17.02.2026
Sl. No.393(DL)
Ct. No.14
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 29649 of 2025
Asera Khatun
Versus
The State of West Bengal & Ors.

Mr. Tanmoy Chattopadhyay
Mr. Joy Laha
... for the Petitioners.

Mr. Avishek Prasad
Ms. Richa Pramanik
... for the DPSC, Malda.

Mr. Biplab Guha
Mr. Debasish Bhattacharyya
... for the State

1. Report filed by the State furnished by the District Inspector of Schools (Primary Education), Malda dated 16th February, 2026 is taken on record.
2. By the present writ petition, the petitioner seeks for setting aside and/or quashing of and/or withdrawal of the impugned order dated 9th December, 2025 passed by respondent no. 5, the District Inspector of Schools (Primary Education), Malda (Annexure P/5) rejecting the prayer of the petitioner for grant of entire family pension.
3. The petitioner's husband retired from service on superannuation on 1st January, 1992 and expired on 30th July, 2003. At the time of death, the husband of the petitioner was survived by three wives. The family pension was released in favour of the surviving three wives in equal shares. Subsequent thereto, the first wife,

namely, Anwara Khatun died on 9th August, 2003 and the second wife, namely, Afroza Khatun died on 13th September, 2017. Neither the first nor the second wife left behind any minor child. Upon demise of the second wife, the divorcee daughter of the second wife namely Meherun Nessa made a representation before the authority concerned seeking share of family pension which was earlier released in favour of her mother. After demise of the second wife, the entire family pension was initially released in favour of the present petitioner. However, subsequent thereto, such payment has been discontinued and the petitioner was directed to refund the family pension of the second wife. Since the petitioner did not refund the amount, the respondent authorities stopped her pension and started process of recovery of the payments already made. The petitioner made a representation requesting the concerned respondent not to take any amount from the share of the family pension. Since the prayer of the petitioner was not considered, the petitioner approached this Court by filing a writ petition being WPA 17428 of 2023 which was disposed of by a Coordinate Bench of this Court on 21st August, 2024 directing the concerned respondents to consider the said representation and take a reasoned decision thereon. Pursuant thereto, on 8th April, 2025, a reasoned order was passed by the respondent authorities concerned holding that the present petitioner is not eligible to receive the pension of other two wives after their demise. Aggrieved by such decision, the petitioner again filed a writ petition being WPA 9896 of 2025.

4. The aforesaid writ petition was disposed of on 31st October, 2025 by passing the following order:

> *"The matter is remitted to the District Inspector of Schools to revisit the issue and take a fresh decision upon due consideration of the notification vide No. 54-F (Pen) dated 13th January, 1997, and in the light of the decisions referred to in the preceding paragraph. If, upon such reconsideration, the District Inspector of Schools finds merit in the petitioner's claim, necessary follow-up action shall be taken, which shall include payment of the full family pension in favour of the petitioner w.e.f. the date of death of the second wife, and release of the amount, if already recovered from her. In the event the District Inspector of Schools finds that the petitioner's claim is without substance, a reasoned order shall be passed and communicated to the petitioner. The entire exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order."*

5. Again by a reasoned order dated 9th December, 2025, the prayer of the petitioner was turned down holding that she is not eligible for the shares of other two wives after their demise. Being aggrieved by the aforesaid order, the petitioner has preferred the present petition.

6. Mr. Tanmoy Chattopadhyay, learned advocate appearing for the petitioner submits, at the very outset, that in the earlier round of litigation being WPA 9896 of 2025 a Co-ordinate Bench of this Hon'ble Court directed the District Inspector of Schools (P.E.), Malda to consider the prayer of the petitioner in the light of the notification No.54-F (Pen) dated 13th January, 1997 and the decision of this Hon'ble Court in ***Fuljan Bibi versus State of West Bengal [W.P. 5822(W) of 2009]*** and ***Sahebanu Bibi versus State of West Bengal [W.P. 10717(W) of 2017]***. However, the impugned order has been passed by the concerned authority without following the

directions that were passed in the earlier round of litigation. The authority concerned as if sitting in appeal on the order passed by this Hon'ble Court held that such notification applies only to the West Bengal State Government Employees whose service are guided by the West Bengal Services (Death-cum-Retirement) Benefit Rules, 1971 and does not apply to the case of the petitioner who is squarely guided by the West Bengal Recognised Non-Government Educational Institution Employees (Death-cum-Retirement) Benefit Scheme, 1981 *(hereinafter referred to as 'DCRB, 1981')*. He also indicates that the prayer of the petitioner has also been turned down quoting the note of Rule 26 of DCRB, 1981 on wrong interpretation of the said clause. Relying on the decision of the Hon'ble Patna High Court in the case of ***Most. Bhagawani Devi vs. State of Bihar*** reported at ***2015 SCC OnLine Pat 9286***, he submits that in a similar scheme having the similar note, the Court after due consideration has observed that 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. He also relies upon the decisions of Hon'ble Punjab & Haryana High Court in ***Premwati vs. State of Haryana*** reported at ***2015 SCC OnLine P&H 10444*** and ***Vidya Vati vs. Punjab State Power***

Corporation Ltd. & ors. (Re:- RA–CW-487-2025 in/and CWP-5001-2023) in support of his contention. He seeks for appropriate direction for release of the entire family pension in favour of the petitioner and also for refund of the amount which has been deducted from the share of the petitioner that was earlier paid to her towards being the share of the other two wives.

7. On the contrary, Mr. Biplab Guha, learned advocate representing the State submits that the Rules of 1971 and the notification being 54-F (Pen) dated 13th January, 1997 does not apply to the petitioner. The case of the petitioner is guided by the DCRB Scheme of 1981 and note to Rule 26 clearly records that the payment of the share of the deceased widow shall cease upon her death. In such event, the petitioner being the third living wife of the deceased employee is only eligible to 1/3rd share of the pension and not more than that. Referring to report of the District Inspector of Schools (Primary Education), Malda dated 16th February, 2026, he submits that pursuant to earlier orders passed in *Sahebanu Bibi (supra)* and *Fuljan Bibi (supra)* upon due consideration of the representation of the petitioner, therein, the Department has rejected the same on the similar grounds. Therefore, the impugned order passed by respondent no.5 does not call for interference. In the light of his above submissions, he prays that the writ petition should be dismissed as petitioner cannot claim for the entire family pension.

8. Mr. Avishek Prasad, learned advocate appearing for the DPSC, Malda also submits in a similar fashion indicating that as per Rule 45 of the DCRB Rules, 1981, the rules of 1971 shall apply *mutatis mutandis* subject to the approval of the State Government. As on date, there is no such notification approving applications of Rule of 1971, the same cannot be applied to the petitioners who are guided by the Scheme of DCRB Rules of 1981.
9. Upon hearing learned advocates for the respective parties and considering the materials on record, the only issue which falls for consideration is whether the petitioner being the third wife of the deceased employee is entitled to the entire share of the family pension.
10. The prayer of the petitioner, which was directed in the earlier writ petition to be considered, has been turned down by the impugned order on two grounds. Firstly, that the notification being 54-F (Pen) dated 13th January, 1997 does not apply to the case of the petitioner who are guided by the DCRB scheme of 1981 and secondly, Rule 26-Note of DCRB scheme of 1981 makes the petitioner ineligible for the share of other two wives.
11. In order to examine the issue as noted hereinabove, it would be apposite to reproduce Rule 26-Note 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."*

12. The issues as raised in the present writ petition are precisely relevant with regard to note of Rule 26 as hereinabove. Mr. Guha, 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 as means that the share of the deceased wives 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 second 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 there are no minor children of the second wife and upon her death, 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. While dealing with a similar note prevalent in the State of Bihar, the Hon'ble Patna High Court in *Most. Bhagawani Devi (supra)* 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."*
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> *.... ....*
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> *"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."*

13. Further the Hon'ble Punjab & Haryana High Court in *Premwati (supra)* and *Vidya Vati (supra)* while dealing with note of similar nature came to this conclusion that the surviving wife is entitled to full family pension.

14. In view of the above, the impugned order passed by the District Inspector of Schools (P.E.), Malda dated 9th December, 2025 is hereby set aside.

15. Accordingly, Respondent no. 5, the District Inspector of Schools (Primary Education), Malda is directed to sanction and release the family pension to the extent of 100% in favour of the petitioner with effect from 14th

September, 2017 (i.e. the date following the date of death of the second wife).

16. It is informed by the learned advocate appearing for the petitioner that the share of the other two wives which was initially paid to the petitioner upon the demise of the second wife on 13th September, 2017, has been deducted from the petitioner.
17. Accordingly, respondent no. 5, the District Inspector of Schools (Primary Education), Malda is further directed to refund the amount, if any, which has been deducted from the petitioner, initially paid to the petitioner upon the demise of the second wife of the deceased employee on 13th September, 2017 as expeditiously as possible.
18. Such exercise shall be completed within a period of one month from the date of communication of this order.
19. Learned advocate for the petitioner is directed to communicate this order to respondent no. 5, the District Inspector of Schools (Primary Education), Malda, for necessary compliance.
20. With the aforesaid directions, the writ petition being **WPA 29649 of 2025** stands disposed of.
21. Since no affidavits have been called for, the allegation made in the writ petition is deemed to be not admitted.
22. Interim order, if any, stands vacated.
23. All connected applications, if any, stand disposed of.
24. There shall be no order as to costs.
25. All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

(Bivas Pattanayak, J.)