

17.12.2024
Item No.9
gd/ssd

WPA/22729/2024
SWAPNA RANI SARKAR
VS
STATE OF WEST BENGAL & ORS.

Mr. Sakti Pada Jana,
Mr. Subhajyoti Das,
Ms. Sudipta Pramanik
..for the Petitioner.

Mr. Saikat Chatterjee,
Mr. Sandip Chattopadhyay
..for the State.

The petitioner who is the widow of Rajib Lochan Sarkar since deceased has filed this writ petition alleging inaction on the part of the respondent authorities in not considering the prayer for grant of family pension.

The husband of the petitioner was an Assistant Teacher of a Higher Secondary School. He retired from service on superannuation with effect from February 29, 2008.

It is not in dispute that during the service career the husband of the petitioner applied for revised scale of pay under ROPA 1990 as well as ROPA 1998.

The husband of the petitioner died on November 7, 2012 leaving behind him surviving the petitioner as his widow.

The petitioner submitted a representation which was received by the Office of the District Inspector of Schools (S.E.), Uttar Dinajpur on August 20, 2024 expressing her willingness for family pension after refunding the Government share of CPF with interest and additional interest.

Mr. Jana, learned Advocate appearing for the petitioner submits that since the husband of the petitioner opted for revised scale of pay under ROPA 1990 and ROPA 1998, he became entitled to pension and gratuity and it was not necessary for the husband of the petitioner or the petitioner to exercise fresh option to come over to the pension scheme.

In support of such contention Mr. Jana placed reliance upon the Full Bench decision of this Court in the case of *District Inspector of Schools (S.E.) Kolkata Vs Abhijit Baidya and others* reported at 2013(3) CHN (CAL) 711. Mr. Jana also placed reliance upon the decision of the Hon'ble Division Bench in the case of *Pramila Behara vs. State of West Bengal and others* in FMA 864 of 2022 order passed on 11.12.2023 and the order dated 24.08.2023 passed in FMA 620 of 2018 in the case of *State of W.B. & Ors. vs. Sefali Jana & Ors.* wherein the Division Bench recognized the right of the widow to get family pension.

Mr. Chatterjee, learned Advocate appearing for the State has filed a bunch of documents which is taken on record. A copy of such documents is handed over to Mr. Jana in course of hearing of this writ petition. Mr. Chatterjee, by drawing the attention of the Court to the letter of the Teacher-in-Charge of the said school addressed to the District Inspector of Schools (S.E.), Uttar Dinajpur dated 11th September, 2024, submits that in spite of several opportunities being granted to the deceased husband of the petitioner, he did not exercise his option to for getting pension. He, therefore, submits that since the deceased employee during his lifetime did not exercise such option, his widow cannot be permitted to exercise option now.

Heard the learned Advocates for the parties and perused the materials placed.

The question that arises for consideration is whether the deceased husband of the petitioner was under an obligation to exercise option to entitled to the benefits of pension-cum-gratuity. It is not in dispute that the husband of the petitioner opted for the revised pay scale under ROPA 1990 and ROPA 1998. It is also not in dispute that the husband of the petitioner retired from service at the age of 60 years.

The Hon'ble Full Bench in *Abhijit Baidya (supra)* held that an employee who has opted for revised pay scale under ROPA 1990 becomes entitled to pension and gratuity by virtue of operation of Para 17 of ROPA 1990 and it was not necessary for him to exercise fresh option as per Memo. Dated 16th December, 1991 which was applicable to employees who had not opted for ROPA 1990. The Hon'ble Division Bench further observed that the benefit of pension and gratuity was conferred due to acceptance of reduced age of superannuation of 60 years under Para 17 (1) of ROPA 1990 and the right for pension-cum-gratuity that has accrued could not have been taken away retrospectively by substitution of provisions of Para 17 in 2007 or by substitution of Para 13 of ROPA 1998 in 1999.

In view of the decision of *Abhijit Baidya (supra)*, this Court holds that there was no necessity on the part of the deceased employee to opt for pension and the benefit of pension cum gratuity accrued in favour of the petitioner upon acceptance of reduced age of superannuation of 60 years.

The Hon'ble Division Bench in *Sefali Jana (supra)* reiterated the well settled proposition of service jurisprudence that pension includes family pension and it was held that the widow was entitled

to family pension upon the death of the concerned teacher.

In *Pramila Behara (supra)* it was held that as the husband had already agreed to reduce the age of superannuation and had suffered financially, the widow will not be required to exercise any fresh option.

Since this Court has already held that the deceased husband was under no obligation to exercise option for pension, there is no necessity on the part of the petitioner being his widow to exercise option for pension afresh. However, the petitioner shall be obliged to refund the Government share of contributory provident fund with interest and additional interest as a condition for grant of family pension.

In the representation submitted by the petitioner before the concerned DI it has been specifically stated that the petitioner is willing to refund the Government share of CPF with interest and additional interest.

The respondent authorities are directed to calculate the employer share of contributory provident fund with interest and additional interest which the petitioner is required to refund for availing the benefit of Pension-cum-Gratuity Scheme and to intimate the said calculation to the petitioner within

a period of four weeks from the date of receipt of a server copy of this order. Immediately upon receipt of the said communication, the petitioner shall deposit the specified amount of the employer share of CPF with interest and additional interest to the Government Treasury through the concerned District Inspector of Schools within a period of two weeks from the date of such communication and submit the necessary documents in support thereof to the concerned District Inspector of Schools. The concerned District Inspector of Schools shall immediately thereafter send the pension papers of the petitioner to the Office of the Directorate of the Pension, Provident Fund and Group Insurance, West Bengal who shall after verifying the same issue Pension Payment Order in favour of the petitioner within a period of eight weeks from the date of deposit of the aforesaid amount by the petitioner.

It is, however, made clear that the petitioner shall be entitled to pension from the date following the date of retirement of her husband on superannuation in terms of the provisions of the DCRB Rules.

The respondent authority shall also consider whether the petitioner is entitled to receive any further amount on account of gratuity. If the petitioner is entitled to any such amount, the

authority shall take steps accordingly for release of such amount within the time indicated hereinbefore.

With the above directions, the writ petition stands disposed of.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)