FORM NO. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS

FMA 439 OF 2024
CAN 1 OF 2024

SHAHBAZ ALAM
Vs.
THE STATE OF WEST BENGAL & ORS.

FOR THE APPELALNT	:	**MR. SHUVRO P. LAHIRI, ADVOCATE** **MR. HABIBUR RAHMAN, ADVOCATE** **MR. RAJESH NASKAR, ADVOCATE**
FOR THE STATE	:	**MR. AVISHEK PRASAD, ADVOCATE**
HEARD ON	:	NOVEMBER 8, 2024
JUDGMENT ON	:	NOVEMBER 8, 2024

THE COURT:

1. Learned Counsel for the appellant desperately argues before this Court that the authorities have committed errors in determining the family pension in order to ascertain whether the same exceeds the gross salary of the Group-D staff.
2. The writ-petition seeking appointment on compassionate ground was rejected by the Single Bench upholding the decision of an authority that the family pension received by the family exceeds the gross salary of a Group-D staff. The calculation made by the authority in this regard being the subject matter of challenge in the writ-petition is placed before us.
3. The authority has calculated the family pension at Rs.27,735/- and on comparison with the salary of a Group-D staff, found that such income exceeds the same. The object and purpose of undertaking such exercise is manifest that the provision relating to a

compassionate appointment postulate that, in the event, the income of the family exceeds the gross salary of a Group-D staff, the right to seek compassionate appointment gets diluted.

4. The right to seek compassionate appointment emanates from the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 (hereinafter referred to as 'the said Rules'). By virtue of rule 20 of the said Rules, the mode and the manner of ascertaining suitability for appointment on compassionate grounds are elaborately incorporated therein. Rule 21 of the said Rules extends such mode and the manner in which such selection is to be made to the primary teacher. Although the said Rules *ex facie* indicates that the same is framed for the selection of a person for appointment to the post of a non-teaching staff, but Schedule-V was appended to the said Rules in exercise of such powers conferred under rules 20 and 21 of the said Rules containing an exhaustive provision relating to the procedure for appointments on compassionate ground in case of teaching staff. It contemplates two situations, firstly where an employee died while in service; secondly becomes medically incapacitated to discharge the solemn duty attached to the said post.

5. The present case relates to a compassionate appointment on the untimely death of a teacher. Clause 1 of the Schedule-V pertains to death of a teacher with the stipulation that the family suffers extreme financial hardship in providing two square meals and other essentials for their survival because of the unfortunate death of an employee which put them in penury.

6. The explanation appended thereto defines financial hardship as well as the computation of income of such a family. It is apposite to quote the relevant provisions as follows which runs thus:

<u>SCHEDULE-V</u>

(Procedure, manner of application and preparation of panel for appointment on compassionate ground).

When a Teacher or non-teaching staff dies in harness before the date of his superannuation, i.e. the age of 60 years, leaving a family which is, in the opinion of the District Inspector of Schools (Secondary Education), in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the – (i) spouse; (ii) son; (iii) daughter of the deceased Teacher or non-teaching staff's family who is possessing required educational qualifications as laid down in Schedule I for the posts of Clerk or Group 'D' staff and unemployed and not below 18 years of age and not above 45 years of age may, within two years from the date of such death, make an application in writing to the District Inspector of Schools (Secondary Education) for appointment as non-teaching staff on compassionate ground;

Provided that only one member of the family of the deceased teacher may be appointed under the provisions of this sub-rule.

Explanation – the expression "financial hardship", in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family, shall mean amount of income less than the initial gross salary of a Group 'D' staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty-seven years of age of the deceased teacher has he been alive, whichever is earlier, at the material point of time, shall be taken into account;

Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group 'D' staff at the initial stage at the material point of time.

7. It is evident from the definition of 'Financial Hardship' that the amount of income of the family consisting of up to five members should be less than the initial gross salary of a Group-D staff of the Government at a relevant point of time. So far as the computation of the income of the family is concerned, the legislative intent is laudable to the extent that any income of the family from any other sources shall be taken into account but the

provident fund, gratuity and 40% of the family pension of the first seven years shall be excluded from the said computation. The authorities cannot transgress their powers beyond the statutory provisions and should adhere the same in a pragmatic manner. The moment the statutory provision excludes certain components from the income of the family, it has to be computed in such manner.

8. The Counsel for the appellant is not *ad idem* on the computation of the income by the competent authority and vociferously submits that the dearness relief/allowance cannot be taken as a component of the income of the family for the purpose of the compassionate ground and, in the event, the same is excluded, the income of the family would not exceed the gross salary of the Group-D staff of the State Government at the material point of time.

9. The 'family pension' is not defined in the said Rules but the same can be borrowed from the West Bengal Recognized Non-Government Institute Employees (Death-cum-Retiral Benefits) Scheme, 1981, containing an exhaustive provision, its computation and the 'family pension'. Rule 23 of the said Scheme though postulates the 'family pension' but it does not give the definition with precision. Paragraph 23 of the said Scheme recognizes the entitlement of the member of the family of an employee who died while in service having rendered more than one year of service, to a family pension. Paragraph 25 is relevant for the purpose of the present case before us, imbibing within itself the computation of the 'family pension' at the enhanced rate initially for a period of 7 years in the following:

> ***<u>25. Family Pension at enhanced rate-</u>***
> *(a) In the event of death of an employee while in service, the rate of family pension will be 50% of the pay last drawn subject to a maximum of twice the family pension ordinarily admissible at the rates shown above, provided the employee concerned has put in not less than 7 years' continuous service prior to his death. The family pension at enhanced rate is payable for a period of 7 years*

from the date following the date of death or till the date on which the employee concerned would have attained the age of 65 years had he served, whichever period is less.

(b) In the event of death after retirement the family pension at enhanced rate shall be payable up to the date on which the deceased employee concerned would have attained the age of 65 years had he survived or for 7 years, whichever period is less; but in no case the amount of enhanced family pension shall exceed the pension sanctioned to the employee concerned at the time of retirement. However, in cases when the amount of normal family pension exceeds the amount of pension sanctioned at the time of retirement, the enhanced family pension shall not be less than the amount of normal family pension. The pension sanctioned at the time of retirement shall be the pension inclusive of the part of pension which the retired employee may have commuted before death.

After the period for payment of family pension at enhanced rate is over, family pension at normal rate will commence.

Note: The method of determining the amount of family pension payable under the above principle should be calculated in the following manner.

Pension admissible should first be calculated by applying the minimum and maximum limits and doubled. The resultant amount of 50% of the pay last drawn, whichever is less, is the amount of family pension admissible under this Scheme.

10. Apart from the same, we do not find any statutory provision which may give a precise definition to the expression ‘family pension’. The above quoted paragraph of the said Scheme does not indicate any other component to be taken into account except that the rate of the ’family pension’ will be 50% of the pay last drawn.

11. It is no longer *res integra* that it has to be calculated on the basis of a basic pay last drawn at the time of the death which, in fact, has already been taken into account by the authority while determining the amount of the family pension.

12. Paragraph 16 containing Chapter V of the said Scheme relates to the rate of pension and the amount to be determined on the basis of the slabs appended thereto. The note appended beneath the said chart of the slabs conveys the intention of the authority that the average amount reckonable for the pension means the basic pay, dearness pay and the special pay. However, clause (ii) of

paragraph 16 of the said Scheme extends such relief to the family pension and, therefore, it is beyond cavil of doubt that the relief in the form of dearness pay shall be an integral part of the determination in relation to a family pension.

13. However, learned Counsel for the appellant intend to rely upon the definition of an emolument given under the said Scheme in paragraph 5(p) to mean the emolument which the employee was receiving immediately before his retirement and includes basic pay, personal pay, special pay, dearness pay and the word 'pay' has also been defined as an amount of a remuneration drawn monthly by the employee as the pay which has been sanctioned for the post held by him subsequently or in an official capacity. The dearness pay has also been defined to mean such portion of the dearness allowance as has been declared by the Government as dearness pay.

14. There appears to be a fallacy in the submission of the learned Advocate of the appellant that the dearness pay cannot be equated with the relief as contemplated in paragraph 16 of the said Scheme. The pay is defined as an amount of remuneration drawn monthly by an employee as a pay sanctioned for the said post. Any component which is attached to the monthly salary and payable on such monthly basis would be regarded as pay and the moment such pay has been recognized as a relief under the aforesaid Rules, it would be regarded as an integral part of the income while determining the family pension.

15. It would be preposterous to suggest that the dearness relief which is attached to the pension including the family pension, should be debarred from the income for the simple reason that such components are paid on monthly =basis attached to the said post and, therefore, forms an integral part of the family pension.

16. From the harmonious reading of the paragraph 16 of the Scheme and the note appended thereto, the relief would include the components of dearness pay either in the nature of an allowance

or the relief and the moment such relief is imbibed within the family pension in terms thereof, it would be preposterous to suggest that the dearness relief would be kept outside the purview of the income for the purpose of determining whether it exceeds the gross salary of the Group-D staff of the State Government.

17. So far as medical allowance or interim relief are concerned, such components in our view should not be taken into account while determining the family pension and even we discard those amounts which are negligible, the total family pension received by the family in terms of the said statutory provision exceeds the gross salary of the Group-D staff the State Government.
18. We thus do not find any illegality and/or infirmity in the order of the Single Bench in rejecting the writ-petition.
19. Thus, the appeal being **FMA 439 of 2024** and the connected application being **CAN 1 of 2024** are **dismissed**. No order as to costs.
20. Urgent Photostat Certified copy of this order, if applied for, be given to the parties within three days of such application.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)