

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI**

**05  
30.01.2023  
Suman**

**WPA 89 of 2023**

**Ajit Barman @ Akshay Kumar Barman  
Vs.  
The State of West Bengal and Ors.**

**Ms. Ankita Dey  
Mr. S.M. Obaidullah  
....For the petitioner**

**Mr. Bikramaditya Ghosh  
Ms. Bedashruti Bose  
....For the State**

The petitioner has claimed the benefit of family pension in the instant writ petition on the ground of his 100 per cent visual disability.

It is stated by the petitioner that his father was an Assistant Teacher of Durachapti aided Primary School under Dinhata-II Circle, Cooch Behar. He retired from service with effect from 31<sup>st</sup> May, 2009. Thereafter, while enjoying pension, the father of the petitioner /pension holder died on 15 December, 2012. On 20<sup>th</sup> July, 2022 the petitioner made a representation on the basis of the Government of West Bengal, School Education Department Memorandum No.10 SEB, O/IM-131/2008 (Part-I) dated 13<sup>th</sup> January, 2009.

The learned advocate for the petitioner submits that the right of family pension flows from the benefit extended to the original pension holder after his death. The petitioner is the son of the deceased pension holder.

He is 100 per cent visually disabled. Therefore, his case may be sympathetically considered.

The learned Government advocate, on the other hand, refers to the relevant portion of the Memorandum which runs thus:-

“Sub. L Family pension for life to children (suffering ability of mind or who are physically crippled /disabled and non teaching staff of the Non-Government Aided Education Institution).

The undersigned is described to say that in terms of Memo No.(BY/IM-43/2 dated 5.9.2005 family pension by life is payable to children suffering any disability of mind or who are so physically crippled/disabled so as to render them to earn a living even after attaining the age of 25 years subject to fulfillment of certain condition. Benefit of Family Pension for the employees of the Recognized. Non Government Articles Educational Institutions who exercised option for pension including family pension cum gratuity was introduced, with effect from 1.4.1981 vide G.O. No.136 Edn (B) dated 5.5.1985 and as a result the disabled children of such employees who retired after 01.04.98) but prior to 05.09.2005 were made in eligible for life-time payment of family pension under Memo No.325-SF(B) dated 5.9.2005.

02. Notwithstanding anything contained in the Memo No.325-SE(B) dated 5.9.2005 the Governor has been pleased to decide that the disabled children of

those employees as defined in para above who retired after 01.04.1981 but prior to 05.09.2005 will also be eligible for grant of life-time payment of family pension irrespective of the fact as to whether such children acquired disability before or after retirement or death in harness of the employee and /or such children were born of a marriage solemnized after the retirement of the employees provided that such children are not in respect of any kind of pension whatsoever from any Central Government.

3. Only the disabled children whose family are in respect of pension family pension under G.O. No.136-Ed. (33) dated 15.05.1985 will be eligible under this Memorandum.

Provided that the disability must be such a nature as denied in Sub-Section (i) of Section 2 of the Persons with disabilities (Equal opportunities, protection of Right participation) Act 1995.

04. This issues with the concurrence of Finance Department (pension Branch) vide U.G., No.864 dated 11.12.2008.”

As per the said Memorandum the benefit of the family pension is provided to physically crippled/disabled sons /daughters of a pension holder even after attaining the age of 25 years in the case the original pension holder retired after 01.04.1981 but

prior to 05.09.2005 in the instant case the original family pensioner retired on 31<sup>st</sup> May, 2009.

Therefore, the above memorandum is not applicable in the case of the petitioner.

Accordingly, I do not find any merit in the instant writ petition and the same is dismissed.

**(Bibek Chaudhuri, J.)**