

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,

Case No. - OA 353 OF 2023

ADITYA NARAYAN MALLICK - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

05
07.03.2024

For the Applicant : Mr. Goutam Pathak Baenerjee
Mr.H.Ghosh
Advocates

For the State Respondents : Mr. Sankha Ghosh
Advocate

For the Private Respondent No. 8 : Mr.Manujendra Narayan Roy
Mr.Gourav Haldar
Advocates

For the Principal Accountant General : Mr.Biswanath Mitra
(A&E) West Bengal (Departmental Representative)

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels and the learned Departmental Representative for the contesting parties, the case is taken up for consideration sitting singly.

The applicant has prayed for a direction to the respondent authority to release Death-cum-Retirement Gratuity, family pension and other post retiral benefits admissible to the deceased employee, late Dr.Anjan Kumar Mallick, Deputy Chief Medical Officer of Health, Alipurduar. Submitting on behalf of the petitioner, Mr.G.P.Banerjee, learned counsel refers to a judgement of the Hon'ble Apex Court in the matter (2000) 2 SCC 431 (Rameshwari Devi Vs. State of Bihar and Others, in particular emphasis is drawn to para 9 of the above judgement which is as under:

Form No.

ADITYA NARAYAN MALLICK

Vs.

Case No. : **OA 353 OF 2023**

THE STATE OF WEST BENGAL & ORS.

“Learned Single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their children would be legitimate and thus would be entitled to claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Leared Single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attained majority but nothing would be payable to Yogmaya Devi.”

The judgement of the Learned Single Judge was upheld by both Division Benches of Patna High Court and also Apex Court. Disagreeing that the above judgement relied on by Mr.Banerjee is relevant in this matter, Mr.M.N.Roy, learned counsel submits that this particular matter interpreted the service rules of the State of Bihar, whereas, such service rules of this State are different. In opposing such a prayer in this application, Mr.Roy has drawn my attention to rule 7 (2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 which is as under :

For the purpose of a family pension-

- (i) Wife in the case of a male officer,*
- (ii) Husband in the case of a female office,*
- (iii) Minor sons including adopted sons,*
- (iv) Unmarried minor daughter including adopted daughters,*
- (v) Dependant parents.*

Submission is that as clear from the above entries defining which family members are entitled to family pension, Mr.Roy suggests that this applicant who is a minor son from the wedlock of Dr. Mallick with Pallavi Mondal is not

ORDER SHEET

Form No.

ADITYA NARAYAN MALLICK

Vs.

Case No. : **OA 353 OF 2023**

THE STATE OF WEST BENGAL & ORS.

entitled to receive any family pension. However, Mr.Roy submits by the definition of 7(1)(e)(1), the applicant is entitled to receive death gratuity.

In support of such prayer, Mr.Banerjee presents a copy of an order dated 20.02.2024 in OA-27 of 2024 and submits that in a similar case, this very Tribunal had passed a direction upon the respondent authorities to consider such prayer in that application in the light of the judgement of the Hon'ble Supreme Court in Rameshwari Devi Vs. State of Bihar & Others. However, this is disagreed by Mr.Roy on the ground that the division of family pension for a Muslim family will be different to a Hindu family. Therefore, this direction of the Tribunal in OA-27 of 2024 is not relevant in this matter. Mr.Roy has prayed for some accommodation to file copies of more relevant judgements in similar cases by the next date.

Let the matter appear under the heading "For Orders" on 17th April, 2024 at 10.30 A.M.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

BLR