10.01.2025
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Sl. No. 29
Ct. No. 08

FMA 1234 of 2021
With
CAN 1 of 2021

Sandhya Rani Samanta
Vs.
The State of West Bengal & ors.

Mr. Debabrata Karar
Ms. Sabita Khutia (Bhunya)
Mr. Krishna Pada Santra
Mr. Debopriyo Karar

... for the appellant

Mr. Tapan Kr. Mukherjee
Mr. Somnath Naskar
Mr. Alok Banerjee

..... for the State

The dispute hinges upon the entitlement to receive family pension on the death of a retired employee who admittedly did not complete 10 years of satisfactory services. The Single Bench proceeded to dismiss the writ petition on the ground that the counsel for the writ petitioner could not apprise the Court of any statutory provisions which would entitle her to get the family pension.

At the time of admission of the instant appeal, our attention was drawn to paragraph 23(2) of the Recognized Non-Government Secondary Institution Pension Rules which contains the provision relating to entitlement to get family pension, in the event, the employee received gratuity on superannuation.

Mr. Tapan Kr. Mukherjee, learned additional Government Pleader submits that an amendment was brought in sub-paragraph 2 of para 23 of the said Rules on the basis of circular No. 340-SE(B) dated 03.07.2008 which does not confer power to get family pension, in the event, the retired employee did not receive pension.

Before we proceed to decide the aforesaid point, it would be profitable to quote the aforesaid provision which runs thus:

> *"23. **Family Pension-** (1) Family pension is admissible to the member of the family of an employee who dies while in service after rendering at least one year's service.*
> *(2) The benefit shall also be admissible in case of death of an employee after retirement if at the time of death he was in receipt of a compensation, invalid, retiring or superannuation pension or gratuity."*

It is manifest from the aforesaid statutory provision that the family pension is admissible to the member of the family of an employee who dies even after rendering one year of service. So far as the sub-paragraph 1 is concerned, it is applicable in case of an employee died-in-harness but sub-paragraph 2 expanded the horizon of the said family pension to a case where the employees after retirement died.

It is sought to be contended by Mr. Mukherjee that unless the said retired employee received compensation or superannuation pension, the family is not entitled to a family pension. We made extensive effort in gathering the intention of the legislatures while amending and/or modifying the sub-paragraph 2 of paragraph 23 of the said Rules. It is ordinarily well accepted proposition of the interpretation of the Statute that the word “and” is read in conjunction and the word “or” is treated in a disjunctive manner. The moment, the Statute uses the word “or” along with the other eventualities, each of such eventualities have to be treated to stand alone in order to confer right bestowed under the aforesaid provisions. However, we cannot rule out that at times the interpretative tools used in this connection may invite an interchangeable situation but on the basis of the object and the purpose for which it is so used.

According to Mr. Mukherjee, unless the pension is paid to a retired employee, it is inconceivable that his family would be entitled to a family pension for the simple reason that it would corrode the very notion of the pension extended to the employee who attained superannuation.

A little backdrop is required to be recapitulated which in our opinion, led to the re-shaping of sub-paragraph 2 of paragraph 23 of the said Rules. Our attention is drawn to the memo issued by the Finance Department being memo No. 352-F(Pen) dated 26th May, 2008 where a notification was issued on 30th July, 2007 which was construed at the end of the authorities to have debarred the family from the family pension. The clarification was made that in the event, an employee dies prior to 30th July, 2007 and received gratuity as retiral benefit he would not suffer the rigor of the notification dated 30th July, 2007 which appears to have been issued disentitling the family pension extended to the family members. Such clarification led the notification or an amendment of sub-paragraph 2 of paragraph 23 and, therefore, it has to be read in conjunction therewith. From whatever angle we look at the moment the word "or" is used between the "pension" and the "gratuity", there is no hesitation in our mind that if the retired employee received gratuity as the retiral benefit and subsequently died, his family is entitled to family pension under sub-paragraph 2 of paragraph 23 of the said Rules.

Accordingly, the order impugned is set aside.

The writ petition is allowed. The connected application is also disposed of.

The authorities are directed to extend the family pension to the member of the family who is found entitled in this regard within six weeks from the date of the communication of this order.

The appeal and the connected application are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)