

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 59 of 2024

With

IA No.: CAN 2 of 2024

Calcutta Dock Labour Board and Anr.

Vs.

Priyanka Nandi and Ors.

For the appellants : Mr. Probal Mukherjee, Ld. Sr. Advocate
Mr. Ashok Kumar Jena, Advocate

For the Union of India : Mr. Rudra Jyoti Bhattacharjee, Advocate
Ms. Debjani Ghosal, Advocate

For the private respondent/ : Mr. Shyamal Kumar Das, Advocate
Writ petitioner Mr. Prasanta Kumar Banerjee, Advocate
Ms. Indrani Nandi

Heard & Judgment on : September 9, 2024

DEBANGSU BASAK, J.:-

1. By consent of the parties, the appeal is taken up for final hearing.
2. The Court is informed that all papers used before the learned Single Judge are available on record. Notice of appeal is waived since the private respondent is represented.

3. Appeal is directed against the order dated October 9, 2023 passed in W.P.A. No.9617 of 2022.
4. By the impugned order, the learned Single Judge allowed a divorced daughter of ex-employee of Calcutta Dock Labour Board (CDLB) to receive family pension in view of the Resolution No.19 dated March 30, 2015 taken by the CDLB which makes Rule 54(6)(ii) of the Central Civil Services (Pension) Rules, 1972 applicable.
5. Learned Senior Advocate appearing for the appellants submits that, Rule 54(6) of the CCS Rules was resolved to be implemented subject to affordability. In support of his contention, he refers to the Resolution together with the Calcutta Dock Labour Board Employees' Pension and Gratuity Rules, particularly Rule 31 special provision (b) thereof. He also refers to the Family Pension Rules being appendix 6 to the CDLB Employees' Pension and Gratuity Rules in support of his contention.
6. Learned Senior Advocate appearing for the appellants submits that, the employee concerned expired on January 4, 2016. Decree for divorce of the writ petitioner was on July 3, 2019. Widow of the employee expired on May 4, 2021. He submits that, the widow of the employee was receiving family pension till her death. He contends that, date of death is the crucial factor in considering the heirs and legal representatives who are entitled to family pension of the concerned employee. In this regard, he draws the attention of the Court to the words used in Rule 54(6)(ii) of the CCS Rules. He submits that, a divorce daughter is entitled to family

pension if she is divorced on the date of death of the employee concerned. Any other interpretation according to him will give rise to an anomalous situation.

7. Learned Advocate appearing for the private respondent submits that, the private respondent is entitled to family pension in view of the Rule 54(6)(ii) of the CCS Rules as was adopted by the CDLB in the Resolution No.19 dated March 30, 2015. He submits that, the adoption of the CCS Rules by CDLB is unconditional. Consequently, any divorced daughter of any employee is entitled to family pension.
8. Private respondent as a divorced daughter of the deceased employee approached the Writ Court for family pension. Employee concerned expired on January 4, 2016. Decree for divorce in respect of the daughter of the employee was passed on July 3, 2019. Widow of the employee was receiving family pension till she expired on May 4, 2021.
9. Private respondent traces the right to receive family pension of the deceased employee by virtue of the Rule 54(6)(ii) of the CCS Rules which is as follows:

“(ii) The family pension is payable to the unmarried/widowed/divorced daughters above the age of 25, after all unmarried children have attained the 25 years of age or started earning their livelihood whichever is earlier. If the deceased government servant/pensioner has survived by any disabled child, the widowed/divorced/unmarried

daughter will be eligible to receive family pension only after the turn of disabled child.”

10. In addition thereto, the private respondent claims that, Rule 54(6) was adopted unconditionally by Resolution No.19 dated March 30, 2015 by CDLB. Resolution No.19 dated March 30, 2015 is as follows:

“RESOLUTION NO.19 DATED 30.03.2015

Resolved that –

(a) Provision for “The period for which Family Pension is payable” as in Rule 54(6) of the CCS (Pension) Rules, is hereby included under the definition of ‘Family’ in the Board’s Pension Rules for Workers and Employees, in terms of the note circulated on the item.

(b) Each application for family pension, including the pending cases, from the unmarried and unemployed son or daughter of an employee/worker/pensioner suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, shall be considered strictly as per the conditions stipulated in Rule 54(6) of CCS (Pension) Rules and the family pension be started in eligible cases with the approval of Deputy Chairman.”

11. Entitlement of family pension occurs on the death of the employee concerned. Therefore, date of death is a vital consideration so far as

entitlement of family pension is concerned. As on the date of death, therefore, the categories of persons specified therein, entitled to family pension must exist.

12. Rule 54(6) was adopted unconditionally by the Resolution No. 19 dated March 30, 2015 of CDLB.
13. Parties before us, therefore, are governed by Rule 54(6) read with Resolution No. 19 dated March 30, 2015 of CDLB.
14. Rule 54(6)(ii) in the second sentence states that if the deceased Government servants/pensioners are survived by any of the categories of persons named therein, they will be eligible to receive family pension, that too, only after the turn of disabled child.
15. Therefore, Rule 54(6)(ii) makes the date of death of the employee concerned as the crucial factor on which date, the surviving heirs as enumerated in such Rule are to be discussed.
16. Rule 54(6)(ii) specifies that on the date of the death of the deceased employee, the first person who will receive family pension to the exclusion of all others specified therein is the disabled child. Therefore, if there is no disabled child, the widowed/divorced/unmarried daughter will be eligible to receive family pension.
17. In the facts of the present case, there is no disabled child of the deceased employee. On the date of death of the deceased employee, private respondent was not divorced. Date of death of the deceased employee is

January 4, 2016 while the decree for divorce in respect of the private respondent is dated July 3, 2019.

18. Consequently, we are of the view that the private respondent does not fall within the purview of Rule 54 (6)(ii) of the CCS Rule read with the Resolution No. 19 dated March 30, 2015 of CDLB.
19. In such circumstances, request for family pension of the private respondent cannot be kept.
20. In view of the discussions above, impugned order dated October 9, 2023 passed in W.P.A. 9617 of 2022 is set aside.
21. **M.A.T. 59 of 2024** and the connected application being **CAN 2 of 2024** are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

22. I agree.

(Md. Shabbar Rashidi, J.)

(AD/SD)