

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT 1679 of 2024

The State of West Bengal & Ors.

-Versus-

Miss Abha Ukil & Ors.

For the Appellants : **Mr. Ashim Kumar \ganguly, Ld. AGP,
Mr. Protim Chakraborty.
Mr. Raima Ganguly.**

For the writ petitioner/
Respondents : **Mr. Lalratan Mondal,
Mr. Dilip Kumar Sadhu.**

Delivered on : **23.12.2024**

Prasenjit Biswas, J:-

1. The order passed by the learned Single Bench of this Court dated 26.06.24 is assailed in this appeal.

2. By passing the impugned order learned Single Judge held that the writ petitioner shall be entitled to pension with effect from 6th February, 2006.

3. The writ petitioner is the daughter of one Habal Chandra Ukil, since deceased who was the Assistant Teacher of Primary School under Goaltore Circle of District Primary School Council, Paschim Medinipur who retired from service on 30.06.01 and pension was sanctioned in his favour. The father of the writ petitioner died intestate on 22.11.88 leaving behind his wife, two sons and this writ petitioner as his heirs/legal representatives. After demise of father of the writ petitioner her mother being wife of the deceased employee got family pension till her death. The mother of the writ petitioner died on 05.02.06. As this writ petitioner was unmarried and unemployed submitted an application before the concerned authority for getting family pension. It is said by the writ petitioner that the respondent authority/ District Inspector of Schools (Primary Education), Paschim Medinipur failed and neglected to sanction family pension to the petitioner. Finding no other way the writ petitioner/the appellant filed a writ petition being WPA 5261 of 2023 before this Court and the said writ petition was dismissed by the learned Single Bench on the ground of inordinate delay in filing the said writ petition. The matter was taken to the Appellate Bench of this Court by the writ petitioner by filing a Mandamus Appeal being MAT No. 1897 of 2003. The said appeal was allowed by the Coordinate Bench of this Court by setting aside the order of the learned Single Bench and direction was given upon the authority to remit the arrear family pension on the basis of circular dated 13.04.2010. The order of

the Appellate Bench was duly communicated to the authority concerned. In spite of that the authority concerned did not comply the direction passed by this Court and, as such, the writ petitioner filed an application for contempt being CPAN 303 of 2004 before this Court.

4. In the said contempt proceeding the contemnor/authority concerned submitted an affidavit of compliance stating that the family pension of the petitioner has been implemented with effect from 09.11.03 to the tune of Rs. 8500/- per month and a sum of Rs. 36,184/- as arrear amount of family pension was duly credited to the bank account of this appellant/writ petitioner.

5. The grievance of the writ petitioner /appellant is that in the report of compliance filed by the alleged contemnor/authority he did not disclose any reason as to why family pension has not been paid to this appellant with effect from 2010. The alleged contemnor was further directed to file further affidavit of compliance to clarify the reason for non-payment of arrear amount in terms of the order dated 18.10.03 passed by the Coordinate Bench of this Court. In compliance with the said direction the alleged contemnor again submitted a report of compliance wherein he annexed a certificate issued by the Block Development Officer, Garhbeta-II Development Block wherein the income of the family of the writ petitioner is stated as Rs. 72000/- per annum. It is the specific stand point of the authority that as the income of the writ petitioner was more than Rs. 35000/- per month at that relevant point of time she is not entitled to get the family pension with effect from 2010. The Coordinate Bench

disposed of the said contempt application filed by the writ petitioner by holding that the claim of the writ petitioner for getting arrears of family pension with effect from 2010 should not be gone into the contempt proceeding and it will be open to the writ petitioner to pursue her legal remedies for realization of such arrears if the petitioner is otherwise entitled to in accordance with law.

6. At the time of hearing the learned counsel appearing on behalf of the appellants candidly submitted that the authority has no objection if the order is passed to release the arrear family pension to the petitioner with effect from 30.04.2010 as she prayed in the writ petition but it should not be extended with effect from 6th February, 2006. It has further been assailed by the learned advocate for the appellant that as per Memo No. 95(80)-SE(B)/1M-112/2008 dated 13.04.2010 Family Pension shall be extended to the unmarried daughters of teaching and non-teaching employees/pensioners of non-Government Aided Educational Institutions employees/ pensioners under the West Bengal Recognized Non-Government Educational Institution Employees, DCRB Scheme, 1981 even after attaining the age of 25 years till their marriage or death subject to the condition that the incumbent has monthly income less than Rs.3500/- from any employment in Government, Semi Government, Statutory bodies, Corporation, Private Sector, Self-employment etc. The certificate issued by the Block Development Officer indicates that the family income of the petitioner was of Rs.72000/- per annum which is above the family income as fixed by the G.O. No. 95(80)-SE(B)/1M-112/2008 dated 13.04.2010 as Rs. 3500/- which is modified to Rs. 6000/- and Rs. 9000/-

subsequently and, as such, she would not be entitled to family pension with effect from the year 2006.

7. It is admitted position that this writ petitioner is an unemployed and unmarried daughter of a retired employee who died on 22.11.1988 and thereafter Family pension was released to the mother of this writ petitioner. She subsequently died on 05.02.2006. The pension has been released in favour of this petitioner by issuance of pension payment order with effect from 09.11.2023. As per existing provision of DCRB Scheme of 1991 read with Memo No. 136-SE(B) dated- 15.05.85 the unmarried daughters of the deceased employees/pensioners under the West Bengal Recognized non-Government Educational Institution Employees DCRB Scheme, 1981 are eligible to get family pension till they attain 25 years of age or up to the date of their marriage whichever is earlier. That memo was subsequently modified on 05.09.2005 in terms of G.O. No.325-SE(B)/1M-43/2003 to that extent that the son or daughter of a teaching / non-teaching employee/pensioner if he or she is suffering from disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn by any means after attaining the age of 25 years, Family Pension shall be payable to such son or daughter for life subject to some conditions. That memo was subsequently modified in terms of office Memo No. 39-SE(B)/1M-19/07 dated 10.01.2008 stipulating eligibility of widowed/divorce daughter of employees/pensioners of Recognized Non-Government Educational Institution for family pension till their remarriage/ death subject to condition mentioned therein. So, it is clear

that immediately after the death of the mother the writ petitioner is entitled to get family pension. The mother of the writ petitioner died on 05.02.2006 but her prayer for releasing the arrear family pension was discarded by the authority concerned on the ground that as per certificate issued by the Block Development Officer, the family income of the petitioner was of Rs. 72,000/- per annum. The Memo No. 95(80)-SE(B)/1M-112/2008 dated 13.04.2010 does not state anything to consider the family income of unmarried daughter. It is said about the condition that the incumbent must have monthly income less than Rs. 3500/- which was subsequently amended to Rs. 6000/- and Rs. 9000/-. So, at the time of considering the entitlement of family pensions of an unmarried or unemployed daughter of the employee his or her monthly income has to be considered and not the family income.

8. Undoubtedly, the petitioner has no income of her own and her family income cannot be considered for granting family pension to the writ petitioner. The respondent authorities solely relied upon the income certificate issued by the Block Development Officer and denied the family pension to the petitioner as her income exceeds the income which is stipulated in the aforesaid Memo dated 13.04.2010. We have already said that in case of entitlement of family pension of the unmarried daughter, the monthly income of the said unmarried daughter is to be considered and not the family income of the said unmarried daughter and, as such, the certificate issued by the Block Development Officer cannot be considered for deciding entitlement of family pension of the petitioner.

9. Accordingly, the writ petitioner/respondent is entitled to get family pension with effect from 06.02.2006, that is, just immediate date of death of her mother.

10. So, there is no illegality or infirmity in the order passed by the learned Single Bench dated 26.06.2004 and, as such, there is nothing to interfere with the impugned order.

11. The impugned order passed by the learned Single Bench is hereby affirmed. The instant appeal being MAT 1679 of 2024 is hereby dismissed but without any order as to costs.

12. The Director of Pension, Provident Fund and Group Insurance, West Bengal is hereby directed to release the arrear of pension in favour of this writ petitioner/respondent within a period of one month from the date of communication of this order together with interest at the rate of 7% per annum on the said arrears from June, 2023 till the date of actual payment.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)