

31.03.2026
Sl. No.459(DL)
Ct. No.14
gd/srm

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

W.P.A. No. 7259 of 2024

Santanu Ganguly

Versus

The State of West Bengal & Ors.

Mr. Manik Das,
Mr. Falguni Majhi

...for the Petitioner.

Ms. Sipra Majumear,
Mr. Mahim Chowdhury

...for the State.

Mr. Saibal Acharyya,
Mr. Tanweer J. Mondal

..for the DPSC, Purba Bardhaman.

Mr. Tarapada Das

...for the Respondent No.8.

1. By the present writ petition, the petitioner seeks direction upon the respondent authorities to release death benefits including pension, provident fund and group insurance in favour of the petitioner in accordance with law together interest upon consideration of his representation dated 16th October, 2023.
2. The present writ petition is filed by the minor son of the deceased employee namely Santanu Ganguly through his maternal grandmother Bharati Basak.
3. The brief facts precisely pleaded in the writ petition are as follows. The mother of the petitioner, namely Nandita Basak was an Assistant teacher of

Nutangram Free Primary School under Kalna East Circle, Purba Bardhaman. On 27th January, 2016, the petitioner's mother and father divorced each other. Subsequent thereto, the mother of the petitioner married respondent No.8 herein, namely Prasenjit Ghosh. Upon divorce from her previous husband, the mother of the petitioner changed the nomination in Provident Fund Account in favour of her mother Bharati Basak. The petitioner's mother died-in-harness on 9th March, 2023. On 16th October, 2023, the petitioner through his maternal grandmother, approached respondent No.4, District Inspector of Schools (Primary Education), Purba Bardhaman and respondent No.5, Sub-Inspector of Schools, Kalna East Circle for release of death benefits including family pension in favour of the petitioner upon the death of the petitioner's mother. The petitioner was subsequently intimated of a hearing to be convened on 29th November, 2023 in the office of the respondent No.4. Although hearing was concluded on the aforesaid date, however, no decision was taken by the authority concerned. Hence, this writ petition.

4. Pursuant to order passed in the present writ petition on 14th August, 2024, the District Inspector of Schools (Primary Education), Purba Bardhaman passed the following order on 4th September, 2024:

“ORDER

As per DCRB scheme 1981 published vide GO NO. 136 EDN (B) Dated 15/05/1985, Prasenjit Ghosh, husband of the deceased teacher, is eligible for family pension and he is asked to apply for family pension to the office of the Sub Inspector of Schools, Kalna East Circle with necessary documents. Other death benefits will be provided as per norms.

So, the petitioner cannot be given any benefit from this end.

The order of the Hon'ble Court is considered and the matter is thus disposed of.

All concerned are being informed accordingly.”

5. Mr. Manik Das, learned Advocate appearing for the petitioner submits that as per Death-cum-Retirement Benefit (*in short* ‘DCRB’) Scheme, 1981, the husband of a deceased employee is entitled to family pension. Be that as it may, at the time of hearing before the Court it was submitted on behalf of the respondent No.8, the husband of the deceased employee, that he has no objection if all the death benefits including pension of his wife is given to her son, the petitioner herein. In the event the husband of the deceased employee forgoes his right under the DCRB Scheme, 1981, the minor son under the said scheme becomes entitled to receive the pension and all other death benefits. The undertaking given on behalf of respondent no.8 before the Court was never sought to be reviewed and/or modified by the respondent No.8. Moreover, respondent no.8 has also not assailed the order wherein such undertaking has been recorded.

The Court directed respondent No.8 to file an affidavit stating his no objection. In spite of giving no objection, the affidavit that has been filed containing certain allegations, which was never called for by the Court. Relying on the decision of the Hon'ble Supreme Court passed in ***Smt. Lavanya C & Anr. versus Vittal Gurudas Pai since deceased by Lrs. & Ors.*** reported in ***2025 SCC OnLine SC 499***, he submits that once an undertaking is given before the Court by a Lawyer on behalf of his client that is binding upon the party, and, therefore, the respondent No.8 cannot retract from such undertaking. In such circumstances, appropriate orders be issued for grant of family pension and all other death benefits in favour of the petitioner by setting aside of the order of District Inspector of Schools (PE), Purba Bardhaman.

6. Mr. Saibal Acharyya, learned Advocate representing the District Primary School Council, Purba Bardhaman submits that since the respondent No.8, being the husband of the deceased employee, has given his no objection in respect of release of pension and other death benefits to the petitioner, in that event death benefits including the pension of the deceased teacher can be granted to the minor son of the deceased employee under DCRB Scheme, 1981.
7. On the contrary, Mr. Tarapada Das, learned Advocate for the respondent No.8 submits that the minor child along with deceased employee was residing with

respondent No.8 and soon after the death of the employee the child was forcibly taken away. The order passed by the District Inspector of Schools (PE), Purba Bardhaman on 4th September, 2024 is made in terms of the existing rules under DCRB Scheme, 1981 which entitles the husband of the deceased employee to the family pension and other death benefits. Therefore, such order ought not to be interfered with.

8. Upon hearing the learned Advocates for the respective parties, the only issue which is to be examined in the present writ petition is whether the petitioner being the minor son of the deceased teacher is entitled to family pension and other death benefits in the facts and circumstances of the present case.
9. In order to examine the aforesaid issue, at the outset, it would be apposite to reproduce the definition of 'family' as provided under Memorandum No.136-Edn dated 15th May, 1985 under Chapter II of rule 5 (s) as hereunder:

"(s) "Family" includes the following relatives of an employee namely- (1) For the purpose of a death gratuity

(i) wife in the case of a male employee

(ii) husband in the case of a female employee

(iii) sons including step sons

(iv) unmarried and widowed daughters including step daughters

(v) adopted sons/daughters

(vi) brothers below the age of 18 years and unmarried or widowed sisters

(vii) father

(viii) mother.

(2) For the purpose of family Pension

(i) wife in the case of a male employee

(ii) husband in the case of a female employee

(iii) minor sons including adopted sons

(iv) unmarried minor daughters including adopted daughters

(v) dependant parents.

Note: Adopted or marriage after retirement will not be recognised for the purpose of family pension.”

10. Upon bare reading of the above provision, it is found that though the minor sons are entitled to family pension but their sequence comes after the wife in case of male employee, husband in case of female employee. Therefore, it goes without saying that under the DCRB scheme, 1981, the husband has been made entitled to family pension above the minor son.

11. Be that as it may, on 5th March, 2025 following submission was made before the Court by the learned advocate on behalf of respondent no.8:

“Mr. Tarapada Das, learned advocate for the respondent no. 8, the stepfather of the petitioner submits that his client has no objection if all the death benefits including the pension of the deceased teacher is given to her son, i.e. the petitioner herein.”

12. Upon such submissions the Coordinate Bench of this court directed respondent no.8 to file an affidavit to the said effect on the next date of hearing. To be precise the Court directed respondent no.8 to file an

affidavit in relation to such oral submission made regarding his no objection in the event all the death benefits including the pension of the deceased employee is granted in favour of the minor son. However, the affidavit that has been filed pursuant to such direction of this court has disclosed certain facts which were never called for by the court. The undertaking which was given before the Court has neither been denied nor sought to be reviewed, recalled or challenged. Now it is to be seen as to what would be the effect of such undertaking given by an advocate on behalf of his client.

13. In **Smt. Lavanya (supra)** the Hon'ble Supreme Court while dealing with the effect of an undertaking given by the learned advocate considered several other judgments of the Hon'ble Court and observed as follows:

“10. The above judgments make clear that a lawyer-client relationship is fiduciary in nature and the former is cast in terms of agency of the latter. It is also clear that the lawyer is to respect the decision-making right of the client. It flows from this that any undertaking given to a Court cannot be without requisite authority from the client.

11. The appellants herein would have us believe that the undertaking to not alienate the subject matter property, which, undoubtedly, has far-reaching implications, extending over a large period of time. We find such a situation difficult to accept. The undertaking, subject matter of controversy, was given in July 2007 and the miscellaneous application was filed in the year 2011, i.e., after a period of four and a half years. Had the situation

been that the said undertaking was without requisite authority, the clients were perfectly within their rights to seek discharge of that order, however, no such step was taken.

12. The same undertaking was re-emphasized a month later, on 13th August 2007 and was later made into an order of the Court which, as already observed supra, was extended from time to time. Alienation of the subject matter property despite express orders of the Court, in our view, entirely justify the stand taken by the High Court in punishing the appellants for contempt of Court.”

14. Thus, bearing in mind the proposition laid down by the Hon’ble Supreme Court in **Smt. Lavanya (supra)** such undertaking given by the learned advocate for the respondent no. 8, the stepfather of the petitioner, submitting that his client has no objection if all the death benefits including the pension of the deceased teacher is given to her son, i.e. the petitioner herein, cannot be without requisite authority from the client and therefore is binding upon respondent No.8.
15. In view of the aforesaid undertaking, respondent no.8 has forgone his entitlement to family pension and death benefits. In such event, under the DCRB Scheme of 1981 the petitioner, being the minor son of the deceased employee, becomes entitled to pension and other death benefits.
16. Although learned advocate for respondent no.8, tried to impress upon the court that the minor son of the deceased employee was forcibly taken away by the maternal grand mother however such argument is not

supported by any documents and hence is not acceptable.

17. Accordingly, the order passed by District Inspector of Schools (Primary Education), Purba Bardhaman dated 4th September, 2024 vide Memo No.675 is set aside.
18. The respondent No.4, District Inspector of Schools (Primary Education), Purba Bardhaman is directed to take appropriate steps for release of death benefits including family pension in favour of the petitioner within a period of 12 weeks from the date of communication of this order. Further respondent No.4 shall forward the pension papers to the respondent no.3, Director of Pension, Provident Fund and Group Insurance, Government of West Bengal for taking further consequential steps in accordance with law.
19. Learned advocate for the petitioner is directed to communicate this order to the respondent no.3, Director of Pension, Provident Fund and Group Insurance, Government of West Bengal and respondent No.4, District Inspector of Schools (Primary Education), Purba Bardhaman for necessary action.
20. With the aforesaid directions, the writ petition being **WPA 7259 of 2024** is disposed of.
21. Interim order, if any, stands vacated.
22. All connected applications, if any, stand disposed of.

23. There shall be no order as to costs.
24. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.
25. 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.)