Court No. 17

WPA 10970 of 2022

03.05.2023

(AD 1)

(S. Banerjee)

Nirmala Kora & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Prosenjit Mukherjee
... for the petitioners
Mr. B. Basu Mullick
Mr. Sayan Ganguly
... for the State
Mr. Sarwar Jahan
Ms. Sumita Sen
... for the BDPS Council
Mr. Gopal Chandra Das
Mr. M. Ahmed
... for respondent nos. 7, 8 and 9

Here the question was whether the illegitimate children of a deceased employee is entitled to get family pension by dividing the pension amount amongst the first wife and the illegitimate child begotten from the wife of a void marriage.

While deciding this question learned advocate for the petitioners has taken me through some provisions of Death-cum-Retirement Scheme and also has placed one judgement of the Hon'ble Supreme Court delivered in the year 2016 [(2016)16 Supreme Court Cases 229] where the Hon'ble Supreme Court has held that family pension does not form part of estate of deceased and as such even an employee has no right to dispose of same in his will.

As it has been held that family pension does not form part of estate of deceased and even an employee has no right to dispose of same in his will and further Hindu Succession Act, 1956 is inapplicable in case of family pension, I hold that the family pension amount cannot be divided between the first wife, i.e., the legally married wife and the illegitimate children of the deceased.

Apart from this, learned advocate for the petitioner has also submitted that this family pension is a matter of a scheme and the scheme has to be followed in its letter and spirit which also gets support from the above judgement of the Hon'ble Supreme Court, therefore, the family pension is to be paid to the petitioner no. 1 by the Director of Pension, Provident Fund and Group Insurance.

Today I have been intimated by Mr. Basu Mullick, learned advocate representing the State, that the Provident Fund amount has already been paid to the petitioner and also to the illegitimate child of the second wife which marriage was void and Mr. Basu Mullick has also intimated this court that the gratuity amount would also be paid to the petitioner and the illegitimate children of the second petitioner's husband (the wife will get 50 per cent. And the illegitimate children will get 50 per cent. Of the gratuity) after processing of papers.

The petitioner is directed to submit the papers and the concerned school is directed to cooperate with the petitioner in submitting the papers for gratuity and this has to be done by three weeks from date of communication of this order to the petitioner and the gratuity amount has to be paid, as indicated above, by four weeks from the date of receiving of the papers from the petitioner.

The letter of the District Inspector of Schools giving instruction to the learned advocates, which has been placed before this court by the said learned advocate, is kept on record as the said learned advocate in the way of assisting the court with the consent of his client did not want to keep this instruction as a privileged communication.

The above direction for payment of gratuity and family pension, including the direction that is given now, i.e., payment of family pension amount, is mandatory, which will start within a period of eight weeks from the date of communication of this order to the Director of Pension, Provident Fund and Group Insurance.

With the above observation and direction, this writ application is disposed of.

(Abhijit Gangopadhyay, J.)