

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri
WPA 20648 of 2023**

**Biswajit Sen
Vs.
State of West Bengal & Ors.**

**For the petitioner : Mr. Mahadeb Sarkar
For the State : Mr. Supratim Dhar,
Mr. Amrita Lal Chatterjee**

Judgement on : 29.08.2023.

Bibek Chaudhuri, J.

Affidavit of service filed on behalf of the petitioner be taken on record.

The issue involved in the instant writ petition is whether the applicant of a fair price shop licence on compassionate ground may be subjected to discrimination by the State authority while the similarly situated person was granted licence of fair price shop in respect of the adjacent dealership.

Indisputably the father of the petitioner was a fair price shop dealer. After his death the petitioner, a retired personnel of Indian

Army made an application for grant of licence on compassionate ground. His application was rejected on the ground that he has regular source of income from his pension and, therefore, he is not entitled to get licence of fair price shop.

The Court can take judicial notice of the fact that in respect of Army personnel, pension is granted under the scheme of the National Pension System (NPS). The National Pension System is a defined contribution of pension system administered and regulated by the Pension Fund Regulatory and Development Authority (PFRDA), created by the Act of the Parliament of India. NPS envisages a provision similar like contributory pension. The employee is required to contribute in the pension scheme. The employer is also under obligation to contribute a major share in the contributory pension fund and on the basis of share of the employee and employer, the pension is fixed. Thus, under the NPS, pension is not an accrued income of an employee. On the other hand, it is the contribution of the employee and employer, which the employee gets after his retirement throughout the life.

Therefore, a pension under NPS cannot be equated with regular income of an employee. In the instant case, the petitioner being ex-Army man gets Rs.13,000/- per month towards his pension because of the fact he contributed in his pension account. Unless there is any

contribution, question of payment under National Pension System does not arise.

Moreover, another ex-army man, namely, Sukhendu Halder was granted licence in spite of the fact that he also gets pension. This discrimination by the State authorities cannot be supported under the principle of *intelligible differentia*.

For the reasons stated above, the instant writ petition is allowed. The order dated 8th August, 2023 passed by the Sub-Divisional Controller (Food and Supplies), Bongaon, North 24-Parganas is quashed and set aside. The State respondents, specially the respondent Nos.3 and 4 are directed to dispose of the application of the petitioner in the light of the observation made in the instant writ petition hereinabove within 60 days from the date of communication of this order.

The parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

**Mithun
A.R. (Ct).
SI No.11.**