

31.10.2025.
46
Ct.No.7.
as

WPA 9896 of 2025

Asera Khatun
Vs.
The State of West Bengal & Ors.

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay.
.....for the Petitioner.

Mr. Pinaki Dhole,
Ms. Susmita Biswas Chowdhury.
...for the State.

1. Affidavit-in-opposition filed on behalf of the respondent Nos.2 and 5 and reply thereto, filed on behalf of the petitioner are taken on record.
2. The present writ petition has been preferred challenging the legality and justifiability of the reasoned order passed by the District Inspector of Schools (Primary Education) communicated to the petitioner under a memorandum vide No.238 dated 11th April, 2025. In addition to a prayer for quashing of that reasoned order, the petitioner prays for a directive to the concerned respondent to pay the share of the family pensions of other two deceased wives to the present petitioner and not to take any step to recovery any amount towards the share of the family pension of the second wife of the deceased employee.
3. Before embarking upon the intricacies of the controversy involved in the writ petition, it would be apposite

to avert to the essential facts leading to the presentation of the writ petition.

4. Petitioner's husband happened to be the Assistant Teacher of Kola Jr. Basic School under Harishchandrapur-I Circle, Malda. He retired from service on attaining the age of superannuation on 01.0-1.1992. He died on 30.07.2003. He was survived by three wives. His family pension was released in favour of all the three wives in equal shares. Subsequently, his first wife and then the second wife died on 09.08.2003 and 13.09.2017, respectively. His first wife died leaving behind him no minor child and so as the case of second wife also. Upon demise of second wife, viz., Afroza Khatun, his divorcee daughter viz., Meherun Nessa made a representation seeking payment of share of family pension which was released in favour of her mother.

5. After demise of second wife, entire family pension was initially released in favour of the present petitioner. Subsequently, such payment was discontinued and the petitioner was asked to refund the share of the family pension of the second wife. However, the petitioner did not refund that amount. The respondent stopped payment of her pension and started recovering the amount from the share of the family pension of the petitioner.

6. In the light of the circumstances, petitioner made a representation requesting the concerned respondent not to deduct any amount from the share of the family pension of the present petitioner and to release the entire family pension in her favour. However, despite receiving such representation

from the petitioner, no step was taken in this regard. This inaction compelled the petitioner to file a writ petition being WPA 17428 of 2023 which was disposed of by a Co-ordinate Bench of this Court by an order dated 21st August, 2024 directing the concerned respondents to consider the said representation and to take a reasoned decision thereon.

7. In compliance with the said order, a reasoned order has been passed on 08.04.2025 holding that the present petitioner is not eligible for two other wives share of family pension after their demise. Aggrieved by this decision, the present writ petition has been preferred.

8. Mr. Chattopadhyay, learned Advocate appearing for the petitioner submits that the District Inspector of Schools (PE) has glossed over the latest notification of the Government and arrived at an erroneous decision that in case of a death of a widow, as per Rule 26 D.C.R.B. Rules, 1981, the present petitioner is not entitled to get share of family pension of other two wives.

9. Mr. Dhole, learned Advocate representing the State heavily relied upon the Rules 26 and 28 of D. C. R. B., 1981 to defend the order. He submits that if an employee is survived by more than one widow, the family pension would be paid to them in equal share. However, on the death of one widow, who died leaving behind no minor child, the payment of her share of the pension shall cease. He submits that the District Inspector of School has correctly refused to entertain the petitioners claim in invocation of Rule 26 of D. C. R. B. Rules, 1981.

10. In reply, Mr. Chattopadhyay, learned Advocate appearing for the petitioner submits that the District Inspector of Schools failed to consider the notification vide No.54-F (Pen) dated 13th January, 1997. He submits as per this circular that if any widow is not survived by any child, her share of family pension shall not lapse but shall be payable to the other widows in equal share or if there is only one such other widow, in full, to her.

11. In support of his contention, he cited two decisions reported in 2014 SCC OnLine Cal 4587 (*Fuljan Bibi Vs. The State of West Bengal & Ors.*) and 2017 SCC OnLine Cal 14348 (*Sahebanu Bibi Vs. State of West Bengal & Ors.*).

12. Heard the learned Advocates appearing for the respective parties.

13. Perused the materials on record including the reasoned order passed by the District Inspector of Schools (Primary Education), Malda.

14. A perusal of the reasoned order reveals that, relying upon Rule 26 of the D.C.R.B. Rules, 1981, the District Inspector of Schools concluded that the present petitioner is not eligible for a share of the family pension of the other deceased wives after their demise. Indisputably, while passing the said order, the notification dated 13th January, 1997 was not taken into consideration, nor were the two decisions rendered by two different Coordinate Benches, in the cases of *Fuljan Bibi* (supra) and *Sahebanu Bibi* (supra), considered by the District Inspector of Schools.

15. In the decision of Fuljan Bibi (Supra), a Coordinate Bench of this Court quoted the note of that notification dated 13th January, 1997 which is re-produced hereinbelow for better appreciation of the issue involved in this writ petition;

“Note:- (i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension shall become payable to her eligible child.

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.”

16. Therefore, a bare perusal of the note, as quoted in the decision of *Fuljan Bibi* (supra), makes it quite clear that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, and if there is only one such other widow, then in full to her. However, as noted previously, the aforesaid notification and the two decisions referred to above were not considered by the District Inspector of Schools while passing the reasoned order. Accordingly, the reasoned order issued by the District Inspector of Schools, which is under challenge in this writ petition, is hereby set aside.

17. The matter is remitted to the District Inspector of Schools to revisit the issue and take a fresh decision upon due consideration of the notification vide No. 54-F (Pen) dated 13th January, 1997, and in the light of the decisions referred to in the preceding paragraph. If, upon such reconsideration, the

District Inspector of Schools finds merit in the petitioner's claim, necessary follow-up action shall be taken, which shall include payment of the full family pension in favour of the petitioner w.e.f. the date of death of the second wife, and release of the amount, if already recovered from her. In the event the District Inspector of Schools finds that the petitioner's claim is without substance, a reasoned order shall be passed and communicated to the petitioner. The entire exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

18. With this observation, the writ petition is disposed, however, without any order as to costs.

(Partha Sarathi Chatterjee, J.)