

Item No. 38

30.07.2024
Ct-14
AGM

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 17275 of 2024

Simarani Banerjee
vs.
The State of West Bengal & Ors.

Mr. Srikanta Dutta.
Mr. Prodyut Kumar Ray.
... for the petitioner.

Mr. Rudranil De.
Mr. Tapas Manna.
... For the State.

Affidavit-of-service filed in Court today be kept with the records.

The petitioner claims to be aggrieved by the reasoned order dated 28th May, 2024 passed by the District Inspector of Schools (Primary Education), Birbhum. By the said order, the prayer of the petitioner for receiving family pension has been rejected.

The respondent authority relied upon para 6 of the Memorandum No. 539-SE(P&B)/SL-SS-61/10/(Pt.) dated 01.11.2010 mentioning that the benefit should be extended only to living ex-employees or their widows, as the case may be.

The petitioner claims to be the unmarried daughter of the deceased employee.

The widow of the employee was receiving pension prior to her death but the moment the unmarried

daughter of the employee sought for pension, the same has been rejected.

The issue in question as to whether the unmarried daughter will be entitled to the benefit of family pension is no longer *res integra*. The same has been conclusively decided by the Special Bench of this Court.

Learned advocate for the petitioner refers to the judgment dated 20th June, 2023 passed in **MAT 1518 of 2019 IA No. CAN 2 of 2019 (Old No. CAN 10437 of 2019)** in the matter of (**The State of West Bengal & Ors -vs- Sabita Roy**) wherein the Court held that on the demise of the staff, their widows are entitled to get family pension in terms of the modified provision of the scheme of 1981 vide Memorandum dated 01.11.2010.

The unmarried/widowed/ divorced daughter of an employee who retired prior to 1st April, 1981 or after 1st April, 1981 is entitled to get family pension on fulfillment of the requirements as per the mechanism introduced vide Memorandum No. 96-SE dated 13.04.2010.

The Court clearly held that the Memorandum dated 1st November, 2010 should not stand in the way of extending the benefit in the absence of any express provision restricting or affecting the benefits.

The isolated term in the memorandum dated 01.11.2010 providing pension to only living employees or their widows cannot restrict the beneficial provisions contained in the said memoranda.

Learned advocate representing the State respondents submits, upon instruction that, a Special Leave Petition challenging the aforesaid judgment has been filed before the Hon'ble Supreme Court of India.

This Court has not been made aware of any order that has been passed by the Hon'ble Supreme Court in this regard.

As of now, the issue appears to have been settled by the judgment passed by the Larger Bench. Maintaining judicial discipline this Court would be bound by the direction of the Larger Bench.

In view of the above, the reasoned order passed by the District Inspector of Schools (Primary Education) cannot be sustained in law. The same is, accordingly, set aside.

The District Inspector of Schools (Primary Education), Birbhum is directed to process the prayer of the petitioner for grant of family pension in her favour in accordance with law at the earliest but positively within a period of eight weeks from the date of communication of this order.

The aforesaid respondent shall ensure that if the petitioner fulfils the conditions for receiving the pension, then necessary steps shall be taken for issuance of PPO and the actual disbursement of the pension shall be made in favour of the petitioner immediately thereafter but positively within a period of four months from the date of communication of this order.

The writ petition stands **disposed of**.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)