IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 22698 of 2019

Reserved on : 16.08.2023
Pronounced on: 25.08.2023

Maya Chakraborty

...Petitioner

-Vs-

The State of West Bengal & Ors. ...Respondents

Present:-

Mr. Srikanta Dutta

... for the Petitioner

Ms. Kakali Samajpati
Ms. Kakali Naskar

...for the Respondents

Rajarshi Bharadwaj, J:

1. In the present matter, a writ petition has been instituted, wherein the impugned directive/orders issued by the Secretary, School Education Department under the Government of West Bengal, stands contested on the grounds of non-disbursement of pensionary benefits to the petitioner.

2. The facts of the case are that the petitioner's father one late Ramkrishna Chakraborty was an approved teacher of Satyapur Government Sponsored Free Primary School (hereinafter referred to as the 'said school') who discharged his duties and responsibility till 24th December, 1968. Thereafter the petitioner's deceased father died intestate on 28th December, 1968.

3. Upon the demise of the petitioner's father, the family pension was accorded to the petitioner's mother, one Jibanbala Chakraborty. 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 16th day of January, 2015. The surviving family members include the petitioner, who is the daughter and a widow herself, as well as a married son and a married daughter.

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 widowed daughter of such employees/pensioner whose income was not exceeding Rs.2,600/- per month. The petitioner having no other source of income became entitled to receive the family pension in terms of the said order. On learning the same from the office of respondent no.3, herein the District Inspector of School (PE), Nadia the petitioner made an application before the respondent no. 3, on 9th September, 2016 for granting of pension. As no steps were taken for the disbursement of the family pension the petitioner filed a writ petition before this Hon'ble Court being W P No. 14143(W) of 2017.

5. An order was passed by the Learned Single Judge directing the respondent no.3 to forward all necessary documents to the respondent no.1 subsequent to which the respondent no.1shall take a decision in accordance with the law for disbursement of the family pension in favour of the petitioner after being given an opportunity of hearing. However, on conclusion of the hearing an order vide memo no.11/1/(5) SE(Law) PL/5S-30/18 dated 3rd January, 2019 was passed by the respondent no.1 rejecting the claim of the petitioner. Thus, being aggrieved by the impugned order the present petition has been preferred.

6. Submissions of the learned counsel for the petitioner are that the stands taken by the respondent authorities for rejecting the claim of the petitioner are highly prejudicial to the rights and claims of the petitioner. This unfavorable disposition stems from an oversight in recognizing the petitioner's claim, founded on the provisions of Government Order (GO) no. 539 SE(P&B), dated 1st November, 2010, which, in truth, does not find applicability to the specific circumstances of the petitioner's case.

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 their 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 officer by virtue of the governing rules, not contingent upon any such order.

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 their 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 2019 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.11/1/(5) SE(Law) PL/5S-30/18 dated 3rd January, 2019 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 delay preferably within four (04) months from date.

10. For the foregoing reasons the writ petition is, accordingly, 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)