IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

RESERVED ON: 15.10.2026

DELIVERED ON: 15.10.2026

PRESENT:

THE HON'BLE MR. JUSTICE REETOBROTO KUMAR MITRA

WPA 11022 OF 2025

MAYA CHOWDHURY

- VERSUS –

STATE OF WEST BENGAL AND ORS.

Appearance:

Ms. Chama Mookherji, Sr. Advocate

Mr. Anujit Mookherji, Advocate

Ms. Monisha Chatterjee, Advocate

Ms. Reshmi Nehar, Advocate.

..... for the Applicant/Petitioner

Mr. D.N. Roy, learned G.P.

Mr. Subit Majumdar, Advocate

... for the State

Mr. S.K. Bhattacharyya, Advocate.

... for the Respondent No. 4

Reetobroto Kumar Mitra, J.:

1. The petitioner is aggrieved by the fact that she has not been given the family pension, though she was duly nominated for the same by her brother who has since expired.

2. The facts of the case revolve around some rather melancholy circumstances.

3. The petitioner is a hearing and speech impaired person since birth.

4. The petitioner lived with her brother who worked as a Fire Engine Operator cum driver in the office of Divisional Fire Office, South Kolkata. After years of service, the brother of the petitioner retired from service sometime in November 2021.

5. The petitioner's brother was duly enrolled with the West Bengal Health Scheme and had nominated the petitioner as his beneficiary.

After retiring from service, the petitioner's brother received pension in terms of the Pension Payment Order (hereinafter PPO) of Rs. 30,200/- along with the requisite Dearness Allowance and Medical Allowance.

6. The nomination of the petitioner was submitted in the office of Respondent No. 4 on November 26, 2021.

7. The petitioner's brother expired on November 25, 2024 leaving behind the petitioner as the sole beneficiary of all his service dues including his pension.

8. The parents of the petitioner had predeceased her brother and he was the sole caregiver of the petitioner.

9. Mrs. Chama Mookherji, learned senior advocate, appearing for the petitioner has made the following submissions:

a. The petitioner is a person with hearing and speech impairment to the extent of 90 per cent, on account whereof she is unable to engage in any work and has no source of income and is unable to provide for herself. Thus, the pension would be her only means of livelihood.

b. Having accepted the nomination of the petitioner by her late brother, the authority cannot at this stage deny her eligibility on the ground that she is not entitled under the provisions of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter the DCRB Rules, 1971).

c. Having accepted the nomination of the petitioner, the authorities have made a representation, which has been acted upon by the petitioner and her brother in his lifetime, thereby altering their position. Her eligibility cannot be denied at this stage by the authorities.

d. The authorities are bound by the principles of promissory estoppel and there is a legitimate expectation of the petitioner to receive family pension for which she has been nominated by her brother in his lifetime.

e. She has placed reliance upon two decisions: first, the judgment reported in (2023) 10 SCC 634 (State of Jharkhand and Ors. v. Brahmputra Metallics Ltd. and

Anr.), and second, the order in MAT No. 1518 of 2019 (The State of West Bengal and Ors. v. Sabita Roy).

i. The first decision is to buttress her point that the State is bound by the principle of promissory estoppel, giving her a legitimate expectation upon acceptance of the State of her nomination.

ii. The second decision of the Hon'ble High Court of Calcutta is to establish that pensioners being a homogeneous class are not bound by any classification as that would be arbitrary and violative of Article 14 of the Constitution.

10. Mr. Sajal Kanti Bhattacharyya, appearing for Respondent No. 4, has submitted that under the DCRB Rules, 1971 the term family for the purpose of family pension does not include the unmarried sister of an employee. Rule 7.1(e) being the applicable provision does not provide for the sister as an eligible person to be considered for family pension.

11. Mr. D.N. Roy, learned senior advocate and Government Pleader, has also made his submissions.

12. Though the circumstances and facts are somewhat melancholy, the rights of the petitioner will have to be adjudged in the light of the prevalent rules. Rule 7.1(e) of the DCRB Rules, 1971 is set out hereunder for a clear appreciation:-

"(e) "family" includes the following relatives of Government servant namely :
(1) for the purpose of a death gratuity,
(i) wife in the case of a male officer,
(ii) husband in the case of female officer
(iii) sons including stepsons,
(iv) unmarried and widowed daughters (including stepdaughters),
(v) brothers below the age of 18 years and unmarried or widowed sisters,
(vi) father
(vii) mother
(2) 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 daughters including adopted daughters,
(v) dependant parents"

13. Clearly, the legislature had kept certain persons who would fall within the specific list of persons to ensure that they get benefits of family pension of a deceased employee. Unmarried sister does not feature in this list. Strangely, for the purpose of pension as stipulated in Rule 7.1(d), an unmarried sister has been included. Clause 7.1(d) is set out hereunder:-

> *"(d) emolument" means "pay" as defined in rule 5(28) of West Bengal service Rules, Part I, which the officer was receiving immediately before his retirement"*

14. The mere fact that the petitioner had been nominated by her brother in the PPO to receive family pension, which had been submitted with Respondent No. 4, does not entail, as a corollary, that there is an acceptance of such nomination by the authorities.

15. The right of the nominee to receive the family pension would arise upon the death of the pensioner.

16. On the death of the brother, the petitioner's representation was rejected by the letter dated March 10, 2025. It was specifically stated that due to inadvertence, the petitioner was shown as a family

pensioner in paragraph 2 of Part 1 and paragraph 14 of Part 2 of the PPO. This form was filled out by the brother of the petitioner and received by Respondent No. 4. The mere receipt of the form does not entail an admission by the authorities.

17. Thus, after the death of the brother of the petitioner, when the petitioner's eligibility came up for consideration, Respondent No. 4 in no uncertain terms stated that the name of the petitioner as a family pensioner had been inadvertently shown in the said form.

18. Thus, it cannot be construed that the authorities had accepted the nomination of the petitioner upon mere receipt of the form, as filled out by the petitioner's brother.

19. Such an interpretation would derail the entire process.

20. The question of promissory estoppel arises only when a promise has been made by the person concerned against whom the principles of promissory estoppel are sought to be applied. Thus, a definitive positive statement has to be made by that person resulting in the person to whom the promise is made altering his or her position on the basis of such promise.

21. In this case there is no promise at all made by the authorities. The form was filled out and submitted by the brother of the petitioner. The authorities had received the form.

22. The question of nomination was not called upon to be adjudicated at the time when the form was submitted. This question arises only after the death of the brother of the petitioner sometime in November 25, 2024.

23. At the very first instance the authority by the letter of March 10, 2025 in clear and unequivocal terms stated that the form inadvertently mentioned the petitioner as a nominee, as being the sister of the Government employee (brother of the petitioner), she is not entitled to any family pension on account of her brother. Hence, there is no question of promissory estoppel.

24. Promissory estoppel is an age-old concept, decided by the Court over a period of time to be used as a shield rather than a sword. A shield, to ensure that the person to whom the promise has been made and has altered his/her position on the basis of such promise is not made to suffer on account of the promise made thereby

altering his or her position, from which the promisor subsequently resiles.

25. Had there been any assertion that the nomination of the petitioner had been accepted, acceded to and acted upon by the authority, it could be tantamount to a promise. This promise would bind the authorities and work as a promissory estoppel against them. Not having made any such promise and having merely accepted the form as submitted by the petitioner's brother, the same cannot be construed as a promise made by the authorities.

26. The form had been filled out erroneously, showing the petitioner to be the nominee. I say erroneously being alive to the fact that the DCRB Rules specify the list of persons who can be treated as eligible for family pension. Amongst these eligible persons, an unmarried sister is conspicuous by her absence.

27. In spite of having filled out the form and having nominated the petitioner, it cannot be construed that the petitioner had derived a right merely by filling out the form. This would be tantamount to negative equality.

28. Mrs. Mookherji's submission that the petitioner and her brother had altered their position based on the promise made by the authorities is without any merit. According to her, the alteration of the position is such that had the nomination been disallowed on the date the form was submitted, the petitioner's brother would have adopted her in his lifetime as a daughter, thereby enabling her to be treated as an eligible nominee under the said Rules.

29. Mere acceptance of the form, as submitted by the petitioner's brother nominating the petitioner for family pension in the event of his death, does not amount to any acceptance by the authority. Mere acceptance of the form cannot be construed as acceptance of the nomination made by the petitioner's brother. The right of the petitioner accrued on the death of the petitioner's brother and acceptance of the form prior thereto does not amount to acceptance of the petitioner as the nominee.

30. The PPO which records the name of the petitioner as the nominee in the event of the death of the petitioner's brother to receive family pension cannot also be construed as an acceptance by the authority. The right of the petitioner, in this case also, accrues only upon the death of the petitioner's brother. The PPO has been issued in favour

of the petitioner's brother, merely recording the petitioner as the nominee. This does not create any right in favour of the petitioner.

31. There cannot be any estoppel against statute nor any expectation on the basis of an act done dehors the provisions of the law. Thus, the issue of promissory estoppel and legitimate expectation as argued by Mrs. Mookherji is clearly unacceptable.

32. The second issue raised by the petitioner, that she could not have been differentiated as an unmarried sister, the law is clear and fairly indisputable as enshrined in the rules. Mrs. Mookherji has fairly admitted that the law is indeed against her client. The vires of the rules have not been challenged and cannot therefore be construed in a manner which will defeat the entire provision as enshrined in the rules.

33. The melancholy facts of the case cannot be a reason to alter the law or interpret it in a manner which would favour the petitioner. Thus, on a straightforward interpretation, the rights of the petitioner are non-existent.

34. The decision rendered by the Hon'ble Supreme Court of India is not in dispute that the concept of promissory estoppel applies wholly to administrative laws as well and once a promise is made by the State by enacting a policy, it has to be acted upon in terms thereof.

35. It is true that while dealing with the issue of promissory estoppel in Crabb v. Arun District Council, Lord Denning speaking for the Court of Appeal had succinctly indicated that the basis of proprietary estoppel as indeed of promissory estoppel is the interposition of equity.

36. In the present case there is no representation made by the State, from which it has subsequently resiled. It cannot be said that the authorities had acted arbitrarily or whimsically in a manner intended to deny the petitioner her rights.

37. There being no such assertion by the authority, there is no vested right in the petitioner which she can assert or any corresponding duty or obligation that comes upon the authority to ensure that she gets the benefit of family pension.

38. In fact, quite to the contrary, if the petitioner is permitted to avail of the nomination, that would create negative equality and a discriminatory action in her favour. Every other person filing a form with an erroneous entry would claim a right on the basis of legitimate expectation and a duty on the basis of promissory estoppel.

39. There is absolutely no justification for this argument of the petitioner.

40. The decision of the Hon'ble Supreme Court of India in State of Jharkhand (supra) was on the issue of the respondent being entitled to the rebate or reduction as espoused in a policy introduced by the State of Jharkhand. There was a policy which was being considered as a promise made to the concerned person, which the State sought to deny. The facts are completely different, particularly since there is no such promise made in the instant case on the basis whereof it can be said that the respondent authorities herein have made a representation which they have not honoured.

41. In so far as the decision of this Hon'ble Court is concerned in Sabita Roy (supra), a legislative intent had been interpreted to hold that benefits of family pension to the particular class of successors were

not of restricted applicability but included all of them whether prior to or after the cut-off date of April 1, 1981.

42. The facts of the case in the case of Shiba Pada Sarkar v. The Union of India and Ors. reported in 2014 SCC OnLine Cal 22655 were completely different and the decision was passed on a representation made by the authority. There is no such representation made in the instant case and there has been no error or mistake committed by the authorities.

43. In the instant case, going by the provisions of Clause 7.2(e) of the said Rules, the legislative intent is clear. There is no mention of an unmarried sister as an eligible person to receive family pension on the death of the employee, her brother.

44. In these circumstances, as aforesaid, the following conclusions are inevitable:-

a. The brother of the petitioner submitted a form with an incorrect nomination, his unmarried sister, as a nominee for family pension.

b. This form was merely received by the authority.

c. The question of deciding the rights of the nominee did not arise when the form was submitted as the pensioner was still alive.

d. The time for considering eligibility of the nominee arose on the death of the petitioner's brother in November, 2024.

e. Upon consideration, on March 10, 2025, the respondent authorities in no uncertain terms mentioned that the name of the petitioner had been shown inadvertently as she was not entitled to family pension as an unmarried sister of the Government employee.

f. Rule 7.1(e) of the said Rules sets forth the eligibility of persons to receive family pension. The class of unmarried sisters does not fall within the domain of persons eligible to receive family pension.

g. Merely by receiving a form that has been wrongly filled up, the authority has not made any promise or

assertion that the petitioner is indeed entitled to family pension.

h. There is no question of promissory estoppel as no promise was made by the authorities and the question of legitimate expectation is far-fetched as a legitimate expectation has to be the result of the representation to be made. No representation has been made that the petitioner is entitled to family pension.

i. If the petitioner and her late brother have acted against the provisions of law in filling out the form, it was not for the respondent to correct the same at the time when the form was deposited, but the respondent corrected the same at the time when the question of the petitioner's right arose, that is, after the death of the brother in November 2024.

j. The authorities have, at no point of time made any representation or promise to pay family pension to the petitioner.

45. Having discussed the merits of the case, no interference can be made with the legal interpretation of the applicable rules as to whether the petitioner is entitled to receive family pension on the death of her brother. However, this does not curtail the issue as enshrined in Rule 4 of the DCRB Rules, 1971. The said rule, for the sake of convenience, is set out hereunder:-

> *"4. Nothing in these rules shall be construed to limit or abridge the power of the Government to dispense with, or relax the requirement of, any these rules to such extent and subject to such conditions as may be considered necessary for dealing with a case in a just and equitable manner."*

46. The petitioner is at liberty to make a representation to His Excellency the Governor of West Bengal to seek dispensation or relaxation of the requirement as enshrined in Rule 7(a). The Governor is the only authority vested with the power to relax or condone any of the parameters set forth in the rules. The State will render all assistance to the petitioner and will ensure that the application for dispensation or relaxation, under Rule 4 of the

DCRB Rules is appropriately placed before the Hon'ble Governor to consider such issue of relaxation of the Rules.

47. This is in view of the rather melancholy facts of the case and particularly since the petitioner is a hearing and speech disabled person with no other source of income or even bare assistance.

48. The State authorities are directed to render all assistance and co-operation to make such an application at the earliest.

49. In view of the aforestated findings, the petition fails and is hereby dismissed.

50. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Reetobroto Kumar Mitra, J.)