

05.01.2024
Item No.18
gd/ssd

WPA/27/2024
SMT. PIKULI RANI SAHA
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Saktipada Jana,
Mr. Debajit Kundu
..for the petitioner.

Mr. Subir Kumar Saha, AGP,
Mr. Nabankur Paul
..for the State.

The husband of the petitioner namely Bimal Chandra Saha since deceased was an Assistant Teacher in Jateswar High School.

He died in harness on 6th March 2010.

After his death the petitioner being his widow applied for family pension.

The Commissioner of School Education by an order dated July 27, 2017 rejected the prayer of the petitioner for family pension with the observation that neither the judgment of the special bench passed in APO No. 94 of 2009 extends the right to the widows to exercise option for switching over to GPF from CPF scheme nor the notification dated June 13, 2014 contains any provision for the widows of the employees to exercise such option.

Mr. Jana, learned Advocate appearing for the petitioner submits that the aforesaid ground of rejection of the prayer of the petitioner for switching

over from CPF to GPF scheme cannot be sustained in view of the decision of the Hon'ble Division Bench in FMA 620 of 2018 in the case of State of West Bengal and ors. vs. Sefali Jana delivered on August 24, 2023. By placing reliance upon the said decision Mr. Jana submits that the widows of the deceased teacher are also entitled to exercise option for pension on account of the service of their deceased husbands.

Heard Mr. Saha, learned Additional Government Pleader assisted by Mr. Paul on such submission.

This Court finds that the Hon'ble Division Bench in Sefali Jana (supra) held that if the widows of the deceased teachers want to exercise option for pension on account of service of their deceased husbands the authorities cannot refuse to entertain the prayer of the widows as it is well settled proposition of service jurisprudence that pension includes family pension. The Hon'ble Division Bench held thus-

“6. Pursuant to the three-month period granted in Para 76 of the Abhijit Baidya (supra) decision to all teachers in the State, the writ petitioners/widows of the said teachers, went to the authorities to exercise options for pension on account of the service of their deceased husbands. The authorities refused to entertain the writ petitioners and turned them down. The State held that the Abhijit Baidya (supra) decision and the notification issued by the State pursuant thereto, applied only to the living teachers and not to their family members.

7. It is a well-settled proposition of service jurisprudence that pension includes family pension. The pension is aimed at securing the family particularly the widow and persons lawfully entitled to benefit from the service of a deceased employee.

8. The respondents are therefore entitled to family pension on account of their deceased husbands/employees. They shall exercise option therefor. The petitioners are entitled on the ground that the husbands had opted for to come under Para 17 of ROPA 1990 and also in view of the dicta in the decision of Abhijit Baidya (supra).”

It further appears from the record that in similar circumstances the respondent authorities have also allowed the widows to switch over to the GPF Scheme from the CPF scheme as would be evident from the order of the Director, Provident Fund and Group Insurance, Government of West Bengal dated 18th August, 2021 in the case of Putul Mondal vs. State of West Bengal & ors.

This Court, therefore, holds that the petitioner shall be entitled to switch over to the GPF scheme from the CPF scheme upon refunding the entire amount which was received by the petitioner on account of provident fund account of her husband together with any interest as specified in the relevant circular issued by the State.

The petitioner shall refund the entire Provident Fund amount along with accrued interest till the date of making such refund as specified in the relevant circular of the State within a period of three

months from the date of receipt of the server copy of this order.

Mr. Jana, learned Advocate for the petitioner submits that in the judgment dated September 30, 2019 in G.A. NO. 464 of 2018 arising out of APOT 104 of 2006 in the case of Md. Abdul Ghani vs. State of West Bengal & Ors. the Hon'ble Special Bench clarified that an employee who has opted for Pension-cum-Gratuity Scheme and has also refunded the quantum of money that was notified to him/her. He/She shall be entitled to be paid pension from the date following the date of his/her retirement on superannuation in accordance with the provisions of the DCRB Rules.

Since the husband of the petitioner died in harness, this Court holds that in the event the petitioner refunds the amount as directed by this Court, she shall be entitled to pension from the date following the date of death of her husband.

Upon refund of the money as directed by this Court, District Inspector of Schools (SE), Alipurduar is directed to forward the recommendation to the Director of Pension Provident Fund and Group Insurance being the 3rd respondent for issuance of Pension Payment Order within a period of two week from the date of making of such refund.

The Director of Pension, Provident Fund and Group Insurance is directed to issue Pension Payment Order within a period of two weeks from the receipt of recommendation from the D.I.

The respondent authorities are directed to take all steps for release of the pension expeditiously and the arrears of pension shall be paid to the petitioner as expeditiously as possible but positively within a period of three months from the date of issuance of the Pension Payment Order.

For the reasons as aforesaid Memo dated 27.07.2017 issued by Commissioner of School Education, West Bengal is set aside and quashed.

With the above observations and directions the writ petition stands disposed of.

(HIRANMAY BHATTACHARYYA, J.)