

03.10.2023
SL No.64
Court No.8
(gc)

**MAT 1345 of 2022
CAN 1 of 2022
CAN 2 of 2022**

**Smt. Kajal Rani Santra
Vs.
State of West Bengal & Ors.**

Mr. Jayanta Kumar Das,
Ms. Madhumanti Das
...for the Appellant.

1. In spite of service, the State respondents and the private respondent are not represented.

Re: CAN 1 of 2022

1. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
2. The delay of 85 days in filing the memorandum of appeal is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

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CAN 2 of 2022**

4. The appellant is aggrieved by the direction of the learned Single Judge by which an observation has been made in the impugned order to the extent that if there are more than one widowed daughters, each of them are eligible to receive family

pension in proportionate share. It is submitted that the pension rules do not permit the distribution of family pension in proportionate share. The other objection raised is with regard to the order being made prospective and not retrospective as according to the petitioner the younger daughter has no right to receive the money under the pension rules.

5. We agree with the first objection and disagree with the second objection. The pension has to be released in accordance with the relevant rules. If the rule is specific with regard to the family pension being distributed in proportionate share to the eligible heir of the deceased, it would be obvious that the person similarly circumstanced as the private respondent, shall be entitled to receive proportionate share in case there are more than one widowed daughter.
6. However, we feel that while giving the direction, the learned Single Judge did not direct the respondents for payment of family pension in proportionate share. The learned Single Judge directed the authorities to decide in accordance with the government orders which are

applicable in the present facts and circumstances.

7. Under such circumstances, we only clarify that the observation made by the learned Single Judge with regard to the eligibility to receive family pension in proportionate share by each of the two daughters is not the direction upon the authorities concerned to act on such direction. The authorities must decide the eligibility and entitlement to receive family pension of the appellant and the private respondent in accordance with the government orders that are applicable in the present facts and circumstances.
8. Insofar as the payment of amount already received by the private respondent is concerned, we agree with the observation made by the learned Single Judge that she applied immediately after the death of her father and had been receiving the pension from 2016 and it would be inequitable at this stage to direct refund of the said amount as it is likely to cause hardship.
9. In the event the authorities having decided the matter, we extend the time to comply with the order passed by the learned Single Judge within a period of eight weeks from

the date of communication of a copy of this order by either of the parties to the authorities concerned and all other directions passed in this regard shall remain unaltered.

10. With the aforesaid observation, the appeal and the application stand disposed of.

11. However, there shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)