

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

W.P.A. 17577 of 2023

JYOTI PRASAD CHATTERJEE
VS.
THE STATE OF WEST BENGAL & ORS.

For the petitioner: Mr. Sakti Pada Jana,
Mr. Subhajyoti Das.

For the respondents: Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Suman Dey.

Heard on : 26.04.2024, 30.04.2024

Judgment on : 30.04.2024

Biswajit Basu, J.

- 1.** Whether a disabled child of an approved teacher of Non Government/Aided educational institutions who retired prior to April 01, 1981 is entitled to family pension is the issue falls for consideration in the instant writ petition.

2. The father of the petitioner was an assistant teacher of Muktokeshi Gour Mohan Das High School, District – 24 Parganas (South). On attaining the age of superannuation, he had retired from his service on March 31, 1981 and died on October 09, 1983.
3. The petitioner, being the 100% blind son of the deceased teacher, applied for grant of family pension after the death of his mother who was a family pensioner. A representation of the petitioner with the said prayer was pending before the Commissioner of School Education, West Bengal and the District Inspector of Schools(S.E.), District- 24 Parganas(South), the respondent nos. 2 and 4 herein respectively. The petitioner, alleging delay in disposal of the said representation had filed a writ petition being WPA 3414 of 2021 which was disposed of vide order dated February 09, 2021 directing the respondent no. 2 to consider the said prayer of the petitioner.
4. In compliance with the said direction, the respondent no. 2, by the order impugned dated September 02, 2021 has disposed of the said representation of the petitioner(annexed with the writ petition being Annexure 'P₁₁') by rejecting his prayer for family pension, holding *inter alia* that the provisions of the Memoranda of the School Education Department, West Bengal bearing No. 325-SE(B) dated September 05, 2005 (hereinafter referred to as the "Memorandum dated September 05, 2005") read with 10-SE(B) dated January 13, 2009 (hereinafter referred to as the "Memorandum dated January 13, 2009") clearly specify that only the disabled children whose

family are in receipt of pension/family pension under G.O. No. 136-Edn(B) dated January 15, 1985 (i.e. those employees who were in active service on or after April 1, 1981) would be eligible for family pension under the said memoranda.

5. Mr. Sakti Pada Jana, learned senior advocate for the petitioner submits that the benefit of family pension was extended to the disabled children of whole-time approved teaching and non-teaching staff of Non-Government/ Aided educational institutions (hereinafter referred to as the “concerned Employees”) for life vide Memorandum dated September 05, 2005 and by the clarificatory Memorandum dated January 13, 2009, such benefit though was sought to be restricted to the children of such Employees who retired after April 01, 1981, but Paragraph 3 thereof clearly stipulates that the disabled children whose family are in receipt of pension/family pension are eligible to get family pension under the Memorandum dated September 05, 2005, the mother of the petitioner since was in receipt of such family pension, the respondent no. 2 is not justified in rejecting the prayer of the petitioner on the ground that his father had retired prior to April 01, 1981.
6. He further submits that the issue as to whether the unmarried/ widowed daughter of concerned Employees who superannuated or died prior to the West Bengal recognized Non-Government Educational Institution Employees (Death-cum-Retirement benefit) scheme, 1981 (“DCRB Scheme, 1981” in short) coming into force, would be entitled to family pension was referred to

the Special Bench of this Court in **MAT 1518 of 2019**(*The State of West Bengal & Ors. vs. Sabita Roy*). The Special Bench answered the reference in affirmative, therefore in terms of the ratio of law laid down in the said judgment, the respondent no. 2 has committed error in denying the prayer of the petitioner for family pension.

7. Mr. Vaisya, learned Additional Government Pleader, submits that in terms of Paragraph 2 of the clarificatory Memorandum dated January 13, 2009, the disabled children of *only* those Employees who retired after April 01, 1981 are eligible for family pension, but the father of the petitioner since had retired prior to April 01, 1981, the petitioner is not entitled to family pension, as such the order impugned does not call for any interference.
8. Having heard the learned advocate for the parties and on perusing the materials-on-record, this Court feels that a detour to the relevant Memoranda/ Government Orders is necessary to answer the issue under consideration.
9. The Memorandum bearing No. 136-Edn.(B) dated May 15, 1985 issued by the Finance Department, Government of West Bengal (The DCRB Scheme, 1981), came into force with effect from April 01, 1981, whereby the benefit of the said scheme was made available to *only* those concerned Employees who were in active service on or after April 01, 1981. The said restriction, however was withdrawn vide Memorandum bearing No. 163-Edn.(B) dated

June 15, 1990, extending the benefit of the said scheme to all concerned employees, irrespective of their date of retirement.

10. The benefit of such family pension to the son or daughter of a retired concerned Employee, who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her to earn a living even after attaining the age of 25 years was granted vide Memorandum dated September 05, 2005. To clarify the said memorandum, a subsequent Memorandum bearing No. 10-SE(B) O//1M-131/2008(Part-1) dated January 13, 2009 was issued, thereby restricting the said benefit to such type of children of the said Employees who retired *after* April 01, 1981 but prior to September 05, 2005.
11. The pensionary benefit of the said DCRB Scheme, 1981 was further extended to such widows of concerned Employees who retired or died in harness prior to April 01, 1981 vide Memorandum No. 539-S.E(P&B) dated November 01, 2010, but such financial benefit was given with effect from June 15, 1990 or from the date of application for such pension/ family pension, whichever is later. In terms of the said Memorandum, the mother of the petitioner was granted family pension which she received till her death on September 24, 2018.
12. The entitlement of unmarried daughters of concerned Employees who retired after April 01, 1981 to get the benefit of family pension was recognized under the DCRB Scheme, 1981 read with Memo No. 136-SE(B) dated May 15, 1985

but up to the age of 21 years, or marriage, whichever is earlier. However, by the Memorandum bearing No. 95(80)-SE(B)/1M-112/2008 dated April 13, 2010, the said benefit was extended to such unmarried daughters even after attaining the age of 25 years.

13. The issue whether the benefit of family pension can be extended to unmarried/widowed daughter of the concerned Employee who had superannuated or had died before the DCRB Scheme, 1981 came into effect, was referred to the Special Bench of this Court in the case of ***State of West Bengal & Ors. vs. Sabita Roy (supra)***. The Special Bench in its judgment dated June 20, 2023 has answered the referred issue in affirmative. Paragraph 19 of the said judgment being relevant, is quoted below –

“...Therefore, we answer the reference to this extent that the benefit of family pension can be extended to unmarried/ widowed daughter of an employee who superannuated or died prior to coming in force of the Death-cum-Retirement Benefit Scheme, 1981, which came into effect on and from 1st April, 1981...”

14. The benefit of family pension was extended to the disabled child of the concerned Employee(s) vide Memoranda dated September 05, 2005, and January 13, 2009 with the restriction that the benefit of the said scheme would be available *only* to those concerned Employees who were in active service on or after April 01, 1981. The paragraph 3 of the Memorandum dated January 13, 2009, runs as follows –

“...3. Only the disabled children whose family are in receipt of pension/ family pension under G.O.

No.136-Edn(B) dated May 15, 1985 will be eligible under this Memorandum...”

The aforesaid paragraph though was aimed to supply emphasis on the said restriction, but with the recognition of the right/entitlement of the widow(s) of the concerned Employee(s) who had retired prior to April 01, 1981 to get the family pension vide memorandum dated November 01, 2010, the said paragraph comes to the advantage of the family of the concerned Employee who is in receipt of family pension. The family of the petitioner is such a family inasmuch as his mother was in receipt of family pension before her death, therefore, the entitlement of the petitioner to get family pension cannot be denied on the said score also.

15. Moreover, the Special Bench of this Court in the case of ***State of West Bengal & Ors. vs. Sabita Roy (supra)***, has extended the benefit of family pension to unmarried/widowed daughter of a concerned Employee who had superannuated or had died prior to the DCRB Scheme, 1981 coming into force, as such there is no plausible ground to deny the extension of the said benefit to a Disabled child of a concerned Employee who had superannuated or died prior to the DCRB Scheme, 1981 coming into force, besides, considering the aspect of socio-economic justice stemming from the concept of social morality, the memoranda granting social security of livelihood to the disabled children of the concerned Employee(s) by providing family pension

should be construed liberally, as has been held by the Special Bench of this Court in the above referred judgment.

In view of the discussions made above, the order impugned dated September 02, 2021 is set aside.

The respondent no. 4 is directed to prepare the pension papers for grant of family pension to the petitioner from the date following the date of death of the mother of the petitioner together with the arrears thereof as expeditiously as possible, preferably within a period of six weeks from the date of communication of this judgment/order.

WPA 17577 of 2023 is allowed with the above terms without any order as to costs.

Parties to act on the server copy of this judgment/order duly downloaded from the official *website* of this court.

Urgent photostat certified copies of the judgment/order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)