

IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 13642 of 2022

Smt. Sahana Shome Mondal

-Vs.-

State of West Bengal & Ors.

For the Petitioner : *Mr. Indranath Mitra,*
Mr. Subhankar Das.

For the State : *Mr. Ritesh Kumar Ganguly,*

Heard on : 20.09.2023

Judgment on : 30.11.2023

Partha Sarathi Chatterjee, J:-

1. A legal tussle has spiralled up to this Court seeking a quietus to the issue as to whether a widowed daughter of a lecturer and/or teaching staff of a Non-Government College is entitled to get benefits of family pension.

2. To trace out the genesis of the *lis*, it would be profitable to advert to the facts adumbrated in the writ petition. The petitioner's mother, namely, Minati Shome (in short, Mrs. Shome), since deceased, happened to be a lecturer of South Calcutta Girls' College (in short, the college), a Non-Government College. After rendering service for more than 37 (thirty-seven) years in the college she attained the age of superannuation in 1991 but her service tenure was extended till 1996 and hence, she started drawing pension from 1996 and onwards.
3. The petitioner being the only daughter of Mrs. Shome knotted nuptial tie with one Ranajit Mondal but Mr. Mondal breathed his last on 20.04.2000. Following untimely demise of her husband, who was the sole bread-earner of her family, the petitioner was constrained to take shelter in her parents' house for her survival. The petitioner's father, Subodh Kumar Shome left for his heavenly abode on 7th December, 2004 and on 7th July, 2019, the ill-fated petitioner lost her mother, Mrs. Shome. Consequently, the disbursement of pension in favour of Mrs. Shome was stopped.
4. The petitioner made a representation dated 19th April, 2021 with a prayer for release of family pension in her favour in terms of the guidelines dated 12th November, 2008 issued by the Special Secretary, Government of West Bengal, Finance Department, Pension Branch but despite receipt of the representation, the concerned respondent maintained deceptive silence and hence, the petitioner was constrained to approach this court by preferring a writ petition being W.P.A 11363 of 2021 before this Hon'ble

Court seeking a writ of mandamus commanding the respondents to release family pension in her favour in terms of the guidelines dated 12th November, 2008.

5. On 19th July, 2021, a coordinate Bench of this Court disposed of the writ petition by directing the Director of Public Instruction, Government of West Bengal to dispose of the representation strictly in accordance with law within a period of eight weeks from the date of communication of a copy of the order dated 19th July, 2021.
6. Despite receipt of the order dated 19th July, 2021, the same had not been complied with within the time stipulated therein. The petitioner was forced to take out a contempt application being C.P.A.N. 954 of 2021 but during pendency of the contempt application, the petitioner's representation dated 19th April, 2021 was disposed of by a reasoned order vide. no.44L/1C-235L/2021 dated 24.03.2022. Accordingly, recording this fact, the contempt application was disposed of. It is worthwhile to note that by passing the order dated 23th March, 2022, the Director of Public Instruction negated the petitioner's claim for family pension, *inter alia*, contending that the guidelines contained in the Memo. vide. no. 732-F(Pen) dated 12.11.2008 is applicable for payment of family pension for life to the unmarried, divorced/widowed daughters of Government employees/pensioners and not for the widowed daughters of an employee of a State-aided College and as per the Clause 30 of Memo. vide. no. 1097-Edn (CS) dated 31st May, 2000, which was claimed to be known in common parlance as the West Bengal Non-Government Colleges (Death-cum-

Retirement Benefit) Scheme, 1999, the benefits of family pension shall not be admissible to widowed daughter of a teacher/lecturer of Non-Government College.

7. One application under Section 6 of the Right to Information Act was submitted before the competent authority on behalf of the petitioner seeking information whether the Memo. dated 31.05.2000 is applicable in case of release of family pension to widowed daughter with a further request to supply a copy of Memo. dated 31.05.2000. In response to that application, the Joint Director of Public Instruction informed that no such Memo. *vide.* no. 1097-Edn(CS) dated 31.05.2000 is available. However, there was a memorandum dealing with the case of pension of teacher of Non-Government Colleges which is Memo. no. 1097-Edn(CS) dated 31st May, 1978 which is known as West Bengal Non-Govt. Teachers' Death-cum-Retirement Benefit Scheme (hereinafter referred to as the Scheme).
8. Hence, assailing the sustainability of the order *vide.* no. 44L/1C-235L/2021 dated 24th March, 2022 passed by the Director of Public Instruction, Government of West Bengal and seeking a direction upon the concerned respondents to disburse the family pension and its arrear to the petitioner, the present writ petition has been instituted.
9. Since, there was a wrong reference of a Memo. *vide.* no. 1097-Edn(CS) dated 31st May, 2000, by passing an order dated 01.09.2023 the Director of Public Instruction was directed to appear personally in court on 5.9.2023 and give satisfactory explanation regarding such wrong reference

in the order dated 24.03.2022 in form of an affidavit. In compliance with the said order dated 01.09.2023, the Director of Public Instruction concerned appeared personally in Court and by filing an affidavit submitted that in the order dated 24.3.2022 erroneously the Memo. *vide*. no. 1097-Edn(CS) dated 31st May, 2000 was referred which should be read as Memo. *vide*. no. 1097-Edn(CS) dated 31st May, 1978.

10. Mr. Mitra, learned advocate for the petitioner argues that the benefits of family pension have been extended to the widowed daughter of the Government employee and even the widowed daughters of teaching and non-teaching staff of a Government College also get family pension but since the petitioner is a widowed daughter of a deceased teacher of Non-Government College, the concerned respondent has denied to extend such benefit in her favour though the petitioner fulfils all the criteria for enjoying such benefits. Drawing my attention to the order dated 12.10.2001 passed by a coordinate Bench of this court in C.R. No. 7993(W) of 1993 (Annexure-P/13 to the writ petition) he contends that in this case an association of superannuated teachers of Non-Government Colleges approached this court contending, *inter alia*, that by issuing a series of notification, the retirement benefits of superannuated teachers of Government Colleges were upwardly revised but such benefits were denied to the teachers of Non-Government College and C.R. no. 7993(W) of 1993 was disposed of by directing the respondents to maintain parity between the superannuated teachers of Non-Government Colleges and the

retired teachers of Government Colleges in respect of the pensionary benefits and all revisions of such benefits.

11. Mr. Mitra further contends that the Director of Public Instruction, Govt. of W.B. impugned the order dated 12.10.2001 passed in C.R. no. 7993(W) of 1993 in an appeal being F.M.A no. 617 of 2003 (*Director of Public Instruction, Govt. of W.B. –vs- Association of Superannuated Teachers of Non-Govt. College & Ors. , reported in 2007(1) CHN 547*) but a Hon'ble Division Bench of this Court was pleased to dismiss the appeal upholding the view taken in C.R. no. 7993(W) of 1993 by an order dated 20.09.2006. He submits that Director of Public Instruction, Govt. of W.B. preferred a petition for Special Leave to Appeal (Civil) no.(s). 6636 of 2007 before the Hon'ble Supreme Court to assail the order dated 20.09.2006 but subsequently, the Petition for Special Leave to Appeal was withdrawn.

12. According to Mr. Mitra, the proposition laid down in C.R. no. 7993(W) of 1993 has attained finality and hence, the respondents are bound to maintain parity in respect of pensionary benefits between the teachers of the Government Colleges and the Non-Government Colleges and the respondents are bound to disburse family pension to the widowed daughter of a teacher of Non-Government College since such benefit is extended to a widowed daughter of a teacher of Government College and a Government employee. The copies of the Memo. no. 1097-Edn(CS) dated 31st May, 1978 and the Memo. *vide*. no. 732-F(Pen) dated 12.11.2008 submitted by Mr. Mitra are kept with the record.

13. In response, Mr. Ganguly, learned advocate for State argues that a teacher of Non-Government College and a teacher of Government College and a Government employee cannot be claimed to be similarly situated. He further contends that as per the Memo. no. 1097-Edn(CS) dated 31.05.1978, a widowed daughter of a teacher of Non-Government College is not entitled to get family pension. He prays for dismissal of the writ petition.

14. Having scanned the anatomy of the West Bengal College Teachers (Death-cum-Retirement Benefit) Scheme (in short, the Scheme) so far as it relates to family pension, it is explicit that by virtue of the letter *vide*. Memo. no 1097-Edn(CS) dated 31st May, 1978, which was issued in continuation of the Government order no. 817-Edn(CS) dated 11th May, 1976, the Scheme, which was introduced with retrospective effect from 1st April, 1974, was made applicable to all whole-time teachers (both permanent and temporary) of Non-Government affiliated Colleges in West Bengal who were in service on 31.03.1974 and also to those who were appointed after that provided they draw pay in the new UGC scales of pay as introduced w.e.f. 1.1.1973. As per paragraph-4 of the Scheme, the Pension (including Family Pension)–cum-gratuity shall be admissible under the Scheme. The paragraph 5(p)(2) of the Scheme has defined the word ‘Family’ for the purpose of family pension and in such definition, the relatives of a teacher, namely, i) wife in case of a male teacher, ii) husband in the case of a female teacher, iii) minor sons including adopted sons, iv) unmarried minor daughters including adopted daughters & v) dependent parents

have been included. The paragraph- 30 of the Scheme deals with the period during pension is admissible subject to the provision made in paragraph-32 which postulates that the family pension shall be admissible—a) in case of widow/widower upto the date of death or re-marriage, whichever is earlier; b) in case of minor son until he attains the age of 18 years; c) in the case of unmarried daughter until she attains the age of 21 years or marriage, whichever is earlier; & d) in the case of dependent parents up to the date of their death or re-marriage, whichever is earlier. The paragraph- 32 thereof speaks that pension is payable to one member of the family.

15. The Notification vide. Memo. no. 732-F(Pen) dated 12th November, 2008 speaks that the Memorandum Nos. 620-F(Pen) dated 20.06.2006 and 138-F(Pen) dated 03.03.2008 issued by the Department of Finance, Government of West Bengal provide for the extension of the benefit of family pension to the widowed / divorced and unmarried daughters of State Government employees / pensioners respectively whereas the Memo. no. 732-F(Pen) dated 12th November, 2008 prescribed the procedure and/or guidelines for making application for payment of family pension for life to the unmarried divorced / widowed daughters of Government employees / pensioners.

16. Hence, indisputably, the widowed daughter of a deceased teacher of a Non-Government College has been excluded from the zone of consideration for family pension whereas the widowed and divorced daughters of Government employee have been included in the definition of family for

the purpose of family pension under the Death-cum-Retirement Benefits Scheme applicable for them. Needless to observe that a teacher of a Government College is construed to be a Government Employee and guided by the service rules applicable for the Government Employee. [see, the submission made on behalf of the State in case of *Director of Public Instruction, Govt. of W.B. –vs- Association of Superannuated Teachers of Non-Govt. College & Ors.(supra)*] So, it can be construed that the benefits of family pension is extended to the widowed daughter of a teacher of a Government College.

17. Article 14 of the Constitution of India forbids only class legislation and not reasonable classification. A classification is reasonable, when the twin tests as laid down in the celebrated decision rendered by the Hon'ble Supreme Court of India in case of *State of W.B –vs- Anwar Ali Sarkar reported in AIR 1952 SC 75* are fulfilled which are as follows:

(i) *The classification must be based on an intelligible differentia which distinguishes persons or things that are grouped, from others left out of the group; and*

(ii) *The differentia must have a rational relationship to the object sought to be achieved by the statute.*

So, it is to be considered whether the differentia is reasonable and intelligible and if the answer comes in affirmative, then it is to be examined whether such differentia has any nexus with the object of the scheme. The expression '*intelligible*' connotes '*what can be understood*'.

18. It may be argued that a teacher of a Non-Government College cannot be equated with a teacher of Government College or a Government employee since the mode of appointment, service condition and retirement benefits of a teacher of a non-Government college are different and hence, the teachers of Non-Government constitute a distinct class.
19. Now, before examining whether such differentia is reasonable or intelligible, let me examine whether such differentia was accepted by this Court. In the judgment delivered in case of *Director of Public Instruction, Govt. of W.B. –vs- Association of Superannuated Teachers of Non-Govt. College & Ors.* (Annexure-P/14) (supra), which has attained its finality, the Hon'ble Division Bench of this Court without any hesitation held that *'by Notifications dated 7.4.1975, 11.5.1976 and 31.5.1978, the Government has taken a conscious decision to bring about parity between these two groups of teachers, one being employed in non-Government Colleges and other in Government Colleges'* and the Hon'ble Division Bench further held that the letter vide. no. 1097-Edn (CS) dated 31.05.1978 gives a clear indication that the Government has taken conscious decision to bring the teachers of non-Government Colleges at par with the State Government employees of corresponding pay and rank and now, the Government cannot turn back and claim that a teacher of non-Government employee and a Government employee stand on different footing.
20. In case of *Poona Mal (Smt.) –vs- Union of India* reported in *AIR 1985 SC 1196*, while explaining the object and nature of family pension, the Hon'ble Supreme Court of India was pleased to observe as follows:

“When the Government servant rendered service to compensate which a family pension scheme is devised the widow and the dependent minor would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of Constitutional promise in as much as it partakes the character of public assistance in cases of un-employment, old-age disablement or similar other cases of underserved want. Relevant rules merely make effective the Constitutional mandate.”

21. Admittedly, the family pension scheme which is a socio-economic measure is devised to help the widow and dependent children of deceased employee tide over the financial crisis. In case of *Bhagwanti (Smt.) –vs- Union of India*, reported in *AIR 1989 SC 2088*, having regard to object and nature of family pension, the policy decision of the Government to exclude the spouse, who got married to the Government Employee after his/her retirement and the children born after retirement out of wedlock was held to be arbitrary and discriminatory.
22. In the judgment of *Rameshwari Devi –vs- State of Bihar*, reported in *(2000)2 SCC 431*, even the children through the second marriage (being the legitimate children within the meaning of Section 16 of Hindu Marriage Act, 1955) was held to be entitled to get family pension.
23. In case of *State of West Bengal & Ors; Arpita Sarkar ‘Kakali Chakraborty (Dutta) –vs- Purnima Das & Ors.*, reported in *2017 (4) CalHN 362(FB)*, the question that falls for consideration was as follows:

“Whether the policy decision of the State Government to exclude from the zone of consideration of compassionate appointment a daughter of an employee, dying-in harness or suffering permanent incapacitation, who is married on the date of death/permanent incapacitation of the employee although she is solely dependent on the earnings of such employee, is constitutionally valid?”

22. The Hon’ble Constitutional Bench while giving answer to this question was pleased to observe that in Indian Society a married daughter can be divorcee or abandoned wife and she can be fully dependent upon earnings of her father and a married daughter may be forced to take shelter in her parents’ house and survive on the benevolence showered by her father/mother (Government employee) and ultimately, the Hon’ble Constitutional Bench was pleased to hold that the exclusion of the married daughters from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of ‘dependent’ and ineligible to even apply, is not constitutionally valid and it was held that exclusion of daughters purely on the ground of marriage would constitute an impermissible discrimination and be violative of Articles 14 and 15 of the Constitution of India.

23. It goes without saying that Article 15(1) of the Constitution of India prohibits the State from discriminating on the ground of sex rather Article 15(3) of the Constitution empowers the State to make special provision for women. Article 39 of the Constitution speaks that the State should

endeavour to ensure that men and women have the right to an adequate means of livelihood and Article 13(2) of the Constitution prohibits the State from making any law which abridges the rights of its citizen conferred under Part-III of the Constitution.

24. The family pension scheme is socio-economic requirement of the Constitution of India which is a welfare State one and the object of introduction of the scheme of family pension is to assist the dependent of the deceased employee/pensioner or his/her family to tide over the penury into which the dependent or his/her family has plunged due to demise of such deceased employee/pensions. A widowed daughter due to financial stringency may take shelter in her parents' house and survive on the pension of the deceased teacher of a Non-Government College and hence, the exclusion of a widow daughter from the definition of family for the purpose of family pension has no nexus with the object sought to be achieved by the Scheme.
25. At the cost of reiteration, it can be stated that the classification made in between a teacher of Non-Government College and a teacher of Government College or a Government Employee particularly in respect of grant of pensionary benefits has been held to arbitrary by the Hon'ble Division Bench in case of *Director of Public Instruction, Govt. of W.B. –vs- Association of Superannuated Teachers of Non-Govt. College & Ors.* (*supra*) and such decision has attained its finality.
26. The classification made in between widow daughter of a Government Employee and the widow daughter of a teacher of a Non-Government

College for the purpose of family pension is not reasonable and intelligible and such classification and/or differentia has no nexus with the object sought to be achieved by the Scheme. I have not found any justification, rationale and/or logic behind such classification. Consequently, I have no qualm to hold that such classification and/or differentia is violative of Articles 14 and 15 of the Constitution of India and exclusion of widow daughter from the definition of family for the purpose of family pension in paragraph 5(p)(2) of the West Bengal Non-Government College Teachers (Death-cum-Retirement Benefit) Scheme is not constitutionally valid.

27. It would not be out of context to mention that it is a well-known proposition of law that generally a writ court does not interfere in Government policy since the question of policy is essentially for the State to decide but if the Government policy even its economic policy is found to be arbitrary, unfair, unreasonable, irrational and violative of the constitutional provisions or contrary to the statutory provisions, a writ court can interfere. Admittedly, the public authorities must have liberty and freedom in framing policies but that discretion is not unfettered and unreviewable (See, the cases of *Ehsan Khalid –vs- Union of India*, reported in (2014) 13 SCC 356 and *Brij Mohan Lal –vs- Union of India*, reported in (2012) 6 SCC 502).

28. In view of the foregoing analysis, the order vide. no. 44L/1C-235L/2021 dated 24th March, 2022 passed by the Director of Public Instruction, Government of West Bengal is set aside. The Director of Public Instruction shall release the family pension in favour of the petitioner if she fulfils the

criterion of financial dependency. If the petitioner's claim is found to be not tenable, then a reasoned order shall be passed and such reasoned order must be communicated to the petitioner. The entire exercise shall be completed within 12(twelve) weeks from the date of receipt of a copy of this order.

- 29.** It would be open to the appropriate authority to frame rule in the light of the observations made in this judgment so as to include the widowed daughter in the definition of the expression 'family' for the purpose of family pension to entitle a widowed daughter of a teacher of a Non-Government College and/or State-affiliated or State-aided College to enjoy the benefits of family pension.
- 33.** With these observations and order, the writ petition is being **WPA 13642 of 2022** stands thus **disposed of**, however, without any order as to the costs.
- 34.** Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
- 35.** Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)