

06.08.2024.

PB

Sl. No.15.

Ct. No.14.

**In The High Court At Calcutta  
Constitution Writ Jurisdiction  
Appellate Side**

**WPA 17348 of 2024**

Panchanan Sarkar

Vs

The State of West Bengal & Ors.

Mr. K. M. Hossain,

Mr. Kazi Ardan.

.....for the petitioner,

Mr. Avishek Prasad.

.....for the DPSC, Malda.

Mr. Binoy Kr. Das,

Mr. Debabrata Sen.

.....for the State.

The father of the petitioner was a primary school teacher who died-in-harness on 9<sup>th</sup> March, 1978 after serving in the school for nearly 33 years. The petitioner seeks benefit under the DCRB Scheme, 1981. The mother of the petitioner died on 14<sup>th</sup> May, 2012.

Financial benefit in terms of the DCRB Scheme, 1981 has been given effect from 15<sup>th</sup> June, 1990 or from the date of application for pension/ family pension, whichever is later.

The petitioner does not have any document to show that his mother applied for obtaining family

pension under the said scheme. The petitioner, however, insists that on the date of hearing conducted in the office of the DPSC, Malda in March, 1998 in terms of the order passed by this Court on 24<sup>th</sup> December, 1997 in W.P. 15536(W) of 1997 (Tarubala Sarkar Vs. State of West Bengal & Ors.) the petitioner orally prayed for grant of pension in favour of his mother.

Reference has been made to the memo being No. 539-SE (P&B)/SL-SS-61/10 (P1) dated 1<sup>st</sup> November, 2010 issued by the School Education Department, Budget Branch whereby pension/family pension has been extended to the employees who retired or died in harness prior to 1<sup>st</sup> April, 1981 under the West Bengal Recognized Non-Government Aided Educational Institutions.

It has been submitted that despite serving more than 33 years, the father of the petitioner did not enjoy any pension and even after his death his family also did not enjoy the same.

Prayer has been made for grant of family pension which was payable to his mother, since deceased, in terms of the aforesaid memorandum dated 1<sup>st</sup> November, 2010.

Learned advocate for the respondent authority submits that as there is no document to suggest that

any application was made to obtain benefit under the memo dated 1<sup>st</sup> November, 2010, accordingly, such benefit cannot be extended in favour of the petitioner at this stage.

I have heard and considered the submissions made on behalf of all the parties.

The fact that the mother of the petitioner was entitled to receive the benefit under the memo dated 1<sup>st</sup> November, 2010 cannot be disputed. Though there is nothing on record to suggest that application was made by the mother of the petitioner for obtaining the said benefit, but the petitioner insists that he made the prayer at the time of hearing before the DPSC held on 10<sup>th</sup> March, 1998.

Assuming that the petitioner prayed for grant of terminal benefit in favour of the widow of the deceased employee in 1998, but at the relevant point of time the subject memo was not in existence. Right to claim benefit in terms of the memo arose only after 1<sup>st</sup> November, 2010.

It has been consistently held by the Courts that terminal benefits including pension is not bounty and is valuable right in the hand of the employee or to the family after the death of the employee.

Should the family of the deceased employee be deprived of the benefit which has been extended by the

memo dated 1<sup>st</sup> November, 2010 in the absence of a proper application being made by the surviving member of the deceased employee?

In the instant case, the widow was alive for a year and half after the memo came into effect. As the Government intended to extend the benefit of pension/ family pension in favour of the employees who retired or died in harness prior to 1<sup>st</sup> April, 1981, accordingly, the family of the deceased teacher ought not to be deprived of the same. It is more so, because the memo is a beneficial legislation and the benefit ought to be passed on to be beneficiary. Mere technicalities should not stand in the way of the beneficiary receiving the benefit in accordance with the said memo.

As the date from which the memorandum has been given effect is 15<sup>th</sup> June, 1990 or from the date of application of the family pension, whichever is later, and the petitioner insists that prayer was made for pension sometime in March, 1998, accordingly, the Court thinks it fit to direct the District Inspector of Schools (PE), Malda to consider the prayer of the petitioner for grant of the financial benefit on and from 10<sup>th</sup> March, 1998 till the date on which the widow expired (14<sup>th</sup> May, 2012).

The said benefit is being extended only keeping in mind the long service tenure of the employee.

The ground of delay which has been pressed by the respondent authority for not allowing the benefit in favour of the son of the employee for approaching the Court at such a delayed point of time is also not accepted by the Court.

Not granting of pension/family pension is a continuing offence and no adverse right accrued in favour of any person for approaching this Court at a delayed point of time. The benefit which is directed to be granted to the son is actually the deferred payment which was meant for his mother. The petitioner, being the heir of the deceased widow of the deceased primary school teacher, will merely be the recipient of the benefit.

In view of the above, the District Inspector of Schools (PE), Malda is directed to consider the representation of the petitioner in the light of observations as made hereinabove at the earliest, but positively within six weeks from the date of communication of this order. A reasoned order shall be passed and communicated to the petitioner immediately thereafter. It will be open for the D.I of Schools to consult the records of DPSC Malda to process the prayer of the petitioner.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties as expeditiously as possible.

**(Amrita Sinha, J.)**