

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16304 of 2014

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Smt. Sushila Devi, Wife of Mahendra Nath Sah, resident of village - Birpur, P.S. Kanti, District - Muzaffarpur, at Present residing at Mohalla - Nazirpur, beside Pankaj Market Muzaffarpur Town, P.S. and District - Muzaffarpur

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Expenditure, Bhikhaji Kama Palace, New Delhi.
2. The Commissioner of Customs, 15/1 Strand Road, Kolkata-70001.
3. The Pay and Accounts Officer, O/o Commissioner of Customs, Custom House, Kolkata.
4. The Chief Commissioner, Central Excise and Customs, Patna.
5. The Commissioner of Customs, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate.
Mr. Nirmal Kumar Sinha, Advocate.

For the Respondent/s : Mr. Sanjay Kumar, ASG
Mr. Ravinder Kumar Sharma, CGC.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 26-04-2016

Heard learned counsel for the parties.

The writ petition has been filed against the order dated 31st January, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the “Tribunal”) in O.A. No. 895 of 2012 by which the same has been dismissed.

The petitioner was the applicant in the O.A. No. 895

of 2012 before the Tribunal and had sought for payment of arrears of family pension accruing to her late mother-in-law on account of revision of family pension based on the recommendations of the 5th Central Pay Commission.

The relevant facts in the present case are that late Mahadeo Sah, the father-in-law of the petitioner, retired from service on 31.03.1984 while working as Appraiser of Customs, Kolkata and died on 13.06.1984. Thereafter, Ramjhari Devi, the mother-in-law of the petitioner received family pension till her death on 18.02.2010. However, she was not allowed revision of pre 1986 family pension based on the 5th Pay Revision, as made applicable in her case by a policy decision of the Government of India contained in Office Memorandum dated 10.02.1998 of the Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners' Welfare, Government of India.

Learned counsel for the petitioner submitted that her father-in-law also did not receive pension for a few months when he was alive after his retirement and payment of family pension to her mother-in-law was not paid, as per the decision of the Government to pay revised family pension to pre-1986 family pensioners in terms of the Office Memorandum dated 10.02.1998. It was submitted that her mother-in-law had represented to the Department, but there was no



response and thereafter upon her death, the petitioner had also sent application on 07.09.2010. It was submitted that the petitioner was made nominee in the family pension of her late mother-in-law and thus, was required to be given the dues, which remained unpaid. Learned counsel further submitted that the Tribunal has wrongly dismissed the Original Application mainly on the ground of limitation, which is erroneous, as payment of pension is a continuing cause of action, which will not subject to any bar of limitation.

Learned counsel for the respondents submitted that the writ petition is misconceived and the order impugned does not suffer from any infirmity. It was submitted that in terms of the Office Memorandum of the Government of India dated 10.02.1998, though pre-1986 family pensioners were to be given the benefit of recommendations of the 5th Central Pay Revision Commission, but for the same, an application in the prescribed form had to be submitted within a period of 180 days from the date of issuance of the order. It was submitted that the same was not done, as from the official records, no such application by the late mother-in-law of the petitioner is available with the respondents. It was submitted that the date for submission of request was later extended till 31.12.2007 by way of last opportunity but even that was not availed of by the late mother-in-law of the petitioner. It was further submitted that the petitioner for



the first time submitted an application on 27.08.2010 intimating about the death of her mother-in-law and thereafter on 07.09.2010 and 06.12.2010 applied for revision of family pension of her late mother-in-law and payment of arrears in her favour. It was submitted that all such action, being much beyond the time fixed and later extended by the Government, could not have been entertained. It was submitted that as far as plea of the petitioner that her late mother-in-law had also sent an application for revising her pension, besides the same not being available in the official records and further copy of the same, which is said to have been annexed with the Original Application, does not bear either the signature or the thumb impression of the petitioner's late mother-in-law. It was further submitted that even the said photocopy of the so called application made by late mother-in-law of the petitioner, is not in the prescribed form. Learned counsel submitted that in the pension papers submitted by the late mother-in-law of the petitioner in the prescribed Form-A (nomination) of pension papers, Sri Mahendra Nath Sah, her son i.e., husband of the petitioner, was made first nominee and in the other nominee column, "in case of nominee under column (i) i.e., Sri Mahendra Nath Sah, son of Smt. Ramjhari Devi predeceases the pensioner, the name of Smt. Sushila Devi, daughter-in-law has been nominated". It was submitted that as Mr. Mahendra Nath Sah i.e., the husband of the petitioner is



still alive, the claim made by the petitioner, being the daughter-in-law, is not tenable and even if she may have a nomination, as authorized by her mother-in-law, in her favour, it will not be of any consequence, as it does not create any right either in terms of the statutory provisions of the rules where only a nominee can be given payment or under the Succession Act, where the daughter-in-law is not an heir and since pension has been declared to be property which can only be inherited by an heir, the petitioner is not entitled to payment of the dues of late Ramjhari Devi. Learned counsel has also referred to and relied upon a decision of the Hon'ble Supreme Court in the case of *Union of India v. Tarsem Singh* reported in (2008) 8 SCC 648 for the proposition that even in matters where the High Court allows payment of arrears relating to recurring or continuing wrong/injury, such payment should be restricted to a period of three years prior to the date of filing of the writ petition.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we are unable to agree with the submissions of learned counsel for the petitioner. The finding noted in the order of the Tribunal dated 31.01.2014 that there was no conclusive proof of late Ramjhari Devi having applied for revision of her family pension as even the photo copy of the application, annexed to the Original Application, was neither signed



by her nor bears her LTI and even the registry receipt produced did not have any postal stamp affixed on it, has not been satisfactorily explained. Moreover, the stand taken by the respondents in the courtier affidavit that in the Form-A, relating to pension, the husband of the petitioner is the first nominee and him being alive, why the petitioner has moved before the Tribunal or this Court, is also not explained. Further, neither it has been disclosed in the pleadings nor submitted before the Court as to whether the husband of the petitioner is the sole heir or there are others.

We may also note that as per Section 21 of the Administrative Tribunals Act, 1985, which prescribes the limitation for the Tribunal to admit an application and in the present case, even if, the contention of the petitioner is accepted that she was not educated and had no knowledge of the rules and the law and after the death of her mother-in-law, she took time in collecting papers is accepted, then also, on her own admission, she has sent her first application on 07.09.2010, but the Original Application was also filed only in the year 2012, which is beyond the period of such limitation for which there is no explanation as she could have only sent an application after being aware of the Office Memorandum dated 10.02.1998 and perusing the documents available with her.

Another aspect, which is of consequence in the



present case, is that, if we accept the plea that the late mother-in-law of the petitioner, being illiterate, could not be held liable for not submitting her application in the prescribed form, but if it is a fact, as has been submitted on behalf of the petitioner, that her late mother-in-law did apply for revision of pension in the year 1998 itself, it has to be presumed that only upon being aware of the order of the Central Government, as contained in Office Memorandum dated 10.02.1998, she could have applied for such revision and once she had applied, it shall be further presumed that she is aware of the conditions prescribed therein relating to submission of the application in the prescribed form as well as within 180 days of the date of issuance of the order. The same not being done and it not being the case of the petitioner that her husband, who is the son of late Ramjhari Devi is also illiterate and unaware, the Court comes to the inescapable conclusion that the claim raised by the petitioner is an after thought and incurably delayed.

As far as indulgence of the courts in matters relating to payment of pension/family pension is concerned, in the facts and circumstances of the present case, where the main beneficiary is not alive, any case for consideration on sympathetic and humanitarian grounds is also not made out.

In the light of the unrebutted facts and discussions made

hereinabove, in our considered opinion, the order of the Tribunal dated 31.01.2014 in O.A. No. 895 of 2012 does not suffer from any infirmity and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree.

Sujit/-
NAFR

(Hemant Gupta, J)

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