

28.11.2023
Sl. No.58
srm

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

W.P.A. No. 2475 of 2023

Smt. Jotsna Kar & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Imtiaz Uddin

....for the Petitioners.

Mr. Subir Kumar Saha,
Mr. Nabankur Paul

.....for State-respondents.

Mr. Bikash Singha

...for the respondent Nos.4&5.

Petitioners are the parents of a deceased school teacher. They claim family pension as the surviving heirs of their son.

The petitioners contend that father and mother fall within the definition of family. Hence, they are entitled to family pension.

Mr. Nabankur Paul, learned Advocate for the State-respondents submits a copy of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and Rule 105

thereof. It is submitted that Rule 105 provides that subject to the provisions contained in Rule 104, the family pension shall not be payable to more than one member of the deceased at the same time. It shall be first admissible to the widow/widower and then to the minor child. Thereafter to the mother and lastly to the father.

Mr. Singha, learned Advocate for the school authorities submits that such Rules have also been adopted by the School Education Department, vide GO 136 Edn(B) dated May 15, 1985.

It appears that the widow of the deceased was granted family pension. Thereafter it was discontinued when the widow remarried. The widow, Banani Kritania applied for family pension to be granted in favour of the minor son, Rayaana Kar. The said application is yet to be decided.

However, this Court finds that the mother as a natural guardian always has a right to apply for family pension in favour of a son with certain undertakings of maintaining the child.

The claim of the mother and the father as made in this writ petition will be subject to the priority claim of the minor son. Thus, at this stage, there is no scope for consideration of the prayer of the petitioners.

The minor son has the prior claim than the petitioners and hence the claim of the minor child shall be decided first and expeditiously, in accordance with law.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)