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MAT 164 of 2025
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IA No.: CAN 1 of 2025 [Stay]
Kalyani Gayen
– Versus –
The State of West Bengal & Others

Ms. Piyali Sengupta,
Mr. Victor Chatterjee,
Ms. Shreya Bhattacharjee,
Mr. Pramitava Nath
... for the Appellant.

Mr. Kartik Chandra Kapas
... for the State/Respondents.

The present appeal has been preferred challenging the order dated 4th November, 2024 passed by the learned single Judge in the writ petition, being WPA 371 of 2023 which was preferred *inter alia* praying for issuance of necessary direction upon the respondents to disburse the benefits of family pension.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The following facts are not in dispute. Subodh Kumar Gayen (hereinafter referred to as Subodh), the husband of the appellant, was an Assistant Teacher in Daudpur H.L. Sikshaniketan (H.S.) (hereinafter referred to as the said school). He opted for Contributory Provident Fund (in short, CPF) under the Pension Scheme. He thereafter expired on 27th January, 2014. During his service tenure he

also opted for the benefits of Revision of Pay and Allowances Rules, 1990 [in short, 1990 ROPA] as well as Revision of Pay and Allowances Rules, 1998 [in short, 1998 ROPA]. However, Subodh could not exercise option in terms of the notification dated 13th June, 2014, issued in terms of the judgment delivered in the case of *State of West Bengal & Ors. – vs. – Abhijit Baidya* [APO No.94 of 2009]. After his demise, the appellant approached the authorities for grant of benefits of family pension. As no steps were taken, she was constrained to prefer the writ petition.

In the order impugned it was *inter alia* observed that as appellant's husband did not apply for switching over from CPF to General Provident Fund (in short, GPF) within the stipulated time in terms of the Government notification issued pursuant to the order passed in the case of *Abhijit Baidya (supra)*. Such finding is not acceptable inasmuch as Subodh expired prior to issuance of the notification dated 13th June, 2014 pursuant to the judgment delivered in the case of *Abhijit Baidya (supra)*.

The issue involved in the present appeal is no longer *res integra* in view of the judgment delivered in the case of *District Inspector of Schools (SE), Kolkata –vs- Abhijit Baidya*, reported in (2013) 3 CHN 711. It has also been decided by a co-ordinate

Bench of this Court in an appeal, being *FMA 620 of 2018 [State of West Bengal and Ors. Vs. Sefali Jana and Ors.]* that a widow of a deceased teacher would be entitled to family pension on account of the service of her husband, who opted for revised scale under 1990 ROPA, upon refund of the Government share of CPF. Similar order was also passed in the case of *State of West Bengal & Others -Vs.- Smt. Jharna Bhattacharya [MAT 1598 of 2015]*.

In the said conspectus, the learned single Judge erred in law in rejecting the appellant's prayer and accordingly, the order impugned in the present appeal, is set aside.

The respondents, particularly the respondent no.4, shall calculate and communicate the amount to be refunded by the appellant for disbursement of the benefits of family pension within a period of three weeks from the date of communication of this order.

It is made clear that the school authorities shall extend all cooperation to the respondent no.4 towards calculation of the amount to be refunded to the Government along with interest.

Upon such communication of the amount to be refunded, the appellant shall deposit the same within a period of three weeks thereafter. In the event such refund is made, the respondents shall

disburse the benefits of family pension to the appellant within a period of four weeks thereafter.

With the above observations and directions, the appeal and the connected application are disposed of.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)