

17.05.2024
Court No.13
Item No.234
Bd.

WPA 13414 of 2024

**Smt. Gouri Bose
Vs.
The State of West Bengal and Ors.**

Mr. Haritri Roy

... For the Petitioner.

Mrs. Indumouli Banerjee

... For the State.

1. Affidavit of service filed in Court today be taken on record.

2. It is submitted by the petitioner that she is a widow of the teacher namely Late Sunil Kumar Basu, who has served under the State, was allowed to obtain benefit of family pension on account of the service in terms of the decision of the Full Bench of this Court in the case of ***District Inspector of Schools (SE), Kolkata Vs. Abhijit Baidya*** reported in ***(2013) 3 CHN 711***.

3. By introduction of an amendment to Para 17 of ROPA 1990 and introducing Sub-para 2 on 16th May, 2007 the State required such employees to exercise option afresh for switching over from PF to pension cum gratuity scheme. Consequently, Para 13 of ROPA 1998 also came to be amended in effect from 13th July, 1999. The fresh option for pension notwithstanding acceptance under the original Section 17 was required to bring the employees under the DCRB Scheme of the State.

4. The requirement of exercise of fresh options and amendment of Para 17 of ROPA 1990 and Para 13 of ROPA 1998 was held to be bad in law, illegal and arbitrary in the said Full Bench decision ***Abhijit Baidya (supra)***.

5. Pursuant to the three-month period granted in Para 76 of the ***Abhijit Baidya (supra)*** decision to all teachers in the State, the writ petitioner/widower of the said teacher, went to the authorities to exercise options for pension on account of the service of his deceased wife. The authorities refused to entertain the writ petitioner and turned him down. The State held that the ***Abhijit Baidya (supra)*** decision and the notification issued by the State pursuant thereto, applied only to the living teachers and not to their family members.

6. It is a well-settled proposition of service jurisprudence that pension includes family pension. The pension is aimed at securing the family particularly the widow and persons lawfully entitled to benefit from the service of a deceased employee.

7. The writ petitioner is therefore entitled to family pension on account of her deceased husband/employee. She shall exercise option therefor. The petitioner is entitled on the ground that the husband had opted for to come under Para 17 of ROPA 1990 and also in view of the dicta in the decision of ***Abhijit Baidya (supra)***.

8. In view of the above, this Court is of the opinion that the petitioner is entitled to get family pension in terms of G.O. No.749-SE(L) dated 13.06.2014 subject to refund of Govt. share with interest and additional interest.

9. The writ petitioner shall be entitled to refund the entire PF amount received by her husband, together with any interest as has been specified under the circular of the State, issued pursuant to the ***Abhijit Baidya (supra)*** judgement, within a period of three months from date.

10. Upon refund of the said sum of money, the District Inspector of School, Jalpaiguri, is directed to forward the recommendations to the DPPG for issuance of pension payment order within a period of two weeks of each case. The DI of Schools, Jalpaiguri and the DPPG shall do so with urgency.

11. The family pension shall be payable the writ petitioner from the date of actual superannuation and/or the death of the concerned teacher as the case may be. Let arrears of pension be paid to the writ petitioner, within a period of three months of issuance of the Pension Payment Order.

12. The concerned Treasury Officer shall verify as to whether the petitioner is present in person along with the documents of identity before making any disbursement as directed hereinabove. In the event the petitioner is not

present, the matter shall be reported to the Registrar General of this Court for appropriate action.

13. With the aforesaid observations, the instant writ petition shall stand disposed of.

14. There shall be no order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)