

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 13281 of 2023

Binata Das
Vs.
The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. S.P. Pahari, Adv.
For the State	:-	Mr. Tapan Kumar Mukherjee, Sr. Adv. Mr. Parikshit Goswami, Adv.
Heard on	:-	19.08.2024
Judgment on	:-	03.09.2024

Amrita Sinha, J.:-

The reasoned order dated 14th December, 2017 passed by the District Inspector of Schools (Primary Education) Paschim Medinipur rejecting the prayer of the writ petitioner to grant family pension in her favour is impugned in the present writ petition.

The petitioner is the widow of a deceased primary school teacher. The husband of the petitioner joined service on 4th February, 1955. On account of illness he remained absent from school from February, 1970 to 12th January, 1971. Thereafter he was not in a position to attend school as his health did not permit him to do so. The teacher expired on 9th June, 2009.

The widow claimed family pension relying on the memorandum of the School Education Department dated 1st November, 2010. Her prayer stood

rejected on the ground that the teacher submitted his resignation from service on 12th January, 1971 after remaining absent from school from February, 1970 to 12th February, 1971. The petitioner is aggrieved by the same.

The petitioner submits that the memorandum of the year 2010 extends pensionary benefit to the employees or their widows who retired or died-in-harness prior to 1st April, 1981 if the concerned employee rendered at least one year approved qualifying service in the West Bengal Non-Government Aided Educational Institution. The financial benefit is to be given with effect from 15th June, 1990 or from the date of application for pension or family pension, whichever is later. Those employees who retired prior to introduction of the 1981 Pension Scheme but rendered more than one year approved qualified service but less than ten years approved qualified service were brought within the ambit of the subject scheme.

It has been submitted that the teacher was not in a position to attend school after January, 1971 after rendering more than fifteen years of service. As the scheme has been introduced as a social security measure, accordingly, the petitioner ought to be allowed the benefit of the scheme.

The petitioner relies upon the judgment delivered by a Hon'ble Single Judge of the High Court of Judicature of Madras on 19th April, 2022 in **WP No. 41096 of 2016 (T.K. Thanigaivel vs. The Managing Director & Ors.)** wherein the Court held that in case of resignation by the Government servant due to medical reason, there cannot be any forfeiture of service.

Prayer has been made to set aside the impugned order of rejection and to allow family pension in favour of the petitioner.

The prayer of the petitioner has been vehemently opposed by the State respondents. Affidavit in opposition and a supplementary affidavit in opposition has been filed by the District Inspector of Schools (PE) Paschim Medinipur annexing copy of the earlier writ petition filed by the petitioner being WP No. 6740 (W) of 2018.

Reliance has been placed on the Bengal (Rural) Primary Education Act, 1930 and the Rules to provide for the condition of appointment of teachers in primary schools maintained by District School Boards as well as fixation of their salaries referred to in Clause (g) of sub-section (1) of Section 23 and particularly notification no. 1493- Edn. dated 25th July, 1940 which lays down that a teacher continuously on leave for more than twelve months shall be deemed to be no longer in service.

It has been submitted that the petitioner has admitted that her husband did not join school after 12th January, 1971. On account of unauthorized leave or absence in service for more than twelve months, a teacher is deemed to be no longer in service; hence, the teacher cannot be held to be eligible to receive pension. As the employee did not receive pension, accordingly, his family cannot receive family pension except in died-in-harness cases.

The teacher concerned expired long after he discontinued service. The petitioner cannot get the benefit of receiving pension under the died-in-

harness category either, as the teacher remained alive till 2009 i.e, long after he actually stopped attending school.

It has been submitted that the memorandum of 2010 saw the light of the day long after the death of the teacher. The petitioner does not satisfy the eligibility criteria to receive pension in accordance with the said memorandum and, accordingly, there is no question of grant of family pension in her favour.

Reliance has been placed on the West Bengal Recognized Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 wherein there is a provision for exercising option to avail the benefit of pension-cum-gratuity or to avail the contributory provident fund benefit. It has been submitted that the teacher did not avail the benefit of the Scheme of 1981.

It has been argued that the writ petition is liable to be dismissed on the ground of suppression of material facts. The widow petitioner deliberately suppressed that her husband tendered resignation. On account of resignation from service, the teacher lost his right to claim pension. The widow, accordingly, cannot receive any family pension.

Reliance has been placed on the decision of the Hon'ble Supreme Court in the matter of ***K. Jayram & Ors. Vs. Bangalore Development Authority & Ors.*** reported in ***(2022) 12 SCC 815*** wherein the Court held that the jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative

that the petitioner approaching the writ Court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side, then he would be guilty of playing fraud with the Court as well as with the opposite parties which cannot be countenanced. The fact of submission of resignation by the teacher has been suppressed by the petitioner making the writ petition liable to be dismissed.

Respondents pray for dismissal of the writ petition.

I have heard and considered the rival contentions of the parties.

It has not been disputed by the respondents that the teacher had put in more than fifteen years of service prior to his discontinuation. The widow admits the fact of discontinuation of service by her husband.

According to the authority, the teacher tendered his resignation in January, 1971. The aforesaid fact of resignation by the teacher has been brought to the fore by the authority relying upon documents submitted by the petitioner in her earlier writ petition. The authority has not been able to place any document from their end that the resignation, as allegedly submitted by the teacher, was accepted.

Till resignation tendered by the employee is accepted by the employer, the employer-employee relationship continues and is not severed. Nothing has been brought on record to suggest that the resignation was accepted leading to severance of the employer-employee relationship. On the contrary,

it appears that, it is the petitioner who brought the fact of resignation before this Court.

In such a situation can the widow be accused of non disclosure of relevant fact or can the widow be blamed for not bringing to light the relevant fact of the subject case? Therefore, the allegation of suppression cannot be permitted to stand.

The next ground taken by the authority to reject the prayer is that the petitioner does not qualify the eligibility criteria to receive widow pension either in terms of the DCRB Scheme, 1981 or the Act of 1930 or the memorandum dated 1st November, 2010.

It has been submitted that there is no provision to extend pension in favour of a widow of a teacher who resigned from service. The petitioner could have sought for pension as per the aforesaid scheme/memorandum had the teacher been in service or died-in-harness. None is the case here. The memo relied upon by the petitioner came into effect after the death of the teacher and as such the same cannot be made applicable in case of the petitioner.

The memorandum dated 1st November, 2010 clearly records that the department received several orders passed by the High Court directing the respondent authorities to extend pension/family pension under the Scheme of 1981 to the petitioner who served the West Bengal Recognized non-Government Aided Educational Institution and who retired or died-in-harness prior to 1st April, 1981.

As a social security measure, the Governor was pleased to extend the pensionary benefit under the DCRB Scheme, 1981 to such widows of those employees who retired or died-in-harness prior to 1st April, 1981, if the concerned employee rendered at least one years' approved qualifying service in the West Bengal Non-Government Aided Educational Institution.

Admittedly, on 1st April, 1981 the husband of the petitioner was not in service. The widow has, in unclear terms, disclosed in her representation that her husband, due to health reasons, was not in a position to attend school after February, 1971. By that time the teacher concerned had already put in more than fifteen years of service.

According to the Scheme of 1981, family pension is payable to the members of the family of an employee who dies while in service after rendering at least one years' service. There was a provision for expressing willingness to opt for the benefit under the said Scheme. The teacher never expressed his willingness to join the subject Scheme of 1981.

The primary requirement to avail the benefit of the subject memorandum is putting in at least one years' approved qualifying service. The teacher concerned had served the institution for more than fifteen years but because of ill health he was not in a position to continue his service till the date of his superannuation. The Scheme of 1981 was introduced after the teacher discontinued service and the memorandum of 2010 came into existence after the teacher expired.

In all probability, had the teacher been in good health, he would have certainly continued his service till his superannuation. Had the teacher been in service he would have availed the benefit of the 1981 Scheme. In this case the teacher neither got the benefit of the 1981 Scheme nor had the scope to avail the benefit of the memorandum of 2010.

The teacher was issueless and his widow is currently about 85 years of age as disclosed in her affidavit. It will be highly improper if she is not allowed to avail the benefit of the 2010 memo. Since the 2010 memorandum was introduced as a social security measure, there is no reason as to why such social security will not be allowed in favour of the petitioner.

The petitioner will not gain anything or get any advantage out of suppressing the alleged fact of resignation of her husband. In *K. Jayaram* (supra) the Court held that for withholding relevant material in order to gain advantage, the litigant would be guilty of playing fraud. In the instant case, the fact of alleged resignation of her husband was disclosed by the petitioner herself. It is not that the authority discovered the fact of resignation. The letter of resignation has not been brought on record. It was the duty of the authority to produce record to show whether the resignation, if any, was accepted or not. Despite opportunity granted to the authority, no document could be produced to suggest that the alleged resignation was accepted.

Argument was advanced that even if the resignation letter is not on record as the teacher did not attend school for more than twelve months he is deemed to be no longer in service. In the Act of 1930 there is no provision

for forfeiture of service benefit in case of resignation from service. In fact, there is no provision for tendering resignation under the Act has been placed before the Court.

The Act mentions about discontinuation from service. The service of the teacher abruptly came to an end because of his ill health. All service benefit of the teacher stopped from the date of his discontinuation. No case has been made out that after the teacher stopped attending school he joined any other job, profession or business. It is not the case that the teacher was employed elsewhere and had a different source of earning. It is also not the case that the teacher deliberately did not attend school.

The widow consistently submits that due to health reasons her husband could not attend school. Such fact/submission has not been denied or disputed by the authority. On the contrary the authority relies on the letter of the petitioner and admits the fact of discontinuation, however, by way of resignation. The service life of the teacher came to a sudden halt because of such unforeseen forced discontinuation. Though the teacher was literally alive, but for all practical purposes he was dead in the service records. In such a situation it has to be construed that the teacher officially died in harness even though he actually died much later.

In such circumstances the widow ought to be considered for extension of the benefit of the memorandum of 2010 in the died-in-harness category. Denying such benefit would be contrary to the social security measure, the very reason for introduction of the 2010 memo. Such explanation has to be

adopted keeping in mind that neither the teacher nor his widow got any benefit in terms of the 1981 Scheme. Grant of pension as social security measure is a beneficial legislation and it is the bounden duty of the authority to identify such beneficiary and the Court is to ensure that the benefit actually reaches the beneficiary. The issue has to be dealt with an open mind and not with a predetermined mindset to reject the claim of the widow.

In the matter of Thanigaivel (*supra*) the Court passed order upon consideration of the Tamilnadu Pension Rules where there is a provision relating to forfeiture of past service upon resignation. In the case at hand, service rules governing the teacher does not contain any provision for forfeiture of past service. Though there is a provision for dismissal or discharge from service but the same cannot be made without previous report from the District Inspector of Schools. Accordingly, the aforesaid precedent does not help the petitioner.

In view of the above, the impugned order of the District Inspector of Schools (PE) Paschim Medinipur dated 14th December, 2017 is liable to be set aside and is, accordingly, set aside. The instant writ petition is disposed of by directing the District Inspector of Schools (PE) Paschim Medinipur to grant the benefit of the memorandum dated 1st November, 2010 in favour of the petitioner on and from the date of her applying for pension i.e, on and from 12th April, 2017 the day when the petitioner posted her prayer for availing the benefit of family pension.

The District Inspector of Schools shall make the necessary calculation at the earliest but positively within a period of thirty days from the date of communication of this order. The District Inspector of Schools shall forward all documents to the Director, Pension Provident Fund and Group Insurance immediately thereafter so that Pension Payment Order is issued in favour of the petitioner latest within a period of forty five days from the date of forwarding the calculation by the District Inspector of Schools. It is, however, made clear that the petitioner will not be entitled to receive any interest on the amount so payable to her.

The respondent authorities shall strictly adhere to the timeline mentioned hereinabove in view of the fact that the petitioner is of advanced age and she should actually enjoy the benefit that is meant for her.

The writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)