Court No. 22

25.9.2023

(Item No. ML-193)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA 13318 of 2018

Kalpana Pal
v.
The State of West Bengal & Ors.

Mr. Sourav Mitra
Ms. Sreyasree Choudhury
..... for the petitioner
Mr. Avishek Prasad
..... for the State

This is a hearing matter upon affidavits.

Time to file affidavit-in-reply by the petitioner affirmed on January 17, 2022, is extended till today, the affidavit is filed today and the same is taken on record.

The petitioner claims to be the unmarried daughter of one **Sri Kamala Kanta Pal (since deceased)**. The deceased was a **Headmaster** at **Sonamukhi B. J. High School, Bankura** and retired on **November 30, 1978**. The mother of the petitioner died on **May 2, 1999**. The father of the petitioner was receiving pension as per the old pension scheme and the father who was the employee died on **January 23, 1989**. The petitioner being the unmarried daughter claims family pension.

In the first round of writ litigation being **W.P. 1128(W) of 2017** a co-ordinate bench by its order dated **January 19, 2017, Annexure P-6** at **page 29** to the writ petition disposed of the said writ petition by directing the jurisdictional District Inspector of Schools (for short, the D.I.) to decide the issue and pass a reasoned order in the mode and manner as directed therein.

Pursuant to the said direction the respondent No. 3 herein passed the impugned order dated **June 5, 2017, Annexure P-7** at **page 35** to the writ petition. Through the impugned order the claim of the petitioner was rejected with the following observations:

"The memo being No. 138-F(Pen) dated 03.03.2008 issued by the Joint Secretary to the Government of West Bengal, Finance Department pension Branch vividly states that the family pension shall be extended to the unmarried daughters of Government employees/Pensioners even after attaining the age of 25 years till their marriage or death subject to the conditions that the incumbent has monthly income less than 2600/- from any employment in Government/Semi Government, Statutory bodies, corporation, Private Sector self employment etc.

In this instant case Late Kamala Kanta Pal, father of Kalpana Pal (petitioner), was a Headmaster of Sonamukhi BJ High School, Bankura which was a Non-Govt. Aided Educational Institution but not a Govt. Institution. As the petitioner's father was not a govt. employee so as per the above stated Govt. order, Kalpana Pal, the unmarried daughter of late Kamala Kanta Pal should not be entitled to get family pension.

A memo being memo being No. 95(80)-SE(B)/IM-112/2008 dated April 13, 2010 issued by

the School Education Department, Budget Branch, Govt. of West Bengal vividly states as here under:- "after careful consideration of the matter the Governor has been pleased to decide that the benefit of family pension shall be extended to the unmarried daughters of Non-Government aided Educational Institution Employees/Pensioners under West Bengal Recognised Non-Government Educational Institutions Employees (DCRB) Scheme, 1981 even after attaining the age of 25 years till their marriage or death subject to the condition that the incumbent has monthly income less than Rs.3500/- from any employment in Government, Semi Government, Statutory bodies Corporation, Private Sector, self employment etc."

In this instant case, Kamala Kanta Pal, now deceased, retired from his service on 30.11.1978 i.e. before the introduction of the West Bengal Recognised Non-Government Education Institution Employees DCRB Scheme 1981. As Kamala Kanta Pal, father of the petitioner retired from the post of Assistant Teacher on 30.11.1978 so, he was not under the said DCRB Scheme 1981.

Hence as per provision of the above stated G.O. Kalpana Pal, unmarried daughter of Late Kamala Kanta Pal should not be entitled to get family pension.

Hence considering the above state observation and in compliance of the order dated 19.01.2017 of the Hon'ble High Court, Calcutta in W.P. No. 1128 (W) of 2017, Kalpana Pal – Vs. – The State of West Bengal & Ors., the representation of the petitioner for getting family pension is considered and rejected.

The matter is thus disposed of. All concerned be informed accordingly."

Mr. Sourav Mitra, learned counsel appearing for the petitioner referring to the said impugned order at ***page 35*** to the writ petition submits that, 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. he submits that, the said impugned order should be set aside.

Mr. Avishek Prasad, learned State counsel appears for respondent Nos. 1 to 3. Referring to **clause 6** from the said impugned order dated **June 5, 2017** he submits that, the claim of the petitioner was negated and rejected particularly under the provision of the **memo being No. 95(80)-SE(B)/IM-112/2008 dated April 13, 2010** which provides that, the benefit of family pension shall be extended to the unmarried daughters of Non-Government aided Educational Institution Employees/Pensioners under West Bengal Recognised Non-Government Educational Institutions Employees (DCRB) Scheme, 1981 even after attaining the age of 25 years till their marriage or death subject to the condition that the incumbent has monthly income less than Rs.3500/- from any employment in Government, Semi Government, Statutory bodies

Corporation, Private Sector, self employment etc. Relying upon such provision he submits that, this circular relates to **post DCRB 1981** Scheme but the petitioner's case was **pre DCRB 1981** Scheme, hence her claim was rejected. The other ground for rejection of the claim of the petitioner was that, the father of the petitioner retired before 1981 when the scheme be came into force.

Learned State counsel further submits that, the case of the petitioner can be remanded back before the respondent No. 3 for re-consideration.

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 in **1978** 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 re-consideration.

In view of the foregoing discussions and reasons, the impugned order dated **June 5, 2017, Annexure P-7** at **page 35** to the writ petition stands **set aside and quashed**.

In view of the above, the respondent No. 3 is directed to accord necessary family pension payable to the petitioner in accordance with law since **April 13, 2010** being the date of issuance of the circular and transmit and send all records and papers pertaining to the petitioner before the respondent No. 4 for issuing the necessary pension payment order positively within a period of **three weeks** from the date of communication of this order.

The respondent No. 4 in turn shall issue the necessary **Pension Payment Order** (for short, PPO) in favour of the petitioner and shall transmit and send the same to the respondent No. 5 positively within a period of **three weeks** from the date of receiving the intimation from the respondent No. 3.

The respondent No. 5 then shall release the necessary payment with all arrears since **April 13, 2010** in favour of the petitioner after receiving necessary bank details from the petitioner positively within a period of **three weeks** after receiving the said bank detail from the petitioner.

On the above terms and with the above directions, this writ petition being **WPA 13318 of 2018** stands allowed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)