

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
AND
THE HON'BLE JUSTICE SHAMPA SARKAR
AND
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 1518 OF 2019
IA No. CAN 2 OF 2019 (Old No. CAN 10437 of 2019)**

The Sate of West Bengal and Others

VS

Sabita Roy

With

MAT 608 of 2021

IA No. CAN 2 of 2021

**The Director of Pension,
Provident Fund and Group Insurance and Others.**

Vs.

Kabita Sinha and another.

With

WPA 25396 of 2017

IA No. CAN 1 of 2022

Shyamali Maity

Vs.

State of West Bengal and Others.

(Assigned)

Mr. Anirban Ray, Ld.GP,
Ms. Kakali Samajpati, Adv.

... for the appellants in MAT 1518 of 2019

Mr. Anirban Ray, Ld. GP.,
Mr. Suman Dey, Adv.

... for the appellants in MAT 608 of 2021

Mr. Sourav Mitra, Adv.
Mr. Biswarup Biswas, Adv.
Ms. Shreyashi Chowdhury, Adv.

Mr. Salil Kumar Maity, Adv.
Ms. Pinky Saha, Adv.
Mr. S.K. Sharma, Adv.
Mr. Chandar Dutta, Adv.

... for the respondents in both the matters

Mr. Bhaskar Prosad Banerjee, Adv.
Mr. Surendra Kumar Sharma, Adv.

... for the petitioner in WPA 25396 of 2017

Heard On : 21.04.2023

Judgment on : 20.06.2023

Rabindranath Samanta, J:-

1. The aforesaid matters have been referred to this Bench by the Hon'ble Chief Justice to answer the following reference:

“Whether 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.”

2. Initially, by an order dated April 26, 2022 passed in MAT 1518 of 2019 (***The State of West Bengal & Ors-Vs- Sabita Roy***) the reference as above was made by a Division Bench (in which one of us, Rabindranath Samanta, J was a member).

Thereafter, another Division Bench while hearing MAT 608 of 2021(***The Director of Pension and Others-Vs- Smt. Kabita Sinha and Another***), by an order dated 4th July, 2022 upon observing that since a reference had been made by a Division Bench and was awaiting an answer from a Larger Bench as to whether benefit of family pension could 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, also referred the matter to a Larger Bench.

3. On the other hand, a learned Single Bench while hearing a writ petition being W.P 25396 (W) of 2017 to decide an issue whether an unmarried daughter of a deceased Assistant Teacher was entitled to family pension or not, the learned Single Bench observed that since a similar reference had been made by Division Bench and was awaiting a decision from a larger Bench, adjourned the matter sine die till the larger Bench decided the matter.
4. The facts giving rise to mandamus appeals being MAT 1518 of 2019 and MAT 608 of 2021 and the writ application, briefly, are as under:

MAT 1518 of 2019 has arisen out an order whereby the respondent/writ petitioner Sabita Roy had been allowed family pension by a learned Single Judge. Sabita Roy claimed family pension as a widowed daughter of a deceased Assistant Teacher namely Debobrata Roy who retired from service on 31st March, 1979 and died on 31st December, 1991. After his demise, no family pension was granted to the mother of the petitioner. However, the retiral dues of her deceased father were disbursed in equal share amongst his legal heirs. The writ petitioner became widowed on 20.07.2008, but before her mother died on 9th March, 2012. She applied for family pension to the concerned authority, but her prayer was disallowed. Challenging the order by which her prayer for family pension was disallowed, she preferred the writ petition being W.P 1984(W) of 2017 and by order dated 8th April, 2019, the writ petition was disposed of directing the concerned state authority to grant family pension to her.

MAT 608 of 2021 was preferred challenging the judgment and order dated 9th December, 2012 passed by a learned Single Judge by which the respondent/writ petitioner Kabita Sinha, was allowed family pension as a widowed daughter. It is her case, her father who was an approved clerk of a high school retired from service on 1st April, 1970 and died on 15th April, 1976. After his retirement, the petitioner's mother received family pension in terms of the Government Circular dated 15th June, 1990. Her mother died on 5th December, 2008. The petitioner was widowed on 25th May, 1987 before her

mother died. She made an application to the authority concerned claiming family pension, but her prayer was refused by the Director of School Education in December 2011 followed by an order of the Director of Pension, Provident Fund and Group Insurance on 21st September, 2013. Being aggrieved thereby, she filed writ petition being W.P No. 7741(W) of 2018. By the judgment and order dated 9th December, 2019 the learned Single Bench disposed of the writ petition directing the concerned authority to extend pensionary benefits to her, provided she fulfilled all the eligibility criteria for grant of such pension.

5. On the other hand, the petitioner Shyamali Maity filed a writ petition being WP No. 25396(W) of 2017, inter alia, stating therein that her father was an Assistant Teacher of a school and retired from service on 31st December, 1974. Her father was granted pensionary benefits. He died on 16th August, 2000. After his demise, her mother was granted family pension with effect from 17th August, 2000. The petitioner was an unmarried and handicapped daughter of her parents. After the demise of her mother, she applied for family pension, but despite several representation made by her to the authorities concerned family pension was not granted.

As stated above, the Mandamus Appeals involve the issue of grant of pensionary benefits to two widowed daughters and the writ petition involves the issue of granting family pension to an unmarried daughter.

6. Before we proceed to answer the reference it will be apposite to quote some passages of the judgment in the case of ***D.S. Nakara-Vs- Union of India*** reported in AIR 1983 SC 130 underlying the golden principles towards extending pensionary benefits to an employee. The Hon'ble Apex Court at paragraphs 19 and 20 has postulated as under:

“19. What is pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answers to these and

incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad V. State of Bihar, 1971 (Supp) SCR 634: (AIR 1971 SC 1409) wherein this Court authoritatively rules that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab V. Iqbal Singh, (1976) 3 SCR 360: (AIR 1976 SC 667)."

7. In the aforesaid report, the Hon'ble Apex Court in unequivocal terms has ruled that the pensioners constitute a homogenous class and if any classification is made in such homogenous class in the revised pension formula between pensioners on basis of the date of retirement specified in the relevant memorandum, such classification would be arbitrary and violative of Article 14 of the Constitution. The beneficial part of the scheme allowing revised pension to the pensioners shall be retained and made applicable to all pensioners.
8. While the West Bengal recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 (for short DCRB Scheme, 1981) was introduced, the scheme specified that it would apply to employees of State Government Sponsored or Aided Educational Institutions

excluding D.A. getting schools) as indicated in Statement-I) who were in service on 01.04.1981 and also to those who were appointed after that date provided they drew pay in the scales of pay prescribed by Government for such category of employees.

9. Aggrieved by the non-availability of the benefits of DCRB Scheme, 1981, an association called Non-Government School Pensioner's and Another approached this court by preferring a writ petition being **C.O. No.102** of 1988 against the State of West Bengal and Others prayed for extension of the benefits to those who retired prior to 1st April, 1981. By a decision dated 1st July, 1988 a learned Single Judge, placing reliance on the ratio of the decision in **D.S. Nakara** (supra) allowed the writ petition with the following observation at paragraph 6 :

“This action of the respondent is under challenge in this application. The question which is now agitated before this Court is now fully concluded by the judgment of the Supreme Court in the case of **D.S. Nakara-Vs- Union of India** reported in AIR 1983 SC 130. The Supreme Court held that pensioners formed one class and that there is no basis for making classification between the pensioners who had retired before or after a particular date and that the persons who retired earlier are entitled to get the benefit of the notification by which the pensions have been revised at the enhanced rate. In the result this application is allowed.”

10. As informed by the Bar, no appeal was preferred by the State against the judgment passed by the learned Single Bench. That being so, the judgement as above, attained finality.
11. Responding to the grievances of the employees who retired before 1st April, 1981 and the woes of financial distress of widows, unmarried daughters, widowed and divorced daughters of the employees or pensioners the scope of DCRB Scheme, 1981 was liberalised by issuing Government Orders/ notifications from time to time. By those Government orders/ notifications the

benefits of the DCRB Scheme, 1981 were extended not only to the employees who retired prior to 1st April, 1981, but also to their widows, unmarried daughters, widowed and divorced daughters.

To put chronologically, the relevant Government Orders / Notifications issued from time to time may be summarised as under :

By Memorandum No. 163-Edn dated 15.06.1990 the retirement benefits provided under the DCRB Scheme, 1981 were extended to teaching and non-teaching employees of non-government educational institutions covered under the said scheme to those who retired prior to 01.04.1981 on the same terms and conditions and subject to due adjustments of pension and exgratia increases as applicable.

By Memorandum No. 39-SE dated 10th January, 2008 the benefit of family pension was extended to / divorced /widowed daughter of teaching and non-teaching staff/pensioner of non-government recognised educational institutions even after attaining the age of 25 years till her marriage or death subject to the income not exceeding Rs.2,600/- per month.

By Memorandum No. 95(80)-SE dated 13.04.2010 the benefit of family pension was extended to the unmarried daughters even after attaining the age of 25 years till their marriage or death subject to the condition that the concerned persons have a monthly income less than Rs.3,500/-.

By Memorandum No. 96-SE dated 13th April, 2010 family pension was extended to the unmarried/widowed/divorced daughters under DCRB Scheme, 1981 prescribing the mechanism to such persons applying for family pension.

12. Placing reliance on memorandum No. 539-SE dated 1st November, 2010 a Division Bench by a later decision rendered in ***MAT 869 of 2014 (Belarani Acharya -Vs- The State of West Bengal and Others)*** disallowed the prayer of a widowed daughter to get pensionary benefits after the demise of her

father. In such context, it would be profitable to excerpt the aforesaid memorandum which reads as under :

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GOVERNMENT OF WEST BENGAL

School Education Department, Budget Branch

No. 539-SE (P&B)/SL-SS-61/10(pt) Dated: Kolkata, the 1st November, 2010

MEMORANDUM

Subject: Pension/Family pension in respect of the employees who retired or died in harness prior to 01.04.1981 under the West Bengal Recognized Non-Government Aided Educational Institutions.

The school Education Department has received a number of representations from different corners seeking clarification on the entitlement of pension/family pension in respect of the employees under the West Bengal Recognized Non-Government Aided Educational Institutions (hereinafter referred to as employees) who retired or died in harness prior to 01.04.1981 under the West Bengal Recognized Non-Government Aided Educational Institutions. This Department has also received several orders passed by the Hon'ble High Court at Calcutta directing the respondent authorities to extend pension/family pension under the West Bengal Recognized Non-Government Educational institution Employees (Death-Cum-Retirement Benefit) Scheme, 1981 (hereinafter referred to as DCRB Scheme, 1981) to the petitioners who served the West Bengal Recognized Non-Government Aided Educational Institutions and who retired or died in harness prior to 01.04.1981.

The DCRB Scheme, 1981 came into force with effect from 01.04.1981 in terms of this Department's Notification No. 136-Edn (B) dated 15.05.1985 for the employees who were in service as on 01.04.1981 under the West Bengal Recognized Non-Government Aided Educational Institutions.

Subsequently, in terms of GO. No 163-Edn (B) dated 15.06.1990, the benefit of the DCRB Scheme, 1981 was extended to the teaching and non-teaching employees covered by the aforesaid scheme, who retired prior to 01.04.1981 on the same terms and conditions subject to due adjustment of

pension and ex-gratia increases and aforesaid as were or are being drawn by such pensioners.

2. In terms of GO. No. 1610-Edn (S) dated 17.08.1968 with effect from 01.04.1966, the Pension Scheme for the employees of the Secondary Schools was introduced and in terms of G.O. No. 2299 Edn (P) dated 12.12.1972 with effect from 01.04.1968, the Pension Scheme for the Primary Schools teachers was introduced. These two Pension Schemes are referred to as 'Old Pension Scheme'.

3. It has also been observed by this Department that the following categories of the employees were not covered under DCRB Scheme, 1981.

a) those employees who retired/died prior to introduction of the 'Old Pension Scheme' (before 01.04.1966 in case of the employees of Secondary School under the West Bengal Recognized Non-Government Aided Educational Institution and before 01.04.1968 in case of the primary school teachers under the West Bengal Recognized Non-Government Aided Educational Institution.

b) those employees who retired prior to introduction of the 1981 pension Scheme but rendered more than one year approved qualifying service but less than 10 years approved qualifying service.

c) those primary school teachers (who were appointed before 01.04.1968) whose terminal benefits were settled by paying Contributory Provident Fund and Gratuity as per their option under rule 26 of the School Education Department's Notification No. 3767-Edn dated 1.11.1935;

d) those employees who retired prior to introduction of the DCRB Scheme, 1981 and enjoyed pension as per 'Old Pension Scheme' till death before issuance to GO. No. 163- Edn(B) dated 15.06.1990;

e) those employees who died in harness prior to 01.04.1981 after rendering approved qualifying service for 20 years or more. In such cases family pension for 5 years was sanctioned as per provision of the 'Old Pension Scheme' but stopped at the expiry of 5 years (before 15.06.1990) from the date of the death of the incumbent.

f) those employees who died in harness prior to 01.04.1981 after rendering at least one year's approved qualifying service but not more than 20 years' approved qualifying service; and

g) those employees who died in harness or retired in between the period from 01.04.1981 to 30.06.1990 (both days are inclusive) before exercising any option under the DCRB Scheme, 1981.

4. Hence, the extension of pensionary benefit to the employees or their widows to the above categories was under the active consideration of the State Government for sometime past. After considering the fact, as a social security measure, the Governor has been pleased to extend pensionary benefit under DCRB Scheme, 1981 to such windows of those employees who retired or died in harness prior to 01.04.1981, if the concerned employees rendered at least one year's approved qualifying service in the West Bengal Non- Government Aided Educational Institutions. The employees of such categories may also be brought under the purview of the DCRB Scheme, 1981. The financial benefit may be given with effect from 15.06.1990 or from the date of application for pension/family pension whichever is later. The category as mentioned under para-3(g) above also shall also come within the ambit of this order.

5. In case of primary school teachers, District Inspector of Schools (Primary Education) shall be the pension Sanctioning Authority whereas the Director of School Education, West Bengal or any officer(s) authorised by Government, on his behalf shall be the Pension Sanctioning Authority in respect of the employees of Secondary Schools under the West Bengal Recognized Non Government Aided Educational Institution.

6. The benefit should be extended only to the living ex-employees (as mentioned under para-3 above) or their living widows, as the case may be.”

13. As we find, though the Memorandum dated 01.11.2010 extends the benefit to the living ex-employees as mentioned under Para III above or their living widows, as the case may be, but by the said Memorandum the previous memoranda being No. 39-SE dated 10th January, 2008, No. 95(80)-SE dated 13.04.2010 and No. 96-SE dated 13.04.2010 as mentioned above had not been

superseded. Initially, as noticed in the Memorandum dated 15.06.1990, pensionary benefits were extended to those employees who retired prior to 01.04.1981 and not covered by the DCRB Scheme, 1981. What we perceive, by the memorandum dated 01.11.2010 the pensionary benefits was not only restricted to the living employees who either retired prior to 01.04.1981 or after 01.04.1981, but the beneficial scope was extended to their living widows. The pensionary benefits as extended to divorced/widowed daughter of a teaching and non-teaching staff/pensioner vide Memo No. 39-SE dated 10th January, 2008, the pensionary benefits extended to an unmarried daughter even after attaining the age of 25 years till their marriage or death vide Memo No. 95(80) SE dated 13th April, 2010 and the pensionary benefits extended to unmarried/widowed/divorced daughter under the DCRB scheme, 1981 prescribing a mechanism to apply for family pension vide Memo No. 96-SE dated 13.04.2010 was neither superseded nor affected by the subsequently published memorandum dated 01.11.2010.

14. The golden rule as postulated by Hon'ble Apex Court in ***D.S. Nakara (supra)*** was that the provision of a pensionary rule /law being beneficial to a homogenous class of pensioners, should be interpreted liberally in their favour. Furthermore, the classification within the Homogeneous class, though permissible, must pass the muster of intelligible differentia. The classification within the class should be reasonable, rationale and manifest the laudable object sought to achieve. Any attempt to create separate class segregated from the Homogeneous class must stand on the test of reasonableness. In such backdrop and in the absence of any provision in the memorandum dated 01.11.2010 affecting or restricting the beneficial memoranda as above, by extending the pensionary benefits to unmarried/widowed/divorced daughters of retired employees or family pensioner, we hold that the aforesaid memoranda still occupy the field relating to granting pensionary benefits to those classes of women.

15. The Division Bench, on interpretation of the memorandum dated 1st November, 2010 decided the mandamus appeal being MAT 869 of 2014 (**Belarani Acharya -Vs- The State of West Bengal and Others**) holding therein that the pensionary benefits would only be extended to the living employees or their widows and such benefits would not be extended to an unmarried daughter of a retired employee or a pensioner. At the penultimate paragraph the Division Bench has observed as under :

“Although there are several Government orders which might seem to be inconsistent with one another, no Government order or memorandum has been brought to our notice by Mr. Jana which sounds a different note to what has been provided in the Government order dated 1st November, 2010. We have, therefore, proceeded on the basis that such Government order is the final decision of the Government with regard to non-entitlement of unmarried daughters of teachers who had died prior to introduction of the old pension scheme.”

16. Following the decision in Bela Rani Acharya, another Division Bench in the case of the State of West Bengal and Ors. Vs. Abida Khatun Sk. & Ors. (MAT 546 of 2019) has restated that the benefits of family pension cannot be extended to an unmarried / widowed daughter of an employee who died / superannuated prior to 1st April, 1981.

17. On the other hand, another Division Bench while deciding a mandamus appeal being No. MAT 119 of 2014 (**Kumari Reba Ghosh-Vs-The State of West Bengal and Others**) held that an unmarried daughter of a retired teacher who retired from service prior to 1st April, 1981 would be entitled to get the benefit of family pension introduced under the DCRB scheme, 1981. The decision of the Division Bench is based on the memorandum dated 15.06.1990, but, as noticed above, the memorandum dated 15.06.1990 alone does not extend the pensionary benefits to an unmarried daughter. In fact, the pensionary benefits have been extended to unmarried/widowed/divorced daughters by the

memoranda dated 10.01.2008, 13.04.2010 as also 13.04.2010 as quoted above.

18. We have no hesitation in mind to hold that the unaltered or unaffected Memoranda as above clearly demonstrate in unequivocal terms that a teaching and non-teaching staff who retired prior to 1st April, 1981 or after 1st April, 1981 was entitled to get the pensionary benefits in terms of the DCRB Scheme, 1981. On the demise of such staff, their widows are entitled to get family pension in terms of the modified provision of the scheme 1981 vide memorandum dated 01.11.2010. The unmarried or widowed or divorced daughter of an employee who retired prior to 01.04.1981 or after 01.04.1981 is entitled to get family pension on fulfilment of the requirements as per the mechanism introduced vide Memorandum no. 96-SE dated 13.04.2010. In such legal scenario, we do not concur with the decision rendered in ***Bela Rani Acharya and Abida Khatun Sk.*** that an unmarried daughter is not entitled to get family pension till her life ends on the demise of her parent who either received pension or family pension. Though in the decision in MAT 119 of 2014 (***Kumari Reba Ghosh-Vs-The State of West Bengal***), the Division Bench had ruled that unmarried daughter of a pensioner would be entitled to get family pension, but this Bench neither referred to nor interpreted the relevant memoranda relating to extension of family pension to an unmarried/widowed/divorced daughter. That being the position, we though concur with the final decision, but we respectfully disagree with the observations as recorded therein.

From the memoranda as above it is clearly explicit that the legislative intent was to extend the benefits of family pension to unmarried / widowed / divorced daughter of an employee who retired before or after 01.04.1981 or to unmarried / widowed / divorced daughter of a family pensioner. In such premise, the memorandum dated 1st November, 2010 should not stand in the way of extending such benefits in the absence of any express provision therein restricting or affecting the benefits. Socio-economic justice stemming from the

concept of social morality, if pressed into service, the memoranda granting social security of livelihood to the aforesaid classes of women by providing family pension should be construed liberally. Some isolated terms in the memorandum dated 01.11.2010 providing pension to living employees or their widows, in our view, cannot restrict the beneficial provisions contained in the memoranda as above.

19. 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.
20. The Mandamus Appeals and the writ petition as mentioned above need to be disposed of by the respective Benches in the light of the aforesaid answer.
21. Let the case records of the mandamus appeals and the writ petition be placed before the appropriate Bench for its disposal.
22. The reference stands disposed of accordingly.
23. No order as to costs.
24. Urgent certified/Website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)

(Shampa Sarkar, J.)

(Harish Tandon, J.)