

31.01.2023
(D/L-13)
Ct.-18
(Susanta)

W.P.A. 13730 of 2022
With
I.A. No. CAN 1 of 2023

Gita Mukhopadhyay Chakraborty
-Vs-
The State of West Bengal & Ors.

Mr. Sudipta Maity,
..... For the Petitioner.
Mr. Biswajit De,
Ms. Debdooti Dutta,
..... For the State.

Re: **I.A. No. CAN 1 of 2023**

The sole petitioner died intestate during the pendency of the writ petition on August 20, 2022. This is an application for substitution of the heirs and legal representatives of the deceased petitioner.

It is submitted by Mr, Maiti, learned Counsel for the proposed petitioners that the application for substitution could not be filed immediately after the death of the petitioner due to non-availability of the death certificate.

The application is otherwise in form, the explanation offered is satisfactory, the delay in filing the application, is condoned.

The particulars of the heirs and legal representatives of the deceased petitioner have been set out under paragraph '3' of the application, let those persons be substituted in place and instead of the deceased petitioner.

The application being I.A. No. CAN 1 of 2023 is allowed without any order as to costs.

The department is directed to carry out the necessary amendment in the cause-title of the writ petition.

Re: **W.P.A. 13730 of 2022**

Affidavit-of-service filed by the learned advocate for the petitioner be kept with the record.

The mother of the petitioners was an Assistant Teacher who retired from her said service on superannuation on November 30, 2008.

The petitioners are claiming that their mother had exercised option to switch over to Pension-cum-Gratuity from CPF-cum-Gratuity and refunded the employer's share of contribution with interest and additional interest within the time limited by the notification of the Government of West Bengal bearing No. 749-SE(L)/SL/5S-56/13(Pt-V) dated June 13, 2014.

The grievance of the petitioners is that the Pension Payment Order was issued with effect from the date of the aforesaid refund, instead from the date following the date of retirement of the employee concerned on superannuation.

The petitioners by the instant writ petition are praying for issuance of a writ of mandamus commanding the respondents to release the arrear pension from the date following such date of retirement.

Learned counsel for the State-respondents do not oppose the prayer of the petitioner.

In view of the judgment of the Special Bench of this Court in the case of ***DISTRICT INSPECTOR OF SCHOOLS(SE), KOLKATA vs. ABHIJIT BAIDYA*** reported in **2013(3) CHN (CAL) 711** and in view of subsequent clarification of some of the paragraphs of the said judgment by the Special Bench in its order dated **September 30, 2019** on **G.A. 464 of 2018**, the issue is no longer *res integra*.

The petitioners are entitled to the arrear pension, as prayed for. The concerned District Inspector of School (SE) is directed to verify the records expeditiously to ascertain as to whether the employee concerned had exercised the said option and refunded the employer's share of contribution within the time limited by the aforesaid notification dated June 13, 2014.

In the event, it is found that the said option was so exercised, the said authority shall process the claim of the petitioners for arrears of pension and shall forward the necessary recommendation and/or sanction to the Director of Pension, Provident Fund and Group Insurance, who, in turn, shall take steps to issue Revised Pension Payment Order in favour of the petitioners with effect from the date following the date of retirement of the employee concerned on superannuation and the concerned Treasury Officer, thereafter shall release the pension in accordance with the Revised Pension Payment Order.

Entire exercise in this regard is required to be completed within a period of twelve weeks from the date of communication of this order.

W.P.A. 13730 of 2022 stands disposed of with the above directions. There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)