 30, 2015, the period for which family pension was payable as per Rule 54(6) of the Central Civil Services (Pension) Rules,

1972 was included, under the definition of 'Family' in the Board's Pension Rules for workers and employees. Therefore, this Court finds no reason for not inclusion of the word "Family" as per Rule 54(6) of Central Civil Services (Pension) Rules, 1972 in the Board's Pension Rules for payment of "*Family Pension*" to the divorced daughters.

To the mind of this Court the affordability of an employer for payment of pension/family pension cannot be taken into consideration while assessing the issue of pension/family pension payable to an employee/legal representative of an employee.

It has been held by the Hon'ble Apex Court that "*pension*" is not a "*bounty*". Therefore, the financial stringency of the employer cannot be considered to be a determining factor for considering the entitlement of the petitioner for family pension. A beneficial reference may be made to a judgment reported in **(2022) 4 Supreme Court Cases 363** in the case of ***Punjab State Co-operative Agricultural Development Bank Limited – Vs. – Registrar, Co-operative Societies and others.***

CPAN 780 of 2015 arose out of F.M.A. No. 1709 of 2013. In F.M.A. No. 1709 of 2013 the petitioner's entitlement to enhanced pension must have been directed to be paid. Since the enhanced pension was not paid, the contempt application being CPAN 780 of

2015 may have been filed. Therefore, despite the financial stringency/affordability of CDLB being argued, F.M.A. No. 1709 of 2013 seems to have been decided in favour of the petitioner granting him enhanced pensionary benefits.

In the light of the discussions made hereinabove, **W.P.A. No. 9617 of 2022** is **disposed of** by directing the Assistant Administrative Officer, CDLB to consider the representation of the petitioner dated November 29, 2021 within a period of six weeks from date, upon giving a personal hearing to the petitioner and in the light of the observations made hereinabove. Furthermore, the authorities concerned of the CDLB will be permitted to approach the Central Government for allotment of funds necessary for implementation of the “*family pension*” to Category-II dependants as per WRC, 2007.

A reasoned order shall be passed and communicated to the petitioner within a period of two weeks from the date of hearing.

There will be no order as to costs.

All parties shall act on a server copy of this order duly downloaded from the official website of this Court.

(Lapita Banerji, J.)

