THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.26499 OF 1999

ORDER:

This writ petition is filed challenging the order dated 04.11.1999, passed by the 4th respondent-Industrial Tribunal, in C.M.P.No.3 of 1998.

The brief facts of the case are that the petitioner is a widower of one late K. Surya Rao who worked as a Foreman with the Visakhapatnam Port Trust. Petitioner is the 2nd wife of the said late K. Surya Rao and the said K. Surya Rao died leaving behind him a minor son and the petitioner. Initially with effect from 4.5.1968, petitioner was being paid half share of the pension and the balance half share to the minor son by name K. Sankara Rao. The said K.Sankara Rao attained the majority during the year 1973. The petitioner was being paid the pension at different rates between 1968 to 1973. The claim of the petitioner for payment of full pension amount on account of son K. Sankara Rao attaining the majority has been rejected by the respondents authorities. Challenging the same, petitioner approached the 4th respondent-Industrial Tribunal.

Two objections were raised by the respondent Port Trust before the Industrial Tribunal. Objection No.1 is that the Dispute before the Tribunal was not maintainable and the 2nd objection is that the petitioner would be entitled to only 50% of the allowable pension on the ground that Rule 54(7)(b) of CCS (Pension) Rules, 1972 (for short, "the Rules"), is not applicable. The Industrial Tribunal rejected the objection raised with respect to maintainability. However, the Tribunal had held that the petitioner would be entitled to only 50% of the allowable pension.

Sri Abhinand Kumar Shavili, learned counsel appearing for the petitioner submits that there is a misreading of Rule 54 of the pension Rules and on appropriate and careful analysis of Rule 54 of Rules does not support the reasoning of the Industrial Tribunal. It is the contention of the learned counsel that the eligibility for the pension is not being in dispute and the minimum pension payable to the eligible members in order of priority as provided under the Rules. In that view of the matter, the learned counsel submits that the order of the Industrial Tribunal cannot be sustained and is liable to be interfered with.

Smt V. Uma Devi, learned standing counsel for the respondents 1 to 3 while opposing the writ petition submits that inasmuch as son of the deceased late K. Surya Rao enjoyed the benefit for some time when he was minor, the payment of pension amount cannot be made to him as he attained the majority. She also asserts that, at any rate, even assuming that the pension amount is entitled to be paid, no retrospective effect can be given and the amount payable to the petitioner shall be paid provided the same has not been claimed and paid earlier to the son who had attained the majority in the year 1973.

Having considered the respective submissions that there is no dispute that the petitioner was the whole surviving legal heir of late K. Surya Rao apart from the son K. Sanakara Rao who admittedly attained the majority. Rule 54(7)(b) so far as relevant reads as under:

> "(b) Where the deceased Government servant or pensioner is survived by a widow but has left be3hind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner."

A careful analysis of Rule 54 (7)(b) of the Rules discloses that on death of the employee, the family members are entitled to specified pension at the prescribed rates. The amount of pension payable is fixed irrespective of the number of claimants among whom the same is to be apportioned. Once it is admitted that K. Sankara Rao who was the minor at the time of the death of late K. Surya Rao and subsequently he had attained his majority in the year 1973, the other persons would only be eligible for receiving the pension should be surviving eligible member. In this case, the surviving member is the petitioner. Merely because at earlier point of time, the eligible pension amount was required to be apportioned between the two persons that is the minor son and the petitioner, it cannot be said that the petitioner would not be entitled to receive the allowable pension amount as the eligibility with respect to quantum of pension is governed by the Rules which only speak about the apportionment. In that view of the matter, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed setting aside the order dated 04.11.1999, passed by the 4th respondent-Industrial Tribunal, in C.M.P.No.3 of 1998. Miscellaneous Petitions, if any, pending in this writ petition shall also stand dismissed. No order as to costs.

CHALLA KODANDA RAM,J

Date:24.07.2017
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>WRIT PETITION No.26499 OF 1999</u>

<u>Date:24.07.2017</u>

<u>Gk</u>