

21.05.2024
SI No.3
Court No.8
(gc)

MAT 1164 of 2022
CAN 2 of 2022

The Chairman, Kolkata Port Trust & Anr.
Vs.
Ratna Mondal & Anr.

Mr. Kishore Datta, Ld. Advocate General,
Mr. Ashok Kumar Jena
...for the Appellants.

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriiti Saha,
Ms. Purba Mukherjee,
Mr. Avijit Kar,
Ms. Mohona Das
...for the Respondent No.1/
Writ petitioner.

1. The appeal is arising out of an order dated 7th June, 2022 in a writ petition in which the widowed daughter of late Chittaranjan Mondal, a former employee of Kolkata Port Trust (in short "KoPT") now known as Syama Prasad Mookerjee Port, Kolkata (in short "SPMP") has prayed for family pension after she became a widow.
2. The learned Single Judge disposed of the writ petition by directing the Chairman, KoPT to grant family pension to the writ petitioner subject to the satisfaction that the writ petitioner is not receiving any social security benefit and/or family

pension through her deceased husband and she has no independent income at present. This order is under challenge.

3. The learned Advocate General representing the KoPT has submitted that in view of the fact that the writ petitioner married one Amit Mondal on 29th September, 2016 after the death of her mother, Gita Mondal and she became widow on 31st May, 2017 by which time she forfeited her right to claim family pension under the relevant rules, no direction could be passed for payment of family pension to the writ petitioner subject to the fulfilment of the conditions laid down by the learned Single Judge.
4. Mr. Advocate General has referred to the relevant Circulars of 2010 and 25th September, 2012 and submitted that the Circulars made it absolutely clear that an unmarried daughter would be entitled to family pension till she is married and in case of a widow, until she re-marry or till her death or the date from which she starts earning. The Regulation does not contemplate that the daughter who became the widow after the death of the bread earner would be entitled to family pension.

In order to qualify, the daughter should be a widow on the date of the retirement of the writ petitioner or on his death.

5. Per contra, Mr. Firdous Samim, learned Counsel representing the writ petitioner in support of the impugned order has submitted that this is a beneficial scheme and the provisions are required to be interpreted in favour of the writ petitioner as the earlier Circular of 2010 and the subsequent Circular dated 25th September, 2012 has clearly extended such benefit to a widowed daughter without any age bar and irrespective of the fact that she became a widow after the death of her father.
6. Indisputably, Chittaranjan Mondal, an erstwhile employee of KoPT retired from service on 1st March, 1979 and thereafter he received pension during his lifetime. He expired on 21st August, 1997 leaving behind his wife and unmarried daughter. Accordingly, both of them were entitled to family pension. Smt. Gita Mondal, wife of late Chittaranjan Mondal received family pension during her lifetime from 22nd August, 1997 till she died on 3rd January,

2015 leaving behind her unmarried daughter, the writ petitioner. The writ petitioner married one Amit Mondal on 29th September, 2016.

7. In view of such marriage, the writ petitioner forfeited her right to claim family pension. However, she was entitled to family pension from the date of death of her mother till she re-married. On 6th May, 2024, we recorded that in terms of our order dated 12th March, 2024, the writ petitioner has received family pension from 4th November, 2015 till 28th September, 2016.
8. The claim for widow pension thereafter needs to be assessed. The right to claim family pension shall be in accordance with the pension scheme and the Court cannot rewrite the pension scheme although the Court may feel that in the given facts and circumstances of the case widowed daughter could have been provided pensionary benefits. The family pension scheme of 2010 read with 2012 does not give any right to a daughter who became a widow subsequently.

9. Mr. Samim has referred to Clause (f) of the Circular dated 25th September, 2012 which requires a widow dependent daughter to produce additional documents like proof of marriage, death certificate of husband, non-remarriage certificate so as to avail the benefit of family pension. However, the said Clause does not contemplate a situation we are presently faced with. In our respectful reading of the said Circulars, it is clear that the daughter should be a widow dependent daughter on the date of death of the pension-holder and in order to avail such benefit, she would be required to produce documents as contemplated in the Circular dated 25th September, 2012.
10. Although we cannot ignore that as a social security scheme, the Port may contemplate extending such benefit to a daughter who may be left with no income after the death of her husband, however, in absence of any such rules and regulations, we are unable to extend such benefit to the writ petitioner.

11. On such consideration, we allow the appeal and set aside the order of the learned Single Judge.
12. However, we hope that the KoPT shall take into consideration in future as a social security measure to extend such benefits to such of the dependants like the present writ petitioner who may be in penury or dire financial need in the event of the death of her husband subject to establishing the criteria laid down by the learned Single Judge in the impugned order.
13. We have also taken note of the submission made on behalf of the writ petitioner that she is disabled. However, as observed earlier, in the event Port Trust Authority decides to extend such benefits on a case to case basis, the case of the writ petitioner shall also be considered and a holistic view should be taken with regard to her claim.
14. With the aforesaid observation, the appeal and the application are disposed of.
15. However, there shall be no order as to costs.

16. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)