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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1924/2017

GOVT OF NCT OF DELHI ..... Petitioner

Through Mr. Saurabh Chadda, Advocate.

versus

NATHO DEVI ..... Respondent

Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **03.03.2017**

Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 17th February, 2015 disposing of OA No. 3360/2012, which in the operative portion holds as under:-

> "7. In view of the above, I dispose of this OA with a direction to the respondents to review her case and re-calculate the retiral benefits payable to her in terms of the recommendations of the 6th Central Pay Commission. If the applicant has any Medical Certificate for the period from 04.07.2005 to 15.06.2006 with regard to her late husband, the same can also be produced before the respondents within one month. The respondents shall also pay upto date interest on the delayed payment of retiral benefits @ 9% within a period of two months from the date of receipt of a copy of this order. They shall also give a detailed calculation sheets in respect of each of the retiral benefit so that the applicant can understand the way they have

calculated the dues. There shall be no order as to costs."

2. The respondent-Natho Devi had filed the aforesaid OA for fixation/re-fixation of the family pension, gratuity, etc. as the period from 4th July, 2005 to 15th June, 2006, when her late husband Prem Babu had remained absent on account of illness was treated as *dies non* vide order dated 21st March, 2009.

3. The petitioners have relied upon Rule 5(2) of the CCS (Pension) Rules, 1972, which reads as under:-

> "5. Regulation of claims to pension or family pension
>
> (1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.
>
> 1(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day.
>
> Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under Clauses (j) to (m) of Rule 56 of the Fundamental Rules or Rule 48 3[or Rule 48-A], as the case may be, the date of retirement shall be treated as a non-working day."

4. In our opinion, the Tribunal rightly held that the said Rule would not be applicable. Late Prem Babu was sick and, therefore, could not attend to the duties and had remained absent. To this extent, we do not think there is

any justification and reason to interfere with the impugned order.

5. Reliance placed by the counsel for the petitioner on the Government of India's decision, as quoted in the impugned order, would not help and assist the petitioner. The rule position is very clear. We do not think the period of absence of a medically sick employee, who subsequently dies, can be treated as period as *dies non* by itself. Such approach cannot be appreciated and is unacceptable.

6. Learned counsel for the petitioner submits that the authorities had passed a subsequent order dated 22nd November, 2016 in terms of order dated 17th February, 2015. In other words, this would show that the petitioners had accepted and purportedly complied with the order dated 17th February, 2015. This is another reason for this Court to not to interfere with the impugned order dated 17th February, 2015.

7. Learned counsel for the petitioner submits that the respondent has filed a contempt petition. Orders in the contempt petition are not subject matter of the present writ petition and we do not comment on the same. It is open to the petitioner to take all defences as available to him in law. We do not express any opinion on the said aspect. The writ petition is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 03, 2017
VKR