
(2020) 01 CAL CK 0169

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 546 Of 2019 With Civil Application
(CAN) No. 4244 Of 2019

State Of West Bengal & Ors

APPELLANT

Vs

Abida Khatun Sk. & Ors

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0169

Hon'ble Judges : Saugata Bhattacharyya, J;Soumen Sen, J

Bench : Division Bench

Advocate : Joytosh Majumder, Pinaki Dhole, Avishek Prasad, Abhilash Sinha Roy,
Satyajit Mandal, Amar Nath Sen

Final Decision : Allowed

Judgement

By consent of the parties, the appeal and the application are taken up together and disposed of by this order.

The respondent/writ petitioner no.1 is the unmarried daughter of Md. Ziaul Haque, an Assistant Teacher of Mograhat Anglo Oriental Institution, who died-in-harness on 12th March, 1980. Late Ziaul Haque was survived by his widow Lalmoni Bibi, two daughters Sahida Bibi and Abida Bibi and four sons Samsul Alam Shaikh, Safiul Alam Shaikh, Kamarul Alam Shaikh and Badru Alam Shaikh. The widow of Ziaul Haque, namely, Lalmoni Bibi died in the year 2003 leaving behind her legal heirs, being the writ petitioners. The writ petitioners filed an application for payment of balance amount of pensionary benefit which was due in favour of their mother and also other benefits such as gratuity, provident fund, leave salary etc. One of the writ petitioners, namely, Samsul Alam Shaikh, filed an application for compassionate appointment. The respondent/writ petitioner no.1 being the unmarried and handicapped daughter had applied for pension. Such pensionary benefit was disallowed to the respondent/writ petitioner no.1 on the ground that under the existing Death-cum-Retirement Benefit Scheme, she was not entitled to such pensionary benefits. This has given rise to the writ

petition.

The writ petition was allowed on the basis of a memorandum dated 13th April, 2010. Unfortunately, the appellants were not represented. As a result whereof, it was not brought to the notice of the learned Single Judge that the said memorandum is applicable to the employees who were brought under the purview of the Death-cum-Retirement Benefit Scheme, 1981. The memorandum dated 13th April, 2010 is a modification of the existing provisions of the Death-cum-Retirement Benefit Scheme, 1981. The relevant order that was applicable to the late Assistant Teacher Ziaul Haque is the order No.539-SE (P&B)/SL-SS-61/(10) (Pt.) dated 1st November, 2010, which clearly deals with the categories of the employees who would be entitled to pensionary benefits not covered under the Death-cum-Retirement Benefit Scheme, 1981. Clause (6) of the said order clearly records that the benefit should be extended only to the living ex-employees as mentioned under para-3 of the said order or their living widows, as the case may be. Admittedly, the respondent/writ petitioner no.1 is the unmarried daughter and not covered by the Government memorandum dated 1st November, 2010.

Learned Government Pleader has submitted that this issue has been decided by a coordinate Bench of this Court in MAT 869 of 2014 (Bela Rani Acharya vs. The State of West Bengal & Ors.) decided on 3rd March, 2017.

We find from the decision of the coordinate Bench that relying on the same memorandum the benefit to the appellant was denied as the appellant was not covered by the Death-cum-Retirement Benefit Scheme as the teacher in that case had died prior to 1st April, 1981.

On such consideration, we feel that in view of the memorandum dated 1st November, 2010, the benefit of the memorandum dated 13th April, 2010 cannot be extended to unmarried daughters.

Under such consideration, the appeal and the application for stay are allowed. The impugned order dated 24th April, 2017 is set aside.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.