

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19643 of 2012

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1. The Union Of India, Through The General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar)
 2. The Divisional Railway Manager, East Central Railway, Danapur, P.O. Khagaul, District - Patna (Bihar)
 3. The Senior Divisional Personnel Officer, East Central, Danapur, P.O. - Khagaul, District - Patna (Bihar)
 4. The Senior Divisional Engineer (Co-Ordination), East Central Railway, Danapur, P.O. - Khagaul, District - Patna (Bihar)
 5. The Senior Divisional Financial Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna (Bihar)
 6. The Section Engineer (Permanent Way) East Central Railway, District - Begusarai (Bihar)

.... Petitioners

Versus

Smt. Siya Devi Wife Of Late Arjun Resident Of Village - Dhantola Par, P.O. - Sirsi, District - Patna (Bihar)

.... Respondent

with

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Civil Writ Jurisdiction Case No. 15508 of 2012

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1. The Union Of India, Through The General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar)
2. The Divisional Railway Manager, East Central Railway, Danapur, P.O- Khagaul, District- Patna.
3. The Senior Divisional Personnel Officer, East Central, Danapur, P.O- Khagaul, District- Patna.
4. The Senior Divisional Engineer, (Co- Ordination), East Central Railway, Danapur, P.O- Khagaul, District- Patna
5. The Senior Division Finacial Manager, East Central Railway, Danapur, P.O- Khagaul, District- Patna (Bihar)
6. The Section Engineer (Permanet Way) East Central Railway, Gaya, District- Begusarai (Bihar)

.... Petitioners

Versus

Smt. Sakali Devi W/O Late Ramdeo Resident Of Village- Dhantola Par, P.O- Sirsi, District- Patna.

.... Respondents

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Appearance :

(In CWJC No. 19643 of 2012)

For the Petitioner/s : Mr. Ashok Kumar Keshri

For the Respondent/s : Mr. M P Dixit with Mr. Sanjay Kr. Choubey

(InC No. 15508 of 2012)

For the Petitioner/s : Mr. Ashok Kumar Keshri

For the Respondent/s : Mr. M P Dixit with Mr. Sanjay Kr. Choubey

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 22-01-2015

Arbitrariness and capriciousness of a very high order was exhibited by the office of the General Manager (Personnel), Hajipur, on two innocent widows of the employees of the Eastern Railways. In fact, this can constitute a text book case both as regards the arbitrariness on the part of the Administrative Authorities as well as on the question of the principles of natural justice.

Though the constitutional courts have been reiterating the necessity to follow the principles of natural justice in the field of administration of justice, it is rather unfortunate that there are still some officers who appear to be not amenable to correction. On account of acts of such persons, not only the innocent persons are put to in hardship but also public money is wasted in the litigations pursued at the instance of such persons, occupying important position in the Government offices and its instrumentalities.

The husband of the respondent in CWJC No.19463 of 2012 was employed as a Gang man in the Eastern Railway, and he died while in service, on 12.10.1987. After examining her case, the railway administration sanctioned pension, with effect from 13.10.1987. The husband of the respondent in the other case was also a Gang man and he died on 28.1.1991. As in the other case, pension was sanctioned to her also, with effect from 29.1.1991. It was in the year 1996, that an officer in the Eastern Railway issued a show cause notice to the respondents requiring them to explain as to why family pension, that was sanctioned to them, be not cancelled. Explanations are said to have been submitted, thereto. However, the proceedings

were not pursued further, by the Administration.

On 19.9.2003, the APO (Courts), in the office of the General Manager (P), Hajipur, Sri A K Srivastava passed an order stating that the respondents are not entitled for family pension. He simply referred to the judgment of the Supreme Court in SLP No. 4373 of 1997 (Union of India & Ors. Vs. Rabia Bikaner) dated 7.7.1997. Feeling aggrieved by those orders, the respondents filed OA No.624 of 2010 and OA No.471 of 2011 in Patna Bench of the Central Administrative Tribunal. It was pleaded that their case was thoroughly examined, and only on being satisfied about their entitlement, pension was sanctioned. They made reference to the show cause notice dated 9.10.1996 and the non-pursuit of the matter thereafter. The ground of violation of principles of natural justice was raised, in relation to the impugned orders.

The OAs were opposed by the appellants, by filing counter affidavits. They pleaded that the respondents are not entitled for family pension, in view of the judgment of the Supreme Court.

Through its common order dated 30.12.2012 the Tribunal allowed the OAs and has set aside the order dated 19.9.2003. The said order of the Tribunal has been challenged in these two writ petitions.

Sri Ashok Kumar Keshri, learned counsel for the petitioners submits that the husbands of the respondents herein were not entitled to be sanctioned pension and, in that view of the matter, the sanction of family pension of the respondents was untenable. He contends that when the very sanction was contrary to law; there was no necessity to issue show cause notice, particularly when the subject matter is covered by the judgment of the Supreme Court. He relied upon the judgment in *G.M. North West Railways vs. Chanda Devi*

[(2008) 2 SCC 108].

Shri M P Dixit, learned counsel for the respondents, on the other hand, submits that family pension was sanctioned to the respondents only after examining the relevant provisions of law and it was not open to them, to raise objection at a later stage. He submits that though an attempt was made in 1996, to reconsider the issue the same was dropped, obviously on finding that there was no basis for the proposed action. Learned counsel contends that the judgment of the Supreme Court in the case of Rabia Bikaner (supra) is not applicable to the facts of the present case. He placed reliance upon the judgment of this Court in Union of India vs. Smt. Sushila Devi & Ors. in CWJC No. 13683 of 2006 in support of his contentions. He further submits that the action of the authorities is arbitrary and violative of Principles of natural justice.

It was way back in the year 1987 and 1991 respectively, that the respondents in both the writ petitions were sanctioned family pensions. It is axiomatic that pension is sanctioned only after thorough verification of facts and the rules is undertaken. Nearly nine years thereafter, an attempt was made to re-examine the matter; and as rightly advised a show cause notice was issued on 9.10.1996. The respondents contended that they submitted explanation to the show cause notices. The fact remains that no order has been passed thereafter.

It occurred to Sri A K Srivastava, that the pension of the respondents can be stopped straightway and he passed the order dated 19.9.2003, which reads as under :-

“ East Central Railway

Office of the
General Manager (Personnel)
Hajipur
Dated 19/09/2003

No.ECR/HRD/Settlement/Policy/03

Divisional Railway Manager,

EC Railway,
Danapur

Sub: Stoppage of family pension sanctioned
To the Dependents/Widows of Ex. CPC
Casual Labour/ Gangman

Ref: Your office letter no.E/Pen.?Engg./CPC/97
Dt. 11-02-2003.

Reference above, the matter of stoppage of Family Pension granted to the dependants /widows of Ex. CPC, Casual Labourers/ Gangman of Danapur Division in the light of the Judgment passed by the Supreme Court of India in SLP No. 4373 of 1997 in (UOI & Ors. Vs. Rabia) on 7/7/97 has been considered by this office. After consideration in consultation with associate Accounts (FA & CAO/ECR/HJP), it has been decided that Family Pension granted to the dependants /widows of Ex. CPC of Danapur Division should be stopped forthwith as they are not entitled for the same as per extant Railway Rules.

Further, responsibility should be fixed at staff and officer for such a serious lapse / mistake and intimate to this office within one month.

Sd/-
(A K Srivastava)
APO (Courts)
For General Manager (P)
Hajipur.``

A perusal of the same discloses that he did not make any reference to the earlier show cause notice, much less the explanation. Straightway he proceeded to stop the pension by referring to the judgment of the Supreme Court in ***Rabia Bikaner's*** case. Things could have been different, had the respondents been parties to the judgment of the Supreme Court. By referring a judgment which was rendered six years ago, without issuing any show cause notice whatever, he proceeded to pass the order. Either he was ignorant of law or was arrogant of his power, that he thought it proper to abruptly cancel the family pension that was being paid to the poor widows. The hardship that is caused to the respondents, would not be difficult to imagine.

It is not as if that the Railway Administration is not aware of this issue. The question as to whether a Gang man who worked for a particular time and was extended the status of substitute, is entitled to be paid pension or, in case of his death, his wife is

entitled to be paid the family pension; was dealt with by the Hon'ble Supreme Court in ***Prabhawati Devi vs. Union of India [(1996) 7 SCC 26]***. It was held that Gang men, that are conferred the status of the 'substitute' are entitled to be extended the benefit of pay scale, and for pension, on retirement. Relevant rule was also referred to.

The question as to whether the judgment in the case of ***Rabia Bikaner vs. Union of India [1997 SCC (L&S) 1524]*** has effect of watering down the principle laid down in ***Prabhawati Devi's*** case was dealt with by this Court in CWJC No. 13683 of 2006. That writ petition, was also filed by the Railways. It was categorically held that the widow of a labourer (Gang man) who was conferred with the status of substitute, is entitled to be paid family pension. In the instant case, the Tribunal discussed the matter at length and held that the respondents are entitled for pension.

Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of ***Chanda Devi*** (supra). Nowhere in the judgment of the Supreme Court it was mentioned that valuable rights, that accrued to a citizen, can be taken away without issuing notice. On the other hand, in ***Olga Tellis & Ors. Vs. Bombay Municipal Corporation (AIR 1986 SC 180)***, it was held that an administrator cannot refuse to issue show cause notice on the ground that there may not be any plausible explanation.

This is a typical case of violation of the Principles of natural justice and that alone is sufficient to set aside the order passed by the office of the General Manager, Eastern Railways.

We do not find any basis to interfere with the order passed by the Tribunal. On the other hand, we take a serious exception to manner in which the petitioners have harassed the respondents. We, therefore, dismiss the writ petitions and direct the

petitioners to restore the pension to the respondents and to pay them the arrears from the date of stoppage with interest @ 9% per annum. We further direct that in case the arrears are not paid and pension is not restored within ten weeks from today, the petitioners shall be under obligation to pay costs of Rs.50,000/- (Rupees fifty thousand) to each of the respondents.

There shall be no order as to costs.

Interlocutory Application, if any, shall stand disposed of.

(L. Narasimha Reddy,CJ)

mrl

(Gopal Prasad, J)

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