

GAHC010205212021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6660/2021

USHA CHAKRAVORTY
W/O LATE PADUM CHAKRABORTY
RESIDENT OF C/O SARAT CH. SARMA
SADA SIVA PATHA, CHIRING CHAPORI, PO CHIRING CHAPORI, PS AND
DIST DIBRUGARH, ASSAM, 786001

VERSUS

THE CHIEF GENERAL MANAGER AND 2 ORS.
STATE BANK OF INDIA, G.S ROAD, OPPOSITE ASSAM SACHIVALAYA,
DISPUR, GUWAHATI 06

2:THE GENERAL MANAGER
STATE BANK OF INDIA

ADMINISTRATIVE OFFICE
DIBRUGARH
SHRI GOPAL GOSHALA
CHIRING CHAPORI TR PHUKAN ROAD
DIST DIBRUGARH
ASSAM
786001

3:THE BRANCH MANAGER.
THANA CHARIALI BRANCH
STATE BANK OF INDIA
DIST DIBRUGARH
ASASM 78600

Advocate for the Petitioner : MS S SHARMA

Advocate for the Respondent : MR. B J MUKHERJEE (R-1,2,3)

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

02.04.2024

Heard Ms. S. Sharma, learned counsel for the petitioner. Also heard Mr. H. Buragohain, learned counsel for the respondents No.1 to 3.

2. The petitioner is before the Court seeking a direction to the respondent SBI to release all financial dues payable to her late husband for the services rendered by him.

3. It is submitted that the late husband of the petitioner was appointed as a Messenger of the SBI from 1985 to 2002 that is about 17 years and at the time of his death, he was posted in the SBI, Thana Chariali Branch, Dibrugarh. It is submitted by the learned counsel for the petitioner that the late husband of the petitioner suffered from liver disease and subsequently died in the year 2016. The learned counsel for the petitioner submits that pursuant to the death of her husband, the house in which she was residing was burnt and all relevant documents pertaining to her husband was destroyed in the fire. Except the petitioner is left with only a "Provident Fund slip", copy of which is enclosed to the writ petition. The learned counsel for the petitioner submits that repeated requests made before the SBI, did not yield any result in respect of issuance of any relevant documents and thereby preventing the writ petitioner from claiming the dues payable to the petitioner. It is submitted that an RTI application was filed before the Bank authorities which however, also did not yield any result. The learned counsel for the petitioner submits that the petitioner's late husband was only a Messenger and was not well versed with

the Rules and Procedures followed by the Bank, therefore his pensionary benefits either superannuation pension or the benefits under the voluntarily retirement scheme ought to have been released by the respondent Bank and they having denied or failed to release the amount, urgent orders are called for from this Court. The learned counsel for the petitioner submits that petitioner is a widow with no support and therefore has approached this Court for necessary orders directing the respondents to finalize the pension papers relating to the late husband of the petitioner and thereafter release the amounts paid.

4. Mr. H Buragohain, learned counsel appearing for the respondent bank disputes the submissions made by the learned counsel for the petitioner that the petitioner is entitled to any pensionary benefits that the late husband of the petitioner never applied for voluntary retirement scheme and he is not entitled to regular pension as he did not render the requisite services of 20 years as contemplated under the Rules. He refers to the affidavit-in-opposition filed by the respondent bank and submits that the petitioner's late husband was employed as a Messenger from 24.05.1985 and he was subsequently confirmed on 24.11.1985 and he continued in the services of the Bank till 13.07.2002 which was the date of termination. It is submitted that at the time of the demise of the petitioner's late husband in the year 2016 he was no longer an employee of the Bank. It is submitted that the late husband of the petitioner was absent from duty without leave and accordingly at least three notices were sent to the petitioner to return back and join in service and the petitioner's late husband did not respond to any of the notices and consequently by notice dated 13.06.2002, the petitioner's late husband was informed that he should report back for duty within 30 days from the date of notice and failure to do so will be deemed to have voluntarily retired from service on the expiry of the notice. He submits that

since the petitioner's late husband did not respond to the notice dated 13.06.2002, he was deemed to be voluntarily retired and he was not considered to be in service after the expiry of the said period.

5. The learned counsel for the parties have been heard. Pleadings on record have been perused. It is seen that several notices were issued to the late husband of the petitioner to report back to duty and which notices the present petitioner claims she was not aware whether the same was received by her late husband during his lifetime. The petitioner is also unable to produce before the Court any documents including medical prescriptions etc in support of her contentions that the late husband of the petitioner suffering from severe ailments or liver disease and therefore was not in a position to report for duty. No application is also placed before the Court to show that the petitioner or her late husband had intimated the Bank authorities regarding the hardship faced by the petitioner's late husband due to ill health because of which he could not attend to his duties inspite of notices being issued. The contention of the writ petitioner is that there was a fire in her house which had destroyed all the documents and as a consequence thereof she is unable to place the any further documents. No FIR or police report is also placed before the Court in support of her contentions that the house in which she had dwelled along with her husband was gutted in a fire and all her belongings including various documents have been destroyed or lost.

6. What is seen from pleadings on record is that the department had repeatedly issued notices to the petitioner's late husband directing him to report back to the duty. The last communication placed before the Court by way of the affidavit filed by the Bank is a memorandum dated 13.06.2002 whereby references to earlier communications were made and the petitioner's late

husband was directed to report for duty within 30 days from the date of receipt of notice and failure to do so will be deemed to have been voluntarily retired from service on the expiry of the notice.

7. The learned counsel representing the Bank submits that this notice indicates that after expiry of the notice if the petitioner did not report back for service, he would be deemed to have voluntarily retired from service on the expiry of this notice.

8. There are no other documents or communications placed before the Court to show that the petitioner's late husband was dismissal/terminated from service pursuant to any such enquiry instituted by the Bank. As such, it is clear that there is no dismissal/termination from service of the late husband of the petitioner by the procedure established by law. What is projected before the Court by the respondent bank is that in view of the memorandum dated 13.06.2002 read with the earlier memorandums issued directing the late husband of the petitioner to report back to his duties and upon expiry of the said notice he will be deemed to have been voluntarily retired from service. What has not been urged before the Court is that "Voluntary retirement" is not a form of retirement which is contemplated under the Rules of the SBI. To sever the relationship between employer and the employee as per the procedure laid down in the Bank, it is only by way of resignation, dismissal, termination or removal from service, and as per procedure established by Law. Admittedly, the petitioner's late husband did not resign from service nor was his service terminated or was he dismissed pursuant to procedures undertaken by the Bank as per the Rules. The Bank authorities have deemed the petitioner's late husband to have voluntarily retired from service after expiry of the Notice vide memorandum dated 13.06.2002. Such presumption prima facie cannot be

accepted in the absence of “voluntary retirement” being one of the modes to terminate the relationship between an employer and employee under the Rules governing the services of the employees. Ordinarily, time and again, the bank authorities normally introduce voluntary retirement schemes as per requirement. The respondent bank also admits that such a scheme was indeed floated by the OM dated 30.12.2000 and it is pointed out that this scheme was only valid for 15 days. It is also the submission of the learned counsel for the respondents that there was no application filed seeking voluntary retirement by the late husband of the petitioner under the said scheme.

9. As such, it is evident that the late husband of the petitioner had never applied for under the voluntary retirement scheme nor was he granted voluntary retirement as per the procedure prescribed under the scheme. If that be so then the bank authorities could not have presumed or assumed that non reporting for duty by the petitioner’s late husband can be accepted to be a form of voluntary retirement dehors any such scheme floated by the respondent bank.

10. As discussed above, no materials are placed before the court to suggest that any proceedings were initiated to dismiss, terminate or compulsorily retire the late husband of the petitioner from his service. Under the circumstances, the memorandum dated 13.06.2002 indicating that the petitioner’s late husband shall be deemed to have voluntarily retired from the services upon his failure to report back for duties in terms of the said memorandum cannot be permitted to be accepted as a form for severing the relationship between an employer and employee in terms of the Service Rules prescribed and laid down the bank itself. The Bank was required to initiate proper proceedings and thereafter proceed to pass orders dismissing, or terminating or removing or retiring the late husband of the petitioner in terms of the procedure prescribed. Such procedure

admittedly had not been undertaken.

11. In *Mafatlal Narandas Barot Vs. J.D. Rathod Divisional Controller, State Transport Mehsana and Anr.*, reported in 1965 SCC OnLine SC 55, the Apex Court was examining an appeal against an order passed by the jurisdiction of High Court as to whether the appellant was entitled to an opportunity to show cause against the proposed punishment required under the Regulation 61 of the Regulations governing the services of the appellant in the corporation in which the appellant was employed. It was admitted that no charge was framed against the appellant nor was he given an opportunity to show cause. The Apex Court held that the corporation may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to deny his guilt and to establish his innocence which he can only do when he knows what charges leveled against him are and the allegations on which such charges are based. The relevant paragraph of the Judgment is extracted below:

“12. It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do only when he knows what the charges leveled against him are and the allegations on which such charges are based. In our Judgment, the appellant was entitled to an opportunity to show cause against the action proposed to be taken against him.”

12. As such, it is clear that the employer employee relationship does not

automatically get terminated on the absence of the employee unless otherwise specified in the Rules. In the facts of the present case, notwithstanding the many notices issued on the late husband of the writ petitioner, and the failure of the late husband of the writ petitioner to respond to the notices served and report back for duty, the final notice or memorandum dated 13.06.2002 which called upon the late husband of the petitioner to report back for duty and upon his failure to do so within 30 days from the date mentioned therein, he will be deemed to have been voluntary retired, cannot be considered to be valid in law unless the same is supported by any rules governing the service condition of the employee of the bank.

13. The petitioner's late husband rendered regular service and was paid the scale of pay prescribed. It was not a contract employment or adhoc employment. Under such circumstances, the Bank authorities could not have withheld the retiral benefits payable to the petitioner. Admittedly no procedure as prescribed under the Bank Rules was followed by the bank to proceed with terminations/removal of the petitioner's late husband. As such the submission of the Counsel for the bank cannot be accepted that after the expiry of the period mentioned in the Notice/Memorandum, the petitioner's late husband was voluntarily retired. Since there was no proceedings drawn up against the late husband of the petitioner to remove/dismiss him from service, he was deemed to be in Service till his demise. Under such circumstances, denial of the service benefits and pursuant to the expiry of the employee while in service is wholly improper and contrary to the provisions of law.

14. Under such circumstances, the respondents authorities are now directed to examine the matter and thereafter consider the claims of the petitioner for release of retiral and pensionary dues payable to her late husband for the

services rendered.

15. The said exercise as directed will be conducted by the Bank after examining the matter in depth and a speaking order thereon be passed within a period of 30 (thirty) days from the date of receipt of a certified copy of this order. A copy of such speaking order must be served on the petitioner.

16. Any dues found payable to the petitioner as a legal heir of her late husband should be released forthwith and not later than a further period of 30 days.

17. With the above direction, the writ petition stands disposed of.

JUDGE

Comparing Assistant