

**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**

FMA No. 57 Of 2024

With

CAN 1 of 2023

Lina Mukherjee

-Versus-

The State of West Bengal & Ors.

For the Appellant : **Mr. Sandip Ghosh,
Mr. Partha Sarkar.**

For the State : **Mr. Gaurav Das,**

Hearing Concluded on : **18.07.2024**

Delivered on : **19.08.2024**

Prasenjit Biswas, J:-

1. The order dated 02.08.2023 passed by the learned Single Bench of this Court in connection with WPA 10589 of 2023 is assailed in this appeal. The pivotal issue involved in the instant appeal pertains to the entitlement of the appellant being an unmarried daughter to family pension under the Death- cum-Retirement Benefit Scheme, 1981.

2. The father of this appellant was a Headmaster who died-in-harness on 11.10.1976 leaving behind his wife, two sons and one unmarried daughter (the appellant herein). The mother of this appellant drew the family pension till her death. The appellant's mother died intestate leaving behind his one son and this appellant being her unmarried daughter. This appellant made a representation before the respondent no. 2 (herein) with request to release the benefit of family pension in her favour being an unmarried daughter of his father/employee in terms of government order vide no. 163-Edn(B) dated 15.06.1990 read with Government Memorandum dated 13.04.2010 being Memo No. 95(80)-SE(B)/IM-112/2008 to mitigate her financial stringency in maintaining her livelihood. The representation of the appellant was turned down by the authority concerned and it was communicated to this appellant through letter vide memo no. 196 dated 09.03.2023.

3. Being aggrieved with that rejection of getting family pension by the authority concerned this appellant preferred a writ petition before the learned Single Bench of this Court being WPA 10589 of 2023. The said writ petition has been rejected by the learned Single Bench by passing the impugned order holding that the appellant did

not take any step for last 14 years and as such due to delay her application is not maintainable.

4. Learned Counsel on behalf of the appellant submitted that the appellant was working as an I.C.D.S worker on a contractual basis and she superannuated from her service on 03.04.2022 and as she was a contractual employee there is no question of getting retirement service benefit as like the government employee to get pension. It is further submitted by the learned Counsel that after the end of contractual employment this appellant has no other source of income by which she can maintain her livelihood. As per submission of the learned Counsel that the authority concerned rejected the application of this appellant only on the ground that her father was a teacher of a school and was not under the Death-cum-Retirement Benefit Scheme 1981. This appellant being the unmarried daughter of the deceased father is entitled to get family pension.

5. At the time of hearing learned Counsel further submits that the learned Single Bench by passing the impugned order committed error in holding that the family pension cannot be given as it is prayed for after a long gap of time. Although explanation was given in the writ application but the learned Single Bench did not consider the said explanation of delay and also did not record the same in the impugned order. The attention of this Court is drawn by the learned Counsel appearing on behalf of the appellant to the decision rendered by the Larger Bench of this Court in cases of **the State of West Bengal and Others Vs. Sabita Roy** in connection with **MAT 1518 of 2019** and **the Director of Pension, Provident Fund and Group Insurance and Others. Vs. Kabita Sinha and Another** in connection with **MAT 608 of 2021** and **Shyamali Maity Vs. State of West Bengal and Others** in connection with **WPA 25396 of 2017** wherein the Larger Bench extended the benefit

of family pension to unmarried/widowed daughter of an employee who superannuated or died prior to coming in force of the said Death-cum-Retirement Benefit Scheme, 1981 which came into effect on and from 1st April, 1981. In view of the said decision of the Larger Bench the petitioner being the unmarried daughter of late employee who died prior to come into force of the said scheme, 1981 is entitled to get the family pension. As per submission of the learned Counsel there is illegality and material irregularity in the impugned order as the learned Single Bench did not at all consider the observations rendered by the Larger Bench of this Court in deciding the issue.

6. A Larger Bench of this court in the case of the **State of West Bengal and Others Vs. Sabita Roy, the Director of Pension, Provident Fund and Group Insurance and Others. vs. Kabita Sinha and another and Shyamali Maity Vs. State of West Bengal and Others** held that family pension can be extended to unmarried/ widowed daughter of an employee who superannuated or died prior to coming into force of the Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981, which came into effect on and from 1st April, 1981. While reiterating the golden rule that the provision of a pensionary law being beneficial to a homogenous class of pensioners should be interpreted liberally in their favour. The Larger Bench of this Court held that Government memorandum No. 539-SE dated Nov 01, 2010, still occupies the field relating to granting pensionary benefits to unmarried/widowed/divorced daughters of retired employees or family pensioner, in the absence of any provision affecting or restricting the same.

7. In that case, the respondent (Sabita Roy) was allowed a family pension by a Single Judge of the Calcutta High Court. The respondent claimed family pension as a widowed daughter of a deceased Assistant Teacher (Debobrata Roy) who retired from service on March 31, 1979 and died on Dec 31, 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 respondent became widowed on July 20, 2008, but before her mother died on Mar 09, 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 a writ which was disposed of directing the concerned state authority to grant family pension to her. The Bench also stated that the unaltered or unaffected memoranda clearly demonstrate in unequivocal terms that teaching and non-teaching staff who retired prior to 1st April 1981 or after 1st April 1981 were entitled to get the pensionary benefits in terms of the DCRB Scheme, 1981. The court further noted that the memorandum dated November 1, 2010, should not hinder the extension of these benefits unless there is an express provision restricting or affecting them. It emphasized the importance of socio-economic justice and the need to interpret memoranda granting social security and livelihood to these classes of women liberally.

8. The Larger Bench of the High Court referred to the principles of extending pensionary benefits to an employee, which was enunciated in the decision of the Apex Court in **D.S. Nakara Vs Union of India** reported in **AIR 1983 SC 130**. In the said decision the Apex Court in unequivocal terms had 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.

9. In view of above facts and circumstances and in view of above observation of the Larger Bench of this Court the order impugned is not maintainable and accordingly, the same is hereby set aside.

10. Respondent no. 2, the District Inspector of Schools, Primary Education, Purba Burdwan is hereby directed to revisit the representation made by this appellant dated 13.02.2023 in view of observations made by the Larger Bench in case of **the State of West Bengal and Others Vs. Sabita Roy** within four weeks from the date of communication of this order. The respondent no.2 is further directed to communicate the fate of the representation made by the appellant within one week thereafter to the appellant.

11. Thus the appeal being no. FMA 57 of 2024 is hereby allowed.

12. Connected applications, if any, are hereby also disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)