

## Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : March 18, 2010

W.P.No.5504(W) of 2010

Smt. Parimal Das

-vs-

The State of West Bengal & Ors.

### POINT:

Family pension-----Petitioner's deceased husband was a primary school teacher---Resigned from service in 1976---Did not claim or was paid any pension-----Petitioner, if entitled to family pension in terms of Retirement Benefit Scheme,1981.

### FACTS:

The Petitioner's husband was a primary school teacher. He resigned from service on September 1, 1976. Length of his service was 26 years 5 months. He was deprived of the benefits granted to primary teachers and their family by the Government after 1977. He died on February 1, 2005. He did not claim or was not paid any family pension during his lifetime. After his death the Petitioner prayed for family pension and has filed this Writ Petition for grant of family pension.

### HELD:

The Petitioner's husband resigned from service on September 1, 1976, and he never claimed or was paid pension. The gentleman died on February 1, 2005. The Petitioner would have been entitled to family pension, if her late husband was entitled to pension and as such was getting pension during his lifetime. No provision of law has conferred on the petitioner an independent right to claim family pension, even if her late husband was not granted and did not claim the benefit of pension under any law or scheme. The Court therefore, does not see how the Petitioner can claim family pension citing her husband's length of service.

PARA--3

Mr. M.K. Maity ....for the petitioner

Mr. T.N. Ghosh .....for the state

### The Court :

1.The petitioner in this art.226 petition dated March 16, 2010 is seeking a mandamus commanding the respondents to grant her family pension. Her case is this. Her husband was a primary school teacher. He resigned from service on September 1, 1976. Length of his service was 26 years 5 months. He was deprived of the benefits granted to primary teachers and their family by the government after 1977. He died on February 1, 2005. In terms of the Death-cum-Retirement

Benefits Scheme, 1981 she is entitled to family pension and other benefits to which her late husband was entitled.

2. Admittedly, the petitioner's husband resigned from service on September 1, 1976 and he never claimed or was paid pension. The gentleman died on February 1, 2005.

3. The petitioner would have been entitled to family pension, if her late husband was entitled to pension and as such was getting pension during his lifetime. No provision of law has conferred on the petitioner an independent right to claim family pension, even if her late husband was not granted and did not claim the benefit of pension under any law or scheme.

I, therefore, do not see how the petitioner can claim family pension citing her husband's length of service.

For these reasons, the petition is dismissed. No costs. Certified xerox according to law.

**(Jayanta Kumar Biswas, J)**

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