

28.02.2025
(D/L-12)
Ct. No.4
(B.K.N.)

W.P.S.T. 116 of 2023
Sufia Begam & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Moniruzzaman,
Mr. Jahangir Badsha

...for the Petitioners

Mr. Tapan Kr. Mukherjee, Ld. AGP,
Mr. Pinaki Dhole,
Mr. Somnath Naskar

...for the State Respondents

1. Learned counsel for the petitioner is permitted to impleade the Principal Secretary, Finance Department, Government of West Bengal as Respondent No. 4.
2. Heard learned counsel for the petitioner and the learned counsel for the State.
3. The brief facts preceding the present litigation is the claim made by the present petitioner, second wife of the deceased government servant for payment of family pension. The claim was made after her son who was earlier beneficiary of the family pension attained the age of 25 years, and thereby became ineligible for such benefit. The petitioner was denied such benefit by the contending that she has foregone the benefit in favour of her son though she had claimed the same earlier. This issue travelled to the West Bengal State Administrative Tribunal (S.A.T.) in O.A. 772 of 2019. Accepting the reasons assigned by the

State authorities the Tribunal dismissed O.A. 772 of 2019 on 20th December, 2019.

4. The Tribunal's order was assailed by the petitioner in a writ proceedings, registered as W.P.S.T. No. 68 of 2020. The writ petition was heard and finally considered by a Division Bench which allowed the writ petition in following terms:

“We have not come across any such provision which could prevent the widow to claim family pension after the son attaining the age of 25 years if it is otherwise admissible. In the instant case, the widow not being a permanent employees and the economic condition justify certain financial benefits to the family in question. We feel the issue needs to be revisited by the authority concerned. The purpose of the family pension is to give benefit, firstly to the widow till his lifetime. Just because the son has attained the age of 25 years and thereby not entitled to the family pension, the widow, in our view, may not be deprived the benefit of family pension. The family is considered to be a one unit for the purpose of family pension and so long the widow survives she has a right to claim the benefit.

On such consideration, we direct the Principal Secretary, Government of West Bengal, Finance Department to consider the representation dated 16th August, 2019 sympathetically taking a holistic view of the matter within a period of 12 weeks from the date of receipt of the pension papers from the Superintendent of Police, Murshidabad. The Principal Secretary shall take into consideration the observation made by us in this order in arriving at a just and fair conclusion. The Principal Secretary is directed to communicate his reasoned order within a period of one weeks from the date of passing of this order.

The Superintendent of Police, Murshidabad is directed to forward all the necessary papers relating to the pension case of the writ petitioners to the Principal Secretary, Finance Department within two weeks from the date of communication of this order upon intimation to the writ petitioners.

Accordingly, the impugned order is set aside.

The Writ petition and the connected application stand allowed.

There will be, however, no order as to costs.

Urgent certified website copies of this order, if applied for, be delivered to the parties, upon compliance of all necessary formalities.”

5. The Principal Secretary, Finance Department, Government of West Bengal in purported compliance of the directions issued by the Division Bench on 4th September, 2020 in W.P.S.T. No. 68 of 2020 has passed an order rejecting the petitioner’s claim. The only reason for rejecting the petitioner’s claim, as per the order of the Principal Secretary to the Government of West Bengal in the Finance Department is as follows:

“A) Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 envisages that no Government employee who has a wife/husband living shall contract another marriage without obtaining previously the dissolution of the first marriage in accordance with any law for the time being in force notwithstanding such a second marriage is permissible under any personal law of the community to which he or she belongs.

On the basis of above corpus of the provision, Mst. Sufia Begum has not been granted family pension. As per prevalent dictums of the Hon’ble Apex Court, child born out of the second marriage is regarded as the legitimate child and is eligible to inherit/succeed all proprietary right/admissible benefits of his/her parents irrespective of the fact that the second marriage was valid or void.”

6. The order of the Principal Secretary, Finance Department, Government of West Bengal was assailed again before the State Administrative

Tribunal in O.A. 386 of 2022. The Original Application has been disposed of accepting the reason assigned by the Principal Secretary, Finance Department, Government of West Bengal, bringing the petitioner before this Court in the present proceedings, assailing such order of the State Administrative Tribunal dated 1st December, 2022.

7. The learned counsel for the petitioner submits that the order passed by the Principal Secretary, Finance Department, Government of West Bengal apparently suffered from the vice of non application of mind. The Principal Secretary, Finance Department, Government of West Bengal while disposing of the claim of the petitioner has relied upon a Rule which does not apply to the Police Force wherein the petitioner's husband served till his superannuation. The West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 does not apply to the Police Force which is apparent from a plain reading of Rule 1(2) of the said Rule. We find such submissions of the learned counsel for the petitioner to be indisputable in view of a plain reading of Rule 1(2) of the Rule which reads as follows:

“1.(2) They shall apply to all employees of the Government of West Bengal:

Provided that nothing in these rules shall apply to persons appointed to any All India Service and members of the Police, and Jail Staff falling under the purview of the Jail Code.”

8. Mr. Mukherjee appearing for the State, however, on the hand submits that such defect in the order of the Principal Secretary, Finance Department, Government of West Bengal is not fatal to the order since the provision is *pari materia* incorporated in the West Bengal Government Servant Conduct Rules, 1959, applicable to the Police Force where the petitioner’s husband served. Rule 30 of the 1959 Rules is referred to, which reads as follows:

“30. Bigamous marriages.-No Government employee, who has a wife living, shall contract another marriage without first obtaining the permission of the appointing authority, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.”

9. The further submission on behalf of the learned counsel for the petitioner is that the claim of the petitioner was required to be considered holistically and having a sympathetic view, in light of the observations recorded by the Division Bench while disposing of W.P.S.T. No. 68 of 2020 which has not been done.
10. During the course of today’s proceedings the parties have also made submissions with reference to the entitlement of family pension under the West Bengal Services (Death cum Retirement Benefit)

Rules, 1971. The learned counsel for the petitioner has relied Rules 104 and 105 of the said Rules to contend that in explicit terms the Rule contemplates grant of pension to **“more than one widow”**. In view of such provision the submission of the State counsel that a second marriage would disentitle the second wife to the benefit of pension is not sustainable. Though this submission is opposed by the learned counsel for the State.

11. We also find that the order passed by the Division Bench on 04.09.2020 in the earlier writ petition bearing W.P.S.T. No. 68 of 2020 is binding *inter partes*, since the same was never assailed by the State. In fact, the Principal Secretary, in purported compliance of the order passed in W.P.S.T. No. 68 of 2020 has considered and written a purported speaking order. From bare perusal of the consideration accorded by the Principal Secretary it is apparent that the same is not in compliance with the letter and spirit of the order passed by the Division Bench, relevant extract of which reads as follows:

“The issue that arises for consideration is that what would be the fate of a widow who may have foregone the pension in favour of the son at the relevant time by exercising option and the economical need persists after the son attains 25 years. The Rule 104 does not speak of any option. It gives right to the legal heirs of a deceased. The

said rights are separate but cannot be claimed by all the heirs together. The family pension has to go in favour of one of the legal heirs as mentioned in Rule 104. The stoppage of benefit upon the son attaining the majority may not ameliorate economic need of the family of the deceased employee. The mother is a Home Guard and as such is not entitled to pension. The son attained the age of 25 years and hence is not entitled for pension. In the event the family pension is stopped the meager income of the wife of the deceased will not be sufficient for the family to lead a decent life. Right to life means to live with dignity. If the financial need is established, in our view the Rule should not stand in the way in extending the family pension to the widow of the deceased employee. To appreciate the argument made by Mr. Mukherjee that Rule 104 stands in the way in extending the benefit we considered the representations and materials on record it appears that the widow since beginning was praying for family pension in her name and may be for compelling reasons had agreed to exercise option in favour of the son.

We have not come across any such provision which could prevent the widow to claim family pension after the son attaining the age of 25 years if it is otherwise admissible. In the instant case, the widow not being a permanent employee and the economic condition justify certain financial benefits to the family in question. We feel the issue needs to be revisited by the authority concerned. The purpose of the family pension is to give benefit, firstly to the widow till his lifetime. Just because the son has attained the age of 25 years and thereby not entitled to the family pension, the widow, in our view, may not be deprived the benefit of family pension. The family is considered to be a one unit for the purpose of family pension and so long the widow survives she has a right to claim the benefit.

On such consideration, we direct the Principal Secretary, Government of West Bengal, Finance Department to consider the representation dated 16th August, 2019 sympathetically taking a holistic view of the matter within a period of 12 weeks from the date of receipt of the pension papers from the Superintendent of Police, Murshidabad. The Principal Secretary shall take into consideration the observation made by us in this order in arriving at a just and fair conclusion. The Principal Secretary is directed to communicate his reasoned order within a period of one weeks from the date of passing of this order.”

12. The consideration of the Principal Secretary Finance Department Government of West Bengal in the impugned Order dated 02.12.2021 rejecting the petitioner's claim for family pension is unsustainable, is without according a holistic consideration, as contemplated by the Division Bench in W.P.S.T. 68 of 2020.
13. We, therefore, consider it appropriate that the issue is remitted to be considered again by the Principal Secretary, Finance Department, Government of West Bengal in view of the observations passed earlier in W.P.S.T. No. 68 of 2020 and in accordance with the extant provisions contained in the DCRB Rules, 1971.
14. Taking a holistic view of the matter let a final decision be taken by the Principal Secretary, Finance Department, Government of West Bengal, in respect of petitioner's entitlement.

15. The petitioner would be at liberty to submit a detailed representation to facilitate such consideration within three weeks from date. The Principal Secretary, Finance Department, Government of West Bengal, newly added Respondent No. 4 would be under a obligation to consider and pass a reasoned and speaking order on such claim within eight weeks thereafter.
16. To facilitate consideration by the Principal Secretary (Respondent No. 4) we set aside the order passed by the West Bengal Administrative Tribunal on 01.12.2022 in O.A. No. 386 of 2022. While according a reconsideration in terms of the directions contained in this order the earlier order dated 02.12.2021 passed by the Principal Secretary Finance Department shall not stand in the way of such consideration.
17. The writ petition is allowed with observations and directions above.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)