28.04.2026
Sl. No.205(DL)
Ct. No.14
srm

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 1827 of 2026

Samsun Nehar

versus

The State of West Bengal & Ors.

Mr. Kalyan Kumar Panda,
Mr. Arun Khutia
...for the Petitioner.
Md. Ahsanuzzaman,
Md. Abu Reja Jaglul Kabir
...for the State.

1. Affidavit of service filed on behalf of the petitioner is taken on record.

2. State files instruction furnished by the District Inspector of Schools (P.E.), Birbhum dated 6th February, 2026 which is also taken on record.

3. By the present writ petition, the petitioner seeks for grant of family pension to the extent of 100% share with effect from 28th March, 2020 and to release arrear family pension without further delay and make necessary correction in the Pension Payment Order.

4. The petitioner contends that her husband, namely Abdul Salek was an Assistant Teacher of Sansat Primary School under Bolpur Incentive Circle, District Birbhum. The petitioner's husband retired from service on superannuation on 31st October, 1994. The Pension Payment Order was issued in favour of the petitioner's husband on 21st May, 1999. At the time of

retirement, the petitioner's husband had two wives, namely Rasida Khatun and petitioner herself and they were entitled to family pension. The first wife, namely Rasida Khatun died on 4th December, 2000. On 21st March, 2010, the petitioner's husband made a representation before the concerned District Inspector of Schools for deletion of name of Rasida Khatun from the Pension Payment Order and keep single name of the petitioner in order to get full family pension in the event of death of concerned employee. However, no steps were taken in such regard. In the meantime, the petitioner's husband died on 27th March, 2020. The petitioner approached the pension sanctioning authority to grant her family pension to the extent of 100% share. Be that as it may, the petitioner has been granted family pension to the extent of 50% share. Being aggrieved by such action of the respondent authorities the petitioner has filed the present writ petition.

5. Mr. Kalyan Kumar Panda, learned Advocate for the petitioner submits that the petitioner is the only surviving wife of the concerned employee. Though the note under Rule 26 of West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement Benefit) Scheme, 1981 *(hereinafter referred to as the "DCRB 1981")* provides where 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 pension shall become payable to her eligible minor child. If at the time of her death a widow leaves no minor child, the payment of her share of the pension shall cease. Be that as it may, the expression *"the payment of her share of pension will cease"* cannot be interpreted that the family pension payable by the State would be reduced or the liability to make payment of the family pension of the State would cease, for the reason that the right to receive full family pension is earned by the employee for his dependents as a matter of his employment. The petitioner being the only surviving wife of the deceased employee is entitled to 100% share from the date following the date of death of her husband, i.e. 28th March, 2020. He seeks for appropriate orders.

6. Md. Ajsanuzzaman, learned Advocate for the State-respondents submits that note to Rule 26 of Chapter VII of memorandum No.136-Ed.(BZ) dated 15th May, 1985 issued by the School Education Department, West Bengal provides that in the event of death of a widow leaving no eligible minor child, the payment of her pension shall cease. Therefore, the petitioner being the second wife is not entitled to get the share of first wife. The petitioner is entitled only 50% share

of the family pension. He seeks for dismissal of the writ petition.

7. Upon hearing learned Advocates for the respective parties, the only issue which falls for consideration is whether the petitioner being the only surviving wife is entitled to 100% share of family pension or not.

8. In order to examine the issue as noted hereinabove, it would be apposite to reproduce Note to Rule 26 as hereunder:

> *"Rule 26-Note: Where 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."*

9. The issues as raised in the present writ petition are precisely relevant with regard to note of Rule 26 as hereinabove. Learned advocate representing the State emphasizes upon the expression on the last part of the note that "*the payment of her share of the pension will cease*" which means that the share of the deceased wife will cease altogether. It is placed on record that the family pension is not a bounty or gratuitous payment. The family pension is paid to the surviving dependents to support their livelihood. From bare reading of the aforesaid note, it would be evident that what is conveyed is that upon death of the one wife, her share would not be paid to her

beneficiaries. However, that does not mean that the family pension payable by the State Government would stand reduced or the liability to make payment of family pension by the State would be reduced. Upon discharging duties during his service tenure a retired employee or his dependents are granted pension or family pension, as the case may be. In the present case at hand, the petitioner is the only surviving wife of the deceased employee. The family pension is an estate of the legal heirs of the deceased employee. The apportionment of family pension of a deceased employee is not the business of the State. State is liable to pay 100% family pension, which can be shared by the legal heirs of deceased employee but the State cannot retain the share of one legal heir on the ground that her share in family pension has ceased. If there is only one legal heir, who is eligible for the grant of the family pension, he/she will be entitled for full 100% family pension and no portion of the same can be retained by the Government by taking shelter behind note of Rule 26 of DCRB, 1981.

10. While dealing with a similar note prevalent in the State of Bihar, the Hon'ble Patna High Court in ***Most. Bhagawani Devi versus State of Bihar*** reported in ***2015 SCC Online Pat 9286*** observed as follows:

> *"Note 1 - When a government employee is survived by more than one widow the pension will be paid to them in equal shares. On the death of the widow*

> *her share of the pension will become payable to her eligible minor child. If at the time of death widow leaves no eligible minor child, the payment of her pension shall cease."*
>
> *…. …. …. …. …. …. …. …. …. …. …. …. …. …. ….*
>
> *"6. The State emphasizes on the last part of this Note, and specially the expression "the payment of her share of the pension will cease". In our view, what is important is "her share". All that is conveyed is that upon the death of the second wife, her share would not be paid to her beneficiaries, but that does not mean that the family pension payable by the State would stand reduced or the liability to make payment family pension by the State would be reduced. This cannot be so, because the right to receive full family pension is earned by the employee for his dependants as a matter of his employment. As noted in the very beginning, it is not a bounty or gratuitous payment."*

11. Further the Hon'ble Punjab & Haryana High Court in ***Premwati versus State of Haryana*** reported in ***2015 SCC OnLine P&H 10444*** and in ***Vidya Vati versus Punjab State Power Corporation Ltd. & ors.*** *(Re:- RA–CW-487-2025 in/and CWP-5001-2023)* while dealing with note of similar nature came to this conclusion that the surviving wife is entitled to full family pension. Therefore, the word "cease" used in note to Rule 26 of DCRB, 1981 cannot be read so as to reduce the family pension. The State is obligated to pay full family pension to the petitioner. In the present case, the first wife, namely Rasida Khatun pre-deceased her husband and expired on 4th December, 2000. Therefore, it goes without saying

that the petitioner being the sole surviving wife is entitled to get 100% share in the family pension.

12. Accordingly, the District Inspector of Schools (Primary Education), Birbhum, respondent No.3 is directed to forward the Pension Payment Order to the Director of Pension, Provident Fund and Group Insurance, respondent No.2 for revision upon correction of the name of the recipient of family pension in column 8 of the Pension Payment Order on deletion of the name of the first wife, namely Rasida Khatun. Consequently, upon revision of the Pension Payment Order, the District Inspector of Schools (Primary Education), Birbhum, respondent No.3 shall sanction and release the family pension in favour of the petitioner to the extent of 100%. Such exercise shall be completed within a period of eight weeks from the date of communication of this order.

13. Arrears, if any, shall be paid to the petitioner within the aforesaid period.

14. Learned Advocate for the petitioner is directed to communicate this order to respondent No.3, District Inspector of Schools (Primary Education), Birbhum, respondent No.2, Director of Pension Provident Fund and Group Insurance and respondent No.5, Treasury Officer, Burdwan-I, Purba Bardhaman, for necessary compliance.

15. With the above direction, the writ petition, **WPA 1827 of 2026** stands disposed of.
16. Interim order, if any, stands vacated.
17. All connected applications, if any, stand disposed of.
18. There shall be no order as to costs.
19. Since no affidavit is called for, the allegations made in the writ petition are deemed to have been denied.
20. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
21. Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)