

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.38255 of 2006

Tmt.Pattu

W/o late K.Ganeshan

.. Petitioner

-vs-

1. Union of India rep.by
General Manager (Law)
Southern Railway
Moore Market Complex
Chennai-3

2. Presiding Officer
Central Government Labour Court
Chennai-104

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records relating to the order dated 24.4.2006 in C.C.P.No.21 of 2000 on the file of the Hon'ble Central Government Labour Court, Chennai and quash the said order.

For Petitioner :: Mr.K.Chairman Selvaraj

For Respondents :: Mr.J.Harikrishna for R1
R2-Court

सत्यमेव जयते
ORDER

This writ petition is directed against the impugned order passed in C.C.P.No.21 of 2000 dated 24.4.2006 by the Central Government Labour Court, Chennai, wherein the request of the petitioner for payment of family pension was rejected holding that she was not entitled for the same, inasmuch as the petitioner had not established for the entitlement of family pension, difference in pay as well as Death-cum-Retirement Gratuity.

2. Learned counsel for the petitioner submitted that the husband of the petitioner, namely, K.Ganeshan, who died on 2.3.1970, served in the railway service as a Mason from 1.6.1950 on a monthly salary of Rs.200/-. After continuously working as a Mason for twenty years,

he was directed to undergo medical examination for the purpose of getting recruited under class BBI group. Therefore, he underwent the medical examination and he was also certified to be fit by the medical officers to be absorbed in permanent vacancies. As the petitioner's husband worked from 1.6.1950 till his death on 2.3.1970, after his death, the petitioner is entitled for family pension and gratuity as per the Railway Service Rules. Learned counsel further submitted before this Court that any workman continuously employed for 240 days in a year has to be construed as a permanent worker. In the present case, the petitioner's husband, who joined the railway service as a Mason on 1.6.50, till his death on 2.3.70, was continuously employed. Therefore, a representation was made for payment of the terminal benefits including his pension from 2.3.70. But no payment was made. Therefore, the petitioner filed the claim petition under Section 33(C)-2 of the Industrial Disputes Act for computation of pension. But the second respondent-Labour Court wrongly, giving a finding that the petitioner failed to prove the services rendered by her husband for more than seven years to claim the family pension, erroneously further held that she was not entitled for the amount claimed in the petition.

3. A detailed counter affidavit has been filed by the first respondent taking a stand that the prayer made in the present writ petition is wholly misconceived, for the simple reason that on an earlier occasion, when the petitioner filed O.A.No.159 of 1989 before the Central Administrative Tribunal, Chennai claiming retiral benefits and pension of her husband, the said original application was dismissed holding that the petitioner had not made out a case in support of the claim. As against that no appeal was filed and that order became final. When the petitioner already suffered a finding that she was not entitled to get the retiral benefits of her husband, the petitioner once again cannot make a repeated claim. When the earlier order dated 23.6.89 passed in O.A.No.159 of 1989 by the Central Administrative Tribunal was not even challenged, the petitioner once again cannot make any further claim with a huge and unexplained delay of eleven years.

4. A perusal of the order passed by the Central Administrative Tribunal in O.A.No.159 of 1989 dated 23.6.89 shows that the petitioner's husband-K.Ganeshan entered in the railway service as a casual labourer in 1954 and he had been on unauthorised absence for some period. Later on, he was charge sheeted for his unauthorised absence. However, he reported for duty duly admitting his guilt and he served as casual labourer for some time thereafter and died on 2.3.70. Thereafter, when the petitioner approached the first respondent with a petition in this regard, she was informed that there were no records available about the service of her late husband. However, she was informed again on 17.9.86 by the personnel branch of the first respondent's office that her husband was only a

casual labourer till the death and on that ground, she was not entitled for any family pension. Refusing to accept the approach adopted by the first respondent, she filed O.A.No.159 of 1989. Her claim was rejected on the ground that she had not made out a case in support of her claim. That order had become final even in the year 1989 itself. When the petitioner had not even challenged the correctness of the order, it is not open to her to once again approach the Central Government Labour Court with a huge and unexplained delay. That apart, when there has been a specific finding that she is not entitled for family pension, as she has not established for the entitlement of family pension, this Court finds no merits in the present writ petition. In fact, the petitioner has simply mentioned that her husband, who was working as Mason from 1.6.50, died on 2.3.70 by putting in twenty years of service. But no record whatsoever has been produced. Therefore, this Court is not able to differ with the findings given by the Central Government Labour Court. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Central Government Labour Court
Chennai 600 104

2. The General Manager (Law)
Southern Railway
Moore Market Complex
Chennai 600 003.

1 cc to Mr.K.Chairman Selvaraj ,Advocate, SR.No.10385
1 cc to Mr.J.Harikrishna ,Advocate, SR.No.9653

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pmk.23.3.2015