

03 18.8.2023
Sc Ct. no.22

WPA 14788 OF 2015

Kamala Rani Pati

Vs.

The State of West Bengal & Ors.

Mr. Robiul Islam
Mr. Sk. Jayed Hossain
Mr. Raju Mondal.

....For the Petitioner

Mr. Shamim ul Bari

....For the State

The petitioner claimed to be the **widow** of one Kalipada Pati, since deceased who was an **Assistant Teacher** and retired on **December 31, 2003**. The deceased employee died on **January 13, 2015**. Till the date of death the deceased employee received his pension. The document relating to service, pension and/or death-cum-retiral benefit annexed at **page 13** to the writ petition depicts that, the added respondent no.6, the son of the deceased employee, was made the nominee to receive family pension.

Pursuant to the direction made by this Court, the said son has been impleaded in the array of respondents as added respondent no.6. The affidavit-of-service on record, affirmed on July 18, 2023 shows that, notice was served upon the added respondent. Page 14 of the writ petition shows that, **the son claimed to have made a declaration that, he would have no objection if the petitioner being his mother receives the family**

pension. The petitioner being the widow of the said deceased State employee claimed family pension.

Mr. Robiul Islam, learned advocate for the petitioner submitted that, the petitioner is in dire necessity of fund for her survival and in any event the petitioner having a legal right over the family pension of her deceased husband, who was the State employee, shall immediately be paid with the family pension.

Mr. Shamim ul Bari, learned advocate appeared for the respondent nos. 1 to 5.

After considering the submissions made on behalf of the parties and after considering the materials on record, this Court first reiterates the law settled on the issue to the extent that, the **son can claim family pension subject to the restrictions imposed under the relevant rule** but **when the widow is there it is the exclusive right of the widow to claim such family pension.**

Inasmuch as, in the facts of this case **page 14** to the writ petition would further depict that, son has already expressed his **“No Objection” in favour of his mother to receive the said family pension.** Even if, in the pension record the name of the son would appear as nominee, till the time the widow is alive **such nomination is invalid and not tenable in law and the widow shall be the recipient of the family pension.**

In view of the facts and circumstances of this case and the law settled on the issue, as discussed above, to subserve justice, the ***petitioner shall be at liberty to make a comprehensive and appropriate representation before the respondent no.3 but the same shall not travel beyond the scope of the case made out in the writ petition, within a period of two weeks from date.***

In the event such a representation is made the respondent no.3 upon a prior hearing notice of at least seven days on the petitioner and the added respondent no.6 and upon giving them an opportunity of hearing shall decide the issue by passing a reasoned order in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.3 ***positively*** within a period of ***six weeks*** from the date of receipt of such representation and shall communicate his reasoned order to the petitioner, the respondent no.4 and the added respondent no.6 within a further period of two weeks from the date of the said reasoned order to be passed.

It is made clear that this Court has not gone into the merits of the claim of the writ petitioner in any manner. The petitioner and the added respondent no.6 shall be free to urge whatever points they wish to urge by

relying upon whatever records and documents they wish to rely upon before the respondent no.3.

While deciding the issue the respondent no.3 shall be free and will be with full liberty to reach a satisfaction as to the existence, status and identity of the petitioner upon necessary identification and/or related documents being furnished before him. In the event any doubt is raised in the mind of the respondent no.3 he shall express his opinion accordingly and pass his reasoned order in the like manner.

It is also made clear that, this order shall not create any equity or right in favour of the petitioner if the petitioner is found not to be eligible to receive her claim strictly in accordance with law.

In the event the reasoned order goes in favour of the petitioner then the respondent no.3 shall take all consequential steps and communicate his reasoned order to the respondent nos. 4 and 5 to give effect thereto forthwith for releasing family pension including the arrears since ***January 14, 2015*** being the next date of death of the deceased employee positively within a period of ***eight weeks*** from the date of communication of the said reasoned order.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms this writ petition, **WPA 14788 of 2015** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)