

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 21903 of 2019

Reserved on : 16.08.2023

Pronounced on: 25.08.2023

Nibedita Mondal

...Petitioner

-Vs-

The State of West Bengal & Ors.

...Respondents

Present:-

Mr. Srikanta Dutta

... for the Petitioner

Mr. Avijit Sarkar

...for the Respondents

Rajarshi Bharadwaj, J:

1. In the present matter, a writ petition has been instituted, wherein the impugned directive/order issued by the respondent no.5, herein the Director of Pension, Provident Fund and Group Insurance, Department of Finance under the Government of West Bengal, stands contested on the ground of non-disbursement of pensionary benefits to the petitioner.

2. The facts of the case are that the petitioner's father one late Prabhat Kumar Mondal was an approved teacher of Markolla Primary School, Birbhum (hereinafter referred to as the 'said school') who discharged his duties and responsibilities till 14th February, 1976. However, he died intestate on 24th February, 1978 while in service.

3. Upon the demise of the petitioner's father, the family pension was accorded to the petitioner's mother, one Jayarani Mondal. This was in accordance with the provisions outlined in the West Bengal Non-Government Education Institution Employee's (Death-cum-Retirement Benefit) Scheme, 1981, hereinafter referred to as the 'said scheme'. However, subsequent to this, the petitioner's mother also passed away without leaving a valid will on the 9th day of March, 2014. The surviving family members include the petitioner, who is the unmarried daughter, and two married daughters.

4. Owing to the Government Order (G.O) being no. 39 SE (B)/1M-19/07 dated 10th January, 2008 the scope of the family pension in terms of the said scheme was extended to the unmarried daughter of such employees/pensioner till her marriage. The petitioner having no other source of income became entitled to get the family pension in terms of the said order. On learning the same from respondent no.3 herein the District Inspector of School (PE), Birbhum the petitioner made an application before the respondent no.5 herein the Director, Pension Provident Fund and Group insurance, West Bengal through the respondent no.3 on 22nd July, 2014 for granting of pension. However, the Deputy Director, Pension Provident Fund and Group Insurance, West Bengal vide letter being memo no. K/RM/P/00722/15 dated 8th September, 2015 rejected the claim holding that there was no scope for extending the benefit of family pension as per the GO no.539- SE (P&B) dated 1st November, 2010.

5. As no actions were undertaken to disburse the family pension, the petitioner filed a writ petition before this Hon'ble Court being W.P. No. 14809(W) of 2017 whereby the Learned Single Judge passed an order setting aside the memo no. K/RM/P/00722/15 dated 8th September, 2015 and instructed the respondent no. 5 to make a reasoned decision in accordance with the applicable rules, regulations, circulars and notifications including the

Government memo dated 13th April, 2010 concerning the granting of the family pension to the petitioner, following a hearing within six weeks. However, after the hearing, a decision was rendered through memo no. 508/L/1(3)/DPPG/L-477/17 dated 29th October, 2018, by respondent no. 5, denying the petitioner's claim stating that as per clause 6 of GO no. 539-SE (P&B) the benefit should be extended only to the living ex-employees or their living widows, but not to the unmarried, widowed or divorced daughters. Consequently, feeling aggrieved by this decision, the present petition has been preferred.

6. The learned Counsel for the petitioner submits that the stand taken by the respondent authorities for rejecting the claim of the petitioner are highly prejudicial to the rights and claims of the petitioner. The respondent no. 5 failed to appreciate the scope of the G.O mentioned in the impugned order as well as the claim of the petitioner based on the policy decision of the State as circulated vide G.O No.95(80)-SE(B)/1M-112/2008 dated 13th April, 2010.

7. Having heard the learned counsel for parties and on perusal of records this Court is of the view that the outdated concept that pension is bestowed as a gift, an unobligated payment subject to the employer's benevolence and not legally enforceable as an entitlement, has been invalidated by the ruling of the Constitutional Bench in the case of **Deoki Nandan Prasad v. State of Bihar** reported in **1971 (Supp) SCR 634: (AIR 1971 SC 1409)**. The Court unequivocally established that a pension is indeed a legally recognized entitlement. The disbursement of pension is not subject to the discretionary authority of the Government; rather, it is governed by established regulations. A government employee falling within the purview of these regulations has the rightful entitlement to claim his pension. While it might be necessary for the appropriate authority to issue an order for the purpose of calculating the specific amount, taking into account the duration of service and related

considerations, the entitlement to receive pension is inherent to the employee by virtue of the governing rules.

8. In the case of **Kumari Reba Ghosh v. The State of West Bengal and Others** dated October 28, 2014 passed in **MAT No. 119 of 2014** this Court ruled that an unmarried or widowed daughter of a retired teacher who had concluded his service prior to 1st April, 1981, is eligible to receive the benefits of family pension introduced under the said scheme. The Division Bench's decision was grounded in the content of the memorandum dated 15th June, 1990. However, it is imperative to note that the memorandum from 15th June, 1990 per se, does not expansively grant pensionary advantages to unmarried or widowed daughter. The extensiveness of pensionary entitlements to unmarried, widowed, or divorced daughters was actually promulgated through subsequent memoranda, specifically Memorandum No.39 SE (B)/1M-19/07 dated January 10th, 2008, and Government Order (G.O.) No.95 (80)-SE (B)/1M-112/2008 dated April 13th, 2010, as previously cited. A three Judges Bench in **MAT 1518 of 2015** had upheld the judgment of **Kumari Reba Ghosh (Supra)** determining that the entitlement to family pension could be expanded to encompass unmarried or widowed daughters of employees who retired or passed away before the enactment of the said scheme.

9. It is clear that the legislative intent is unequivocal in its aspiration to broaden the scope of family pension benefits to encompass unmarried, widowed or divorced daughters of employees who retired either prior to or subsequent to April 1st, 1981, as well as those of family pension recipients. In this light, the memorandum issued on 1st November, 2010, should not present an impediment to the extension of these benefits, particularly in the absence of any explicit provisions therein that limit or impede such entitlements. If one were to invoke socio-economic justice derived from the principles of societal morality, the memoranda that fortify the provision of subsistence security to the aforementioned categories of women through the dispensation of family

pension ought to be liberally construed. Consequently, the petitioner has a valid claim to receive the benefits pertaining to pensionary considerations. Therefore, memo No. 508/L/1(3)DPPG/L-477/17 dated 29th October, 2018 is set aside and the competent authority being respondent no.5, Director, Pension Provident Fund and Group Insurance, West Bengal, is requested to take appropriate measures in initiating the disbursement of the family pension to the petitioner. It is further requested that all outstanding awards and entitlements be granted retrospectively, thereby acknowledging the rightful benefits of the petitioner without any delay preferably within four (04) months from date.

10. For the foregoing reasons the writ petition is allowed. All pending applications are accordingly disposed of. There will be no order as to costs.

11. Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

25.08.2023

PA (BS)