19th February, 2024
(D/L No.03)
(SKB)

W.P.A.26403 of 2022

Deb Ishika Das
Versus
State of West Bengal and others

Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Ambiya Khatun,
Mr. Danis Uddin Abbasi
... for the petitioner.

Mr. Pinaki Dhole,
Mr. Pinaki Bhattacharyya
... for the respondent nos.1 to 5.

Mr. Lalratan Mandal,
Mr. Dilip Kumar Sadhu
... for the respondent no.8.

1. Heard learned advocate for the petitioner, learned advocate for the State respondents and learned advocate for the private respondent no.8.
2. The present case is now taken up for passing appropriate order.
3. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner being the daughter of one Prasanta Kumar Das, since deceased, (who died-in-harness while acting as an Assistant Teacher of Thakur Panchanan Vidyapith Higher Secondary School) has prayed for appropriate direction upon the respondent authorities/State to disburse her share towards death-cum-retirement benefit arising out of the death of her father including family pension, gratuity and provident funds.
4. In support of the instant writ petition, learned advocate for the writ petitioner at the very outset

draws attention of this court to the Annexure 'P-7' of the writ petition being a photocopy of the order dated 5th October, 2020 as passed in W.P.A. No.12897 of 2019 by a co-ordinate Bench. It is contended by the petitioner that though in terms of the said order dated 5th October, 2020, the respondent authorities had disbursed 33% share of the gratuity and provident fund amount along with accrued interest as payable to the writ petitioner but she was not awarded with her proportionate share of family pension which is now being drawn by the private respondent no.8 and, further, her proportionate share of the salary which has also been received by the private respondent no.8, since, in the meantime, the private respondent no.8 being the widow of Prasanta Kumar Das, since deceased, (the father of the writ petitioner) has obtained service under the respondent authorities in die-in-harness scheme.

5. It is further contended on behalf of the petitioner that in W.P.A. No.12897 of 2019, the co-ordinate Bench vide its order dated 5th October, 2020 specifically directed for passing of a reasoned order by the State authorities with regard to the procedure by which 1/3rd share of the retiral benefits of the deceased including the family pension are to be disbursed to the writ petitioner. However, in the Office Order vide Memo No.552(3)/G/APD/SE dated 27th November, 2020, no such order has been passed flouting the order dated 5th October, 2020 as passed in W.P.A. No.12897 of 2019.

6. Learned advocate for the petitioner in course of his argument, places his reliance upon the following decisions:

i) **Premlata Acharya Vs. Suman Acharya and others** reported in **(2018)14 SCC 655**.

ii) **Nandini Paul Vs. United Bank of India and others** reported in **2019 SCC OnLine Cal 2093**

and

iii) unreported judgment dated 17.06.2016 as passed in **Marium Bibi Vs. Coal India Limited and others** [W.P.30935 (W) of 2014].

7. It is thus argued that considering the position of law as enunciated in the aforesaid three decisions, a favourable order may be passed in favour of the writ petitioner.

8. While opposing the contention of the writ petitioner, learned advocate for the State respondents, in course of his argument, draws attention to this court to the affidavit-in-opposition as filed today on behalf of the State respondents. Drawing attention to page numbers 3, 4 and 5 of the opposition, it is argued that pursuant to the order dated 5th October, 2020 as passed in W.P.A. No.12897 of 2019, the competent authority has passed a reasoned order in accordance with the prevailing G.O. It is argued that the present writ petitioner has already obtained her 33% share in respect of the provident fund and gratuity amount together with interest left behind by the deceased and pursuant to G.O. No.136-Edn(B) dated 15.5.1985, the family pension was awarded in favour of the private respondent no.8, since under the said G.O., the family pension cannot be awarded to more than one member of the deceased employee's family at the same time and it shall be first admissible to the widow/widower in exclusion of other family members/dependants of the deceased. It is, thus, contended on behalf of the State that in accordance with the said G.O. dated 15.5.1985, family pension has been awarded rightly to the private respondent no.8.

9. So far as the entitlement of the present writ petitioner to the salary as receivable by the private respondent no.8 is concerned, it is, however, contended that since obtaining an employment in die-in harness scheme is a beneficial scheme, the beneficiary of the said scheme is duty bound to maintain other family members/dependants of the deceased employee.

10. Per contra, learned advocate for the private respondent no.8 echoes the version of the learned advocate for the State so far as her client's entitlement to the family pension is concerned. Drawing attention to pages 3 and 4 of the opposition as filed by the private respondento.8, it is further argued that since her marriage with the father of the present petitioner, the present private respondent no.8 being the step mother of the writ petitioner all along took care of the writ petitioner as her own child and she is also at present ready and willing to take care of the welfare of the petitioner as well as for her maintenance and education. It is further argued that on account of intervention of the matrimonial uncle and aunt of the petitioner, the petitioner being her stepdaughter is unable to come to her custody. It is further submitted that this is a fit case for dismissal of the writ petition.

11. For effective adjudication of the instant writ petition, this court proposes to look to the relevant portion of the order dated 5th October, 2020 as passed in W.P.A. No.12897 of 2019 and the same is reproduced hereunder in verbatim:

> "Under such circumstances, the writ petition is disposed of with a direction upon the District Inspector of Schools (SE), Alipurduar to consider the representations of the petitioner no.2. Upon hearing the petitioners, a reasoned order be passed with regard to the procedure by which 1/3 share of the retiral benefits including the family

> pension of the deceased father of the petitioner No.2 may be disbursed to her. The authority concerned will pass the order on the basis of the rules and regulations applicable in such cases. The decision shall be taken and communicated to the petitioners within a period of six weeks from the date of communication."

12. On perusal of the aforementioned order, it appears to this court that while disposing of the said writ petition, the co-ordinate Bench of this Court directed the State respondents to pass a reasoned order practically with regard to the entitlement of the present writ petitioner regarding her claim of 1/3rd share of the retiral benefits of her deceased father including the family pension.

13. On perusal of the office order dated 20th July, 2020, vis-a-vis the affidavit-in-opposition as filed on behalf of the State respondents, it appears that so far as the proportionate share of the gratuity and provident fund amount including the interest accrued thereon are concerned, all have been disbursed in favour of the present writ petitioner and the same is not disputed by the learned advocate for the writ petitioner. It further appears that in view of the prevailing G.O. No.136-Edn(B) dated 15.5.1985, family pension under Death Cum Retirement Benefit Scheme, 1981, shall not be payable to more than one member of the employee's family at the same time and it shall first be admissible to the widow/widower and then to the other family members.

14. Since the private respondent no.8 is the widow of the deceased Prasanta Kumar Das, this court has no hesitation to hold that the decision of the State respondents to disburse the family pension in favour of the private respondent no.8 is absolutely justified and the present writ petitioner is not entitled to get any share of such family pension as receivable by private respondent no.8.

15. In order to decide as to whether the present petitioner is entitled to get her proportionate share of the salary as is being received by the private respondent no.8 on account of her employment in die-in-harness scheme, this court considers that law has been settled in catena of judgments as passed by the Hon'ble Supreme Court as well as by different High courts including our High court.

16. In the reported decision of *Premlata Acharya (supra)*, a similar issue was raised and the Hon'ble Apex Court answered the said issue in the manner which is reproduced hereunder in verbatim:

> "6. A perusal of the aforesaid Rule indicates that the compassionate appointment of the petitioner could in fact have been terminated, but instead of doing so, the High Court found it appropriate to direct that 50% of her salary should be paid over to her children for their sustenance.
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> 7. A similar view was expressed by a learned Single Judge of the Jammu and Kashmir High Court in *Rehana Azeem v. State*. Para 5 of the Report reads as follows:
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> "5. On consideration I find that perhaps there was no alternative available to the authorities other than directing deductions of 50% of petitioner's salary for payment of Respondents 8 and 9 who admittedly are widow and minor child of deceased employee and as such duly entitled to be maintained from out of the salary of petitioner that she gets in lieu of her appointment essentially ordered for maintaining her and the respondents. That the petitioner has given up such maintenance simply speaks of callousness which she should not have exhibited particularly in case of the minor son of her deceased brother who has a long way to go before he gets any where near self-sustenance."

17. A similar view was taken by our High court in the reported decision of *Nandini Paul (supra).*

18. On perusal of the affidavit-in-opposition and after hearing the learned advocate for the private respondent no.8, it appears to this court that private respondent no.8 has taken a flimsy ground for not paying the proportionate share of her salary to the

present writ petitioner on the ground that she is ready and willing to maintain the present writ petitioner, if she stays with her. Admittedly, the present petitioner is a major though she is stated to be a student of graduation and, therefore, this court cannot interfere with her choice to her place of living. In considered view of this court, the private respondent no.8 cannot be absolved of her liability to maintain the present writ petitioner on the ground that she is staying at her maternal home, especially, when the private respondent no.8 has got the employment under die-in-harness scheme after giving an undertaking that she will maintain the other family members of the deceased employee Prasanta Kumar Das who is the father of the writ petitioner.

19. Such being the position, this court directs the respondent nos.3 and 4 to deduct 33% of the gross monthly salary of the private respondent no.8 excluding the statutory deductions w.e.f February, 2024 and to credit the same in the bank account of the writ petitioner till the present writ petitioner becomes independent and able to maintain herself. It is further directed that arrears of 33% of the gross monthly salary of the private respondent no.8 i.e. from the day of her employment till date shall have also be deducted in periodical installment of Rs.3000/-(rupees three thousand only) per month till its liquidation and the said amount shall have also be credited in the bank account of the writ petitioner month by month. The writ petitioner is at liberty to furnish her bank account details with the respondent nos.3 and 4 at her convenience preferably within a week from the day of passing of this court.

20. With the aforementioned observations, the instant writ petition is allowed in part and disposed of.
21. All parties are to act on the server copy of this order.
22. Urgent photostat certified copy of this order, if applied for, be delivered to the parties, upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)