

29.11.2023
Sl. No.5
srm

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

W.P.A. No. 2567 of 2023

Swapna Singha @ Swapna Singha (Barman)

Versus

The State of West Bengal & Ors.

Mr. Arjun Chowdhury,
Ms. Pratusha Dutta Chowdhury,
Ms. Riya Agarwal

....for the Petitioner.

Mr. Sudipta Kumar Mazumdar, ld. DSGI
Mr. Ajoy Kumar Singhanian

.....for Respondent Nos.1 and 4.

Mr. Bikramaditya Ghosh

...for the SSC.

Affidavit-of-service is taken on record.

There is no dispute that the petitioner was a legally married wife of a deceased employee of 23rd bn of SSB. When the first wife died, late Sunil Kumar Singha married the petitioner on May 23, 1989. Purnima Rani Singha, the first wife died on September 17, 1987. Late Purnima Rani Singha left behind four daughters and a son. After voluntary retirement, the petitioner's husband was enjoying pensionary benefits. The employee had made

several representations to the respondent No.4 for inclusion of the petitioner's name as the recipient of family pension. Photocopy of the death certificate of Purnima Rani Singha and Sunil Kumar Singha as also the certificate of discharge from service have been annexed to the writ petition. After demise of the husband of the petitioner on January 8, 2016, the petitioner approached the authorities for grant of family pension. The certificate of marriage is in possession of the petitioner. A copy of which, has been annexed to the writ petition as Annexure P2.

After repeated representations, the Dy. Commandant, 23 Bn SSB Lalpool (Assam) considered the case of the petitioner and found that in order to process the family pension in case of the petitioner, the following documents would be necessary:

- a) Income certificate of all children born from the first wife.
- b) Marriage certificate of all children born from the first wife.
- c) Birth certificate/birth proof in respect of remaining children born from the first wife and three children born from the second wife so that their names could be entered in the service book.

- d) No Objection Certificate from all children born from the first wife.

It appears that the said documents were required for completing the service book of the deceased pensioner. It further appears that the rules relied upon by the authority provides that if a deceased government servant or pensioner is survived by a widow, but has left behind eligible children or child from another wife who was not alive, the eligible child or children would be entitled to a share of the family pension. Further scrutiny by the authority also revealed that the younger daughter, Smt. Kajal Barman was a widow.

The impediments towards grant of family pension in favour of the petitioner as it appears are thus:-

- a) The service book of the deceased did not contain entries with regard to all the surviving children from both the wives.
- b) Documents and marital status of the children from the first wife were not available.
- c) 'No Objection' from the children of the first wife was not available.
- d) One of the daughters, was found to be a widow.

The issue is whether the petitioner will be entitled to family pension as per Rule 54 of the CCS Pension Rules,

1972 or any other surviving children of the deceased would also be entitled to a share in the family pension under the said Rules or under any other rules and notifications which are followed by the respondents and would be applicable in case of the deceased.

Rule 54(6) lays down the recipients and the period for which the family pension would be payable to such recipients.

The petitioner submits that the widow should get precedence over all other categories in this case, as there are no minor children, or no specially abled children, or unmarried daughters from the first wife. It is further submitted that it would be impossible for the petitioner to obtain 'No Objections' and marriage certificates of the children of the deceased first wife.

This Court is conscious of the predicament of the petitioner. However, the service book requires regularization, but the same can be done from the information already given by the petitioner. In order to ascertain the truth and veracity of the statement of the petitioner with regard to the age of the surviving children and the marital status, the authority can make an enquiry. Their addresses and identities have already been provided by the petitioner. The authority shall also decide in the

facts of the case, upon making an enquiry, whether the surviving children fall into any of the categories as per the pension rules which would entitle them to a share in the family pension. The direction upon the petitioner to provide marriage certificates of the children of the first wife is unreasonable.

It appears from the facts revealed in this writ petition that the pension rules would not qualify any of such children for grant of family pension, unless the contrary can be found by the authority themselves or proved by the children of the first wife. No one had come forward with either any application or claim and the widow is suffering since 2016.

The writ petition is, thus, disposed of with a direction upon the petitioner to approach the Senior Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Department of Expenditure, the respondent No.3 by filing a detailed representation and a server copy of this order. The petitioner will be heard on the virtual mode through a representative, preferably by a learned Advocate. The authority shall invite the other heirs (children of the first wife) of the deceased, enabling them to file details at the hearing. The hearing shall be conducted on the virtual platform and upon hearing all

the parties, a reasoned order shall be passed by allowing the pension payable to the petitioner in accordance with the rules.

If the children of the first wife, who appear to be adults, do not respond to the notice to be issued by the authority concerned, pursuant to the direction of this Court, an adverse inference shall be drawn and the family pension shall be released in favour of the petitioner upon obtaining an indemnity bond from the petitioner. The petitioner shall undertake to indemnify any other claimant who might have a proportionate share in the family pension at a later stage. The documents supplied by the petitioner prove that the children of the first wife were adults and married. Further enquiry may be done by the authorities, but the petitioner shall not be unnecessarily harassed.

The entire exercise shall be completed within a period of four months from the date of communication of this order.

The authority shall make serious endeavour to ensure that the petitioner's rightful claim to the family pension, as per the rules, is not negated and the matter is not kept in abeyance or in suspended animation for an unlimited period. The widow of the deceased has a right

to the pension and the same should be disposed of in accordance with law.

This Court finds that the petitioner has been harassed since 2016 and the employer is bound to act according to law by resolving the situation in a just and fair manner.

It goes without saying, that that the family pension payable, should date back from the date of entitlement, i.e., the date of death of the deceased.

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.)