

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12003 of 2013

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Most. Siya Devi, Wife of Late B.K. Singh, resident of Village - Ramdas Chak, P.O. Dighawara, District-Saran, presently residing at Mohalla-Rajachak, C/o Rajendra Singh (Fair Prince Shop), Digha, P.O. - Bataganj, Patna. Petitioner.

Versus

1. The Union of India, through the Secretary-Cum-Commissioner, Ministry of Railway, New Delhi.
 2. The General Manager, S.E. Railway, Garden Reach, Kolkata, West Bengal.
 3. The Chief Accounts Officer (Pension), S.E. Railway, Garden Reach, Kolkata, West Bengal.
 4. The Senior Divisional Personnel Officer, S.E. Railway, Kharagpur, District - West Midnapur, West Bengal.
 5. The Chief Personnel Officer, S.E. Railway, Garden Reach, Kolkata, West Bengal.
 6. The Divisional Personnel Officer, S.E. Railway, Kharagpur, Kharagpur, Kolkata.
 7. The Workshop Personnel Officer, S.E. Railway, Kharagpur Work Shop, Kharagpur, West Bengal. Respondents.
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Appearance :

For the Petitione : Mr. Sushant Kumar Dutta with Mr. Virendra Kumar, Advocates.
For the Railway : Mr. Ashok Kumar Keshari, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 04-02-2015

This case is illustrative of how old, stale and barred matters revived by a casual observation made by statutory Tribunal or Authorities. It is not in dispute that petitioner's husband was a railway servant and working as such in the railway since 1954. He was at Khargpur in the State of West Bengal. He met with an accident at the place of work and died on 03.03.1970.

Petitioner alleges that nothing was paid to her as a consequence of death of her husband in harness. It is only on or

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about 12.01.1977 she received a paltry amount of Rs.9000.00 under the Workmen's Compensation Act. She being illiterate was unaware of her rights. Ultimately, in the year 2001, she moved before the Central Administrative Tribunal, Patna (hereinafter in short the 'Tribunal') by filing O.A. No.202 of 2001 claiming that she was entitled to family pension and other retiral dues as a consequence of death of her husband in the year 1970. This application was filed after 31 years of the death of her husband and normally ought to have been dismissed outright by the Tribunal. It was beyond the jurisdiction of the Tribunal to entertain much less on a misconceived sympathetic view of humanitarian grounds. Unfortunately and fortunately for the petitioner, the Tribunal disposed of the matter directing the petitioner to make a representation to the railway who would consider the same. It may be noted that the railways objected to the very maintainability of the application before the Tribunal as also that the records of over 30 years in past were simply traceless and nothing could be verified. However, once the O.A. application was disposed of by the Tribunal, petitioner made a representation before the railway. When nothing was done by the railway, the contempt application was filed in which the railway under threat of contempt started making search of old service

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records of more than three decades. They were only able to get from the general provident fund register a leaf in relation to the last payment made in respect of petitioner's late husband that ultimately shows that the husband of the petitioner was continuing in the contributory provident fund scheme and, accordingly, several payments, after his death on different deaths, were made in relation to the provident fund and accrued interest and other such payments, which had not been disclosed by the petitioner nor admitted rather concealed. The contempt application was then disposed of. Now, again the petitioner filed another O.A. application, being O.A. No.153 of 2009, in the year 2009 this time claiming that she was entitled to family pension as her husband had opted out of the contributory provident fund scheme. Her assertion was that in year 1964 family pension scheme for railway servants was introduced, thus, she was wrongly deprived of the said as her late husband was in service long after the scheme was introduced and died in the year 1970. The Tribunal considered the matter and dismissed her claim. This is what has brought the petitioner to this Court.

Learned counsel for the petitioner submits that to her knowledge her husband had opted out of the scheme of contributory provident fund upon the family pension scheme

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having come into force in 1964. Learned counsel submits that the petitioner is an illiterate and did not remember various other payments which had been made to her as a consequence of death of her husband.

Learned counsel for the railway, Mr. A.K. Keshari submits that things which are not favourable to the petitioner, the petitioner forgets and things which may become favourable she recollects without any supporting document. The Tribunal was correct in rejecting her claim. He further submits that in view of Rule-75(1)(b) of the Family Pension Scheme for railway servants, 1964, railway servant who were in service prior to 31st of December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees i.e. those employees who are not under contributory provident fund scheme would be governed by the rules if they came to be covered by the rules. The stand of the railway is correct. Earlier there was a contributory provident fund scheme. It was not replaced enmesh by family pension scheme. People continued under the contributory provident fund scheme unless they exercised their option to change from the contributory provident fund scheme to the family pension scheme. Upon this exercise of option, the deductions and other things would automatically then changed

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from the provident fund folio of the petitioner's late husband. It is evident that till the time of his death in the year 1970 he was still contributing to provident fund scheme as required under the contributory provident fund scheme. Thus, it is evident that he had chosen not to change his option to family pension scheme.

Learned counsel for the petitioner insists that the petitioner is not aware of this rather she is aware that he had changed the option. Such oral averments cannot be accepted in absence of supporting documents. It is a common law principle that a person who asserts his right has to establish the same. Therefore, when the petitioner asserts that her husband had changed the option, it is for her to bring on record materials in support of her averments. To the contrary, railway has brought on record the facts to show to the contrary.

That being so, we find no merit in this application. Accordingly, this writ application is dismissed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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