

ML 253
16.01.2025
Ct. No. 18
adeb

W.P.A. 24642 of 2023

**Sahanaj Khanam
Vs.
The State of West Bengal & Ors.**

Ms. Shetparna Ray
...for the petitioner

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Sampriiti Saha
Ms. Swati Dey
...for the respondent no. 6

Mr. Bibekananda Tripathy
Mr. Kaustav Chatterjee
...for the State

Petitioner being the first wife has come up before this Court with the present writ petition for direction upon the State-respondents to release family pension in her favour. It is submitted that petitioner was the first wife of one Chowdhury Saiful Haque who was an assistant teacher in a Government aided high school. First marriage was solemnized on 3rd April, 1993. However, from the report dated 1st March, 2024 of the District Inspector of Schools (SE), Murshidabad being respondent no. 3 it is revealed that in 1999 said teacher divorced the petitioner on executing talaknama and subsequently filed a suit being 211 of 2015 before the Civil Court praying for a declaration that the said talaknama was valid

one. It is also revealed from the report dated 1st March, 2024 that the suit was decreed on 4th February, 2020 without interfering with the marriage which was solemnized in between teacher and the petitioner. However, the teacher married once again with respondent no. 6 in 2002 and included name of respondent no. 6 as his nominee in connection with his service being an assistant teacher of a Government aided high school. Teacher retired on 31st January, 2019 thereafter he was in receipt of pension. Teacher died on 18th August, 2023 and from 19th August, 2023 respondent no. 6 being the nominee has been receiving entire family pension.

Sanction of family pension denying right of the petitioner to get 50% of the same triggered this writ petition at the instance of the first wife and in connection with the same on filing a report on 1st March, 2024 respondent no. 3 has stated that the petitioner is entitled to receive 50% of the family pension on the strength of note to clause 26 of Death-cum-Retirement Benefits Scheme 1981.

The note to clause 26 of DCRB Scheme 1981 is quoted below:-

“26. Period during which family pension is admissible.

... ..

Note : When an employee is survived by more than one widow, the family pension shall be paid to them in equal shares. On the death of widow, her share of the pension shall become payable to her eligible minor children. If at the time of her death a widow leaves no eligible minor child, the payment of her share of the pension shall cease.”

During course of hearing nothing has been shown on behalf of respondent no. 6 which can disentitle the petitioner from receiving 50% of the family pension. However fact remains respondent no. 6 has been receiving family pension from 19th August, 2023 till date.

In view of the relevant provisions of DCRB Scheme 1981 as alluded above State-respondents are directed to pay 50% of the family pension to the petitioner from the month of January, 2025 which is to be paid in the month of February, 2025.

During course of hearing it has been brought to the notice of this Court that a loan account was existing in connection with the pension account of the husband of the petitioner and after the death of husband of the petitioner EMI is being paid by directly deducting the amount from the family pension which is being paid to respondent no. 6. If the loan account still survives in that event after deducting EMI rest of

the family pension shall be divided in between petitioner and the respondent no. 6 equally.

Since petitioner is entitled to receive arrear family pension from 19th August, 2023 till the month of December, 2024 respondent no. 3 is directed to calculate the total arrear family pension which is payable to the petitioner after deducting EMI and same shall be recovered from the future family pension of the respondent no. 6 in equal suitable installments. In this regard respondent no. 3 is directed to pass an order after granting opportunity of hearing to the petitioner and the respondent no. 6 or their representatives by 8 (eight) weeks from the date of communication of this order. After the order to be passed in terms of this direction payment of family pension shall be made in favour of the respondent no. 6 in terms thereof.

Writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)