Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

W.P.A. 29166 of 2022

Smt. Kananbala Thokdar & ors.

Vs.

The State of West Bengal & Ors.

For the petitioners:	Mr. Kamalesh Bhyattacharyya, Mr. Samim Ul Bari, Mr. Aninda Bhattacharya.
For the State:	Mr. Santanu Kumar Mitra, Sr. Govt. Adv, Mr. Amartya Pal.
For the respondent no.5:	Mr. P.S. Deb Barman, Mr. Debangana Dey Nayak.
Heard on:	25.04.2025
Judgment on:	30.04.2025

Biswajit Basu, J.

1. The predecessor-in-interest of the petitioners was the Teacher-in-charge of Gangadevi High School, District: Malda(hereinafter referred to as '**the said teacher**' in short). The said teacher was suspended on the allegation that he has misappropriated a sum of Rs. 4,00,000/-(Rupees Four Lakh only) granted to the school for construction of additional class rooms under Sarva Shiksha

Abhiyan. The said teacher was suspended by the Managing Committee of the said School and the order of suspension was affirmed by the West Bengal Board of Secondary Education in an appeal preferred by the said teacher, on the said allegation of defalcation of school fund, a criminal case being Chanchal Police Station Case No. 85 of 2008 dated May 07, 2008 under Section 409 of the Indian Penal Code was initiated against him.

2. The said teacher, while in suspension, had attained the age of superannuation and had retired from his service on June 30, 2009. He filed a writ petition being W.P. No. 1668(W) of 2010 alleging delay in disbursement of his retiral benefits. The said writ petition was disposed of vide order dated January 10, 2012 directing the concerned authorities to complete the service book as well as the pension papers of the said teacher within a period of eight weeks from the date of communication of the said order and to complete the exercise regarding payment of the retiral dues.

3. In compliance with the said direction, the pension payment order was issued on July 04, 2018 but the retiral benefits could not be disbursed as the school refuses to grant the 'No-Liability' certificate to the said teacher, in the meantime, the said teacher had died. The petitioners, being the heirs and legal representatives of the said deceased teacher are now praying release of the arrear pension and other retiral benefits and grant of family pension in favour of the widow of the deceased teacher, the petitioner no. 1 herein.

4. Mr. Kamalesh Bhattacharyay, learned senior advocate for the petitioners submits that the criminal case has been abated on the death of the said teacher, though he was placed under suspension, no disciplinary proceeding was initiated against him. He then refers to paragraph 19(5) under Chapter V of the DCRB Scheme, 1981 and submits that the said scheme contemplates a particular situation in which the full pension of a teacher can be denied but such situation does not exist in the present case, therefore, the disbursement of retiral benefits of the deceased teacher cannot be denied.

5. Mr. Partha Sarathi Deb Barman, learned advocate for the school submits that his client is not objecting grant of the retiral benefits of the deceased teacher but the school is not in a position to issue the No-Liability certificate as the school records would show that the said deceased teacher, from time to time, had withdrawn a sum of Rs. 4,00,000/-(Rupees Four Lakh only) from the school fund, which was sanctioned to the school for construction of its additional school rooms under Paschimbanga Sarva Shiksha Mission. There is no evidence/document with the school either regarding utilization of the said money or refund of it, in fact the additional class rooms could not be constructed for want of the said money. The said teacher was asked to explain the situation but he did not respond. He further submits that the auditor of the said school in his audit report for the financial year 2007-08 has pointed out that the deceased teacher had withdrawn the said money but the same has not been accounted for and was not entered in the cash book of the school. In this backdrop, the school authority is not in a position to issue the said No-liability certificate.

6. Mr. Santanu Kumar Mitra, learned senior Government advocate submits that he has received instruction from District Inspector of Schools (S.E), Maldah, the respondent no. 3 herein which says that to explore the possibility of recovering the said amount from the retiral benefits of the deceased teacher, the respondent no. 3 had sought for a direction from the Directorate Of Pension, Provident Fund & Group Insurance (***'the DPPG'*** in short) who in response, has opined that there is no provision to deduct the said amount from the admissible gratuity and to repay the same to the school as the retiral benefit is the property of the incumbent exclusively. Mr. Mitra files a copy of the said instruction of the respondent no. 3 dated April 11, 2025, let it be kept with the record.

Heard learned advocate for the parties, perused the materials-on-record.

7. The pension payment order of the deceased teacher was issued way back on July 04, 2018 but the disbursement of the retiral benefits could not be made for his failure to obtain the No-Liability certificate from the school authority. The Paragraph 2.2 of the Government order bearing no. 88/SE(B) dated May 26, 1998 issued by the Government of West Bengal, School Education Department, Budget Branch prescribes that on superannuation, the teacher is to collect the no liability/liability certificate from the Headmaster/Headmistress/teacher-in-charge/administrator/inspector(circle) as the case may be. In the instant case, the said teacher in spite of being notified, did not collect the 'No Liability/Liability Certificate'. In fact, at the said point of time, he could not have insisted to issue such certificate due to the pendency of the criminal case against him. The said teacher had been contesting the said criminal case with a defence that he had handed over the said money to the Secretary of the Managing Committee of the said school, who did not deposit the same with the school account. Unfortunately, the said teacher had died before the charge of defalcation of money was proved against him, consequently the said criminal case was abated.

8. The said teacher though was put under suspension on the said allegation of defalcation of money but no disciplinary proceeding was initiated against him. The paragraph 19(5) under Chapter V of the DCRB Scheme, 1981 prescribes that final pension, gratuity etc. shall not be sanctioned to an employee against whom departmental/judicial/proceedings have been instituted/continued and in case of misconduct of the pensioner, the pension sanctioning authority has the power to withhold the pension or reduce the pension.

9. The facts and circumstances of the present case do not attract the said paragraph of the said scheme. The allegation against the deceased teacher has not been proved. The DPPG has rightly opined that the retiral benefit is the property of the incumbent exclusively, therefore the liability of payment of the alleged defalcated amount of four lakh rupees cannot be attached with the said property.

In view of the discussion made above, the respondent no. 4 is directed to issue the No-Liability certificate in favour of the said deceased teacher within a period of three weeks from date. The respondent no. 3, on production of the said No-Liability certificate, shall take necessary steps for disbursement of the retiral benefits of the deceased teacher in favour of the petitioners and shall also take steps for grant of family pension in favour of the petitioner no. 1 in accordance with law.

However, it is made clear that the State is free to take steps for recovery of the said amount from the petitioners in accordance with law.

W.P.A. 29166 of 2022 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)