

Item No.48

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

WPCT 17 OF 2025

**Union of India & Ors.
VS
Smt. B. Mallika**

Appearance:-

For the Petitioner : Mr. Mukesh Kumar Gupta, Adv.
Mr. Guddu Singh, Adv.
For the Respondent : Mr. Ujjal Ray, Adv.

Heard on : 06.01.2026

Delivered on : 06.01.2026

Judgment

Per, SUJOY PAUL, ACJ.:-

1. This matter has a chequered history.
2. In this case, parties have fought a long drawn battle in the corridors of the Court on the question of grant of family pension to a divorced daughter.
3. The crucial dates for adjudication of this matter are as under:-
 - i) The father of the respondent/applicant died on 20.02.1992.
 - ii) The mother of the respondent/applicant died on 10.06.2008.

- iii) The respondent filed a matrimonial suit, being MAT 787 of 2009, which was decreed on 16.10.2010.
- iv) The respondent filed a representation for grant of family pension as divorced daughter. Since representation could not fetch any result, she filed OA No.63 of 2012, which was dismissed on 6.7.2012 and the Tribunal opined that the applicant was not a family member and dependent on her parents on the given date and, accordingly, OA was held to be not maintainable and dismissed.
- v) The respondent feeling aggrieved with this order of Tribunal passed in OA 63 of 2012 filed WPCT 37 of 2013, which was decided on 13.5.2015. In view of directions contained in this order of coordinate Bench, speaking order dated 3.7.2015 came to be passed thereby declining the relief of family pension.
- vi) The respondent then filed OA No.620 of 2016 before the Tribunal, which was disposed of on 23.11.2017 again directing the respondents to pass a speaking order. In turn, the speaking order dated 13.01.2018 was passed, which became the subject matter of another litigation in OA No.1290 of 2018 disposed of on 21.12.2021. The railway administration then filed MA No.274 of 2022 seeking modification of the order dated 21.12.2021. The said MA was dismissed on 10.12.2024.
- vii) The department has filed the present petition challenging the order of the Tribunal passed in OA No.1290 of 2018.

Contention of the Petitioner:

4. Learned counsel for the department by placing reliance on the recent judgment of this Bench passed in **WPCT 320 of 2024 (Union of India & Ors. vs. Jayanti Chatterjee)** submits that the present matter is squarely covered by this judgment.
5. It is submitted that the principle laid down in this judgment in **Jayanti Chatterjee** (supra) makes it clear that a widow daughter is entitled to get family pension provided (i) she was dependent on the deceased pensioner at the time of his/her death and (ii) the litigation for divorce was instituted during the lifetime of the deceased employee/pensioner. By taking this Court to the facts of this case, the learned counsel for the department submits that both the aforesaid conditions are not satisfied. The respondent herein was neither dependent on the deceased father/pensioner at the time of his death nor her divorce proceedings were instituted before death of the father and mother. Thus, the respondent is not entitled to get family pension.
6. Criticizing the impugned order of Tribunal dated 21.12.2021 learned counsel for department submits that the impugned order is based on Railway Board's clarificatory circular RBE No.98 of 2008 whereas the mother circular was issued way back on 25/30th August, 2004 and 28th April, 2011. In view of these circulars, which were clarified in RBE No.109 of 2014, the respondent herein is not entitled to get family pension. The Tribunal erred in not considering the subsequent clarifications of 2014 and 2017 and mechanically granted her the benefit of RBE No.98 of 2008.

Contention of the Respondent:

7. Mr. Ray, learned counsel for the respondent submits that in the instant case the said argument will not help the Railway Administration because in the first round of litigation in OA No.63 of 2012 decided on 6th July, 2012 the Tribunal recorded categorical findings, which reads as thus:

“Ex-facie applicant was not a part of family of deceased pensioner when her, father as well as mother died on 20.02.1992 and 10.06.2008 respectively. Matrimonial case filed by her was registered as Case No.787/09. In other words, the Matrimonial Suit and proceedings for divorce were instituted much later to the date of death of her parents. As such applicant was not the family member and dependent on her parents on the given date. In the circumstances, OA is not maintainable. Accordingly it is dismissed. No costs.”

These findings of Tribunal could not sustain judicial scrutiny before this Court in WPCT 37 of 2013 decided on 13.5.2015. In view of findings given by this Court, the Tribunal has not committed any error of law in following the directions of superior Court. Thus, no interference be made.

8. No other point is pressed by the learned counsel for the parties.
9. We have heard the parties and perused the record.

Findings:

10. The basic argument of learned counsel for the petitioner/department is based upon the recent judgment of this Court in the case of **Jayanti Chatterjee** (supra). In the said judgment, this court has not only considered certain governing provisions for grant of family pension, the court also considered the view taken by coordinate Benches of this court and this Division Bench judgment of Madhya Pradesh High Court. In our

opinion, the principle of law laid down by us recently in **Jayanti Chatterjee** (supra) based on relevant provisions and judgments cannot be doubted. The only question is whether the judgment of **Jayanti Chatterjee** (supra) can be pressed into service *in the peculiar facts and circumstance of this case*.

11. We have consciously used the expression *in the peculiar facts and circumstance of this case*. It cannot be forgotten that the present petitioner filed OA no. 63 of 2012 which was dismissed by the Tribunal on 06.07.2012 by holding that applicant was not a family member and dependent on her parents on the relevant date and therefore, OA was held to be not maintainable and dismissed by the Tribunal.
12. When the said order of Tribunal passed in OA 63 of 2012 was called in question before this Court in WPCT 37 of 2013, this court in the decision dated 13.05.2015 Annexure 'A-8' recorded as under:

“Learned advocate of the railway authorities however, relies on an office memorandum mentioned in Estt. Srl. No. 2/2014 dated 8th January, 2014 and submits that those married daughters who became widow and divorcee before the death of both of her parents and were dependent on them at the time of their death are eligible for family pension.

Learned advocate of the petitioner submits that the aforesaid Railway Board's Circular dated 8th January, 2014 has no manner of application in the facts of the present case since the petitioner herein put forward her claim for family pension in the year 2011 when the aforesaid circular had no existence.

Learned advocate of the petitioner also submits that the said petitioner was dependent on the mother and was staying with her mother during her lifetime which has been specifically recorded by the learned Additional District Judge, 5th Court, Paschim Medinipur in Mat Suit No. 787 of 2009.

*Be that as it may, the petitioner herein being the divorced daughter of the deceased employee **shall be eligible for family***

pension in terms of the Railway Board's Order being RBE 98 of 2008 wherein it has been specifically mentioned that a divorced daughter is eligible for family pension at any age **and no other condition has been mentioned by the Railway Board in the aforesaid order** although it is not in dispute that the said petitioner was staying with her mother as dependent till her death.

For the aforementioned reasons, we direct the respondent authorities to take appropriate decision **for grant of family pension** to the petitioner herein as the divorced daughter of the deceased employee in **terms of the RBE 98 of 2008 who was also admittedly staying with her mother till death**, without any further delay but positively within four weeks from the date of communication of this order.

With the aforesaid directions, we set aside the impugned order passed by the learned Tribunal and dispose of this writ petition without awarding any costs."

(Emphasis Supplied)

13. A careful reading of aforesaid findings given by this Court in a case where present parties were litigants shows that the Railway administration relied upon a similar Estt. Srl. No. 2/2014 dated 08.01.2014 before this Court to contend that only such married daughters who became widow or divorced before death of the parents and were dependent on them at the time of their death are eligible for family pension. This argument of railway administration was not accepted by this Court and in clear terms, this Court opined that the petitioner is eligible for family pension in terms of RBE No.98 of 2008. Pertinently, this order of High Court dated 13.05.2015 passed in WPCT 37 of 2013, in absence of any challenge, had attained finality. Since, it attained finality, this order is binding between the parties *inter se*. This is a peculiar fact of the present case where the right of eligibility for pension of the petitioner has already been determined by the High Court in WPCT 37 of 2013. After such clear finding is

recorded by this Court which is reproduced hereinabove, it was no more open to the department to take a contrary view while passing the speaking orders dated 03.07.2015 Annexure 'A-9' and 13.01.2018 Annexure 'A-10'.

14. Putting it differently, in our opinion, since the judgment of this court in WPCT 37 of 2013 has attained finality, the said binding judgment between the petitioner and department will govern the question of grant of family pension. This court in previous round, in no uncertain terms, made it clear that "the petitioner being the divorced daughter of deceased employee shall be eligible for family pension in terms of the Railway Board order RBE No. 98 of 2008". Since, this finding attained finality, it was no more open to the Tribunal to take a different view. The Tribunal did the correct thing and followed the aforesaid direction of this Court in the aforesaid matter and ignored any other subsequent guidelines issued in 2014 or 2017.
15. To sum up, in our considered judgment, neither Tribunal nor this Court in the present round of litigation can travel beyond or behind the findings given by this Court in WPCT 37 of 2013 decided on 13.05.2015. Any other view taken by Tribunal or by us will not be in tune with judicial discipline.
16. This peculiar fact that petitioner succeeded in WPCT 37 of 2013 makes her case distinguishable and therefore, judgment of **Jayanti Chatterjee** (supra) cannot be pressed into service.
17. *In the peculiar facts and circumstance of the case*, the writ petition cannot be entertained. While dismissing the writ petition, we deem it proper to observe that singular reason of success of respondent herein is the order

of this Court passed in WPCT 37 of 2013 decided on 13.05.2015. This judgment for this reason is confined to the peculiar facts of the present case and will not be treated as a precedent for other matters.

18. In view of foregoing analysis, the writ petition deserves to be and accordingly **dismissed** with aforesaid observations.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)

RP(AR.CT.)