
(2011) 03 CAL CK 0030
In the Calcutta High Court
Case No : Writ Petition No. 19386 (W) of 2010

Hanufa Bibi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2011) 3 CHN 831

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Saibal Acharya and Sariful Islam Mallick, for the Appellant; Sandip Kr. Bhattacharya for the respondent No.8, Jhumur Chakraborty for the State and Jayanta Mitra for the Council, for the Respondent

Judgement

Biswanath Somadder, J.—The writ petitioner is a widow of an Assistant Primary School Teacher of Kurumba Free Primary School, situated in the district of Burdwan. Her husband died-in-harness on 22nd September, 1975. Essentially, the writ petitioner is seeking grant of family pension.

2. During the course of hearing of the matter, learned Advocate appearing on behalf of the State invited this Court's attention to a Government Order dated 1st November, 2010, and submitted that the State, in terms of the said Government Order, has decided to extend Death-cum-Retirement Benefit Scheme, 1981 (hereinafter referred to as the "said Scheme" to such widows like the writ petitioner whose husbands died-in-harness or retired prior to 1st April, 81. The learned Advocate for the petitioner had, however, submitted that the financial benefit arising out of the Government Order dated 1st November, 2010, would apply only from 15th June, 1990, or from the date of application to be made by the widow for family pension, whichever is later, and, therefore, his client would not be able to get arrear of family pension from the date of death of her husband, which she was otherwise entitled to, in law. Having regard to such submission made by the learned Advocate for the petitioner, this Court had granted liberty to the writ petitioner to file a supplementary affidavit challenging

the Government Order dated 1st November, 2010, only to the extent wherein it has been stated that the financial benefit arising out of the said order would be effective from 15th June, 1990, or from the date of application for pension/family pension, whichever is later.

3. Pursuant to such liberty granted, a supplementary-affidavit has been filed in Court by the writ petitioner today.

4. After considering the submissions made by the learned Advocates for the parties and upon perusing the instant writ petition as well as the supplementary affidavit, it appears that there are now two issues before this Court, which are as follows :-

i) Whether the Death-cum-Retirement Benefit Scheme, 1981, can be extended to the writ petitioner, and if so,

ii) from when can the said scheme be made applicable?

5. So far as the first issue is concerned, it appears that another learned Single Bench of this Court had an occasion to consider the same and had rendered a judgment in the case of Indu Prava Ghosh vs. State of West Bengal & Ors. reported in 2010(1) CLJ (Cal) 114. The Court, in that matter, was pleased to consider the memo dated 15th June, 1990, issued by an officer of the Education Department of the State Government and the said memo had been quashed and set aside. It further appears from the said judgment that the respondent authorities had been directed to extend the benefits of the said scheme to the writ petitioner of that case within a certain time frame. It was, however, made clear that the benefits of the said scheme would be payable to the writ petitioner from the date on which the said scheme came into force.

6. Following the judgment rendered by the Court in Indu Prava Ghosh (supra), a memorandum dated 1st November, 2010, was issued by the Government of West Bengal, extending the pensionary benefit under the said scheme to the following category of persons :-

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a) those employees who retired/died prior to introduction of the "Old Pension Scheme" (before 01.04.1966 in case of the employees of Secondary Schools under the West Bengal Recognized Non-Government Aided Educational Institution and before 01.04.1968 in case of the Primary School Teachers under the West Bengal Recognized Non-Government Aided Educational Institution;

b) those employees who retired prior to introduction of the 1981 Pension Scheme but rendered more than one year approved qualifying service but less than 10 years approved qualifying service;

c) those Primary School Teachers (who were appointed before 01.04.1968) whose terminal benefits were settled by paying Contributory Provident Fund and Gratuity as per their option under Rule 26 of the School Education Department's

Notification No.3767-Edn. Dated 1.11.1985;

d) those employees who retired prior to introduction of the DCRB Scheme, 1981 and enjoyed pension as per "Old Pension Scheme" till death before issuance of G.O. No.163-Edn(B) dated 15.06.1990;

e) those employees who died in harness prior to 01.04.1981 after rendering approved qualifying service for 20 years or more. In such cases family pension for 5 years (before 15.06.1990) from the date of the death of the incumbent;

f) those employees who died-in-harness prior to 01.04.1981 after rendering at least one year's approved qualifying service but not more than 20 years" approved qualifying service; and

g) those employees who died-in-harness or retired in between the period from 01.04.1981 to 30.06.1990 (both days are inclusive) before exercising any option under the DCRB Scheme, 1981.

7. However, in the said memo dated 1st November, 2010, it has been categorically stated that the financial benefit may be given with effect from 15th June, 1990, or from the date of application for pension/family pension, whichever is later; which takes us straight to the second issue.

8. To answer the second issue, which is with regard to the date of applicability of the financial benefit based on the memo dated 1st November, 2010, it is necessary to take notice of a recent judgment and order rendered by another learned Single Bench of this Court on 25th January, 2011, in W.P. No.17845(W) of 2007 with W.P. No.920(W) of 2009 Hasyabala Banik vs. State of West Bengal & Ors., wherein the Court has been pleased to consider the said memo dated 1st November, 2010 and observed, inter alia, as follows:-

It could be seen that the said DCRB Scheme, 1981 extended the pensionary benefits to the employees who were in service on 1.4.1981. Such benefit was also extended by subsequent memo dated 15th June, 1990 to an employee who retired prior to 1.4.1981. By a subsequent memo dated 2nd February, 1991 such benefit was further extended to an employee who died on and after 1.4.1981. If the benefit is extended to an employee who died after 1.4.1981 there is no justification in not extending such benefit to an employee died prior to 1.4.1981. There cannot be two classes of pensioners. The ratio laid down in case of Non-Govt. School Pensioners" Association & Anr. (supra) squarely applies in the instant writ application. The action of the authority in denying such benefit to the writ petitioner is arbitrary and not sustainable.

9. Based on the above observation, the Court was pleased to quash and set aside the memo dated 1st November, 2010.

10. In view of the said judgment and order dated 25th January, 2011, it is clear that the financial benefit under the said Scheme, which has accrued in favour of those employees who retired from service or died-in-harness prior to 1st April,

1981, being a vested right as also a social security measure, cannot be taken away under any circumstances. However, such financial benefit shall be deemed to have accrued on and from the date the Scheme came into force.

11. In such facts and circumstances as stated above, the writ petition is disposed of with a direction upon the respondent authorities to extend the benefit of the Death-cum-Retirement Benefit Scheme, 1981, to the writ petitioner within a period of six weeks from date. It is, however, made clear that the benefit of the said Scheme shall be payable to the writ petitioner from the date on which the said Scheme came into force.

12. Since no affidavits have been called for, allegations made in the writ petition are deemed to be not admitted by the answering respondents.

13. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties.