

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15420 of 2019

-
-
1. The Union of India through the Secretary, Ministry of Communication, Department of Post, New Delhi- 110001.
 2. The Director General, Department of Post, Dak Bhawan, Sansad Marg, New Delhi- 110001.
 3. The Chief Post Master General, Bihar Circle, GPO Complex, Patna- 800001.
 4. The Director of Accounts (Postal), Patna- 800001.
 5. Superintendent of Post Officer, Madhubani Division, Madhubani- 847201.

... .. Petitioner/s

Versus

Bhikhani Devi, Wife of Late Suraj Sah, Resident of Village and P.O.-
Rajnagar, District- Madhubani- 847235.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, ASGI
Mr. Rajesh Kumar Verma, Asst. S.G.
Mr. Mohit Agarwal, Adv.
For the Respondent/s : Mr. Sudhir Kumar Tiwary, Adv.

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-10-2019



This petition by the Union of India assails the order of the Central Administrative Tribunal, Patna Bench, Patna (*in short the Tribunal*) dated 27th March, 2018, whereby the respondent-applicant, who is the widow of late Suraj Sah, has been extended the benefits of family pension with a direction to consider the case of said respondent-applicant in the light of the decisions rendered by the High Court in C.W.J.C. No. 11435 of 2017 and C.W.J.C. No. 10978 of 2017, the ratio whereof has been referred to in the body of the judgment of the Tribunal.

2. The petitioner-Union of India contends that the Tribunal has overlooked the Circular Letter of the Department of Post & Telegraph, Govt. of India, issued under the signature of the Chief Post Master General, Bihar dated 15th May, 1991, Clauses 6 to 8 whereof read conjointly do not allow such benefits to be extended to an employee unless regularized.

3. Clauses 6 to 8 of the said Circular Letter is extracted hereinbelow:-

"6. 50% of the service rendered under Temporary status would be counted for



the purpose of retirement benefits after regularization as a regular group 'D' official.

7. Conferment of Temporary Status does not automatically imply that the casual labourers would be appointed as a regular group ID employee within any fixed time frame. Appointment to group 'D' vacancies will continue to be done as per the extant recruitment rules, which stipulate preference to eligible ED employees.

8. After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated at par with temporary group 'D' employees for the purpose of contribution to General Provident Fund. They would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary group 'D' employees, provided they furnish two sureties from permanent Govt. Servants of this department."

4. The contention on behalf of the respondents-petitioners is that the judgments on which reliance has been placed by the Tribunal, which are on record and copies whereof have also been placed before us for our perusal, nowhere proceed to consider the impact of



the said Circular Letter under which a complete procedure has been indicated pertaining to extension of benefits upon conversion of the status of the employee.

5. The second ground of challenge is that apart from the merits of the Rules, the respondent-applicant approached the Tribunal after almost eight years of the retirement and subsequent death of the employee. The application, therefore, was even barred by laches and this fact even though raised before the Tribunal has been completely ignored.

6. It has further been submitted that in view of ratio of the judgment in the case of ***Indian Council of Agricultural Research & Anr. Vs. Santosh***, reported in ***(2006) 11 SCC 157***, unless an employee is in regular service in the cadre, pensionary benefits would not be admissible which aspect has also not been either noticed, discussed or adjudicated in the decisions which have been relied on by the Tribunal or by the Tribunal itself while delivering the impugned judgment.

7. Responding to the said submissions,



learned counsel for the respondent-applicant has urged that the judgments in other cases on which reliance has been placed by the Tribunal were put to test before the Apex Court and the SLPs. filed against the same have been dismissed, whereafter the respondents-petitioners themselves have complied with the aforesaid judgments in the wake of the said undisputed facts contesting the claim of the respondent-applicant is unjustified and violative of Article 14 of the Constitution of India.

8. The contention is that if widows of such employees have been extended the benefits by the respondents-petitioners, may be in compliance of the directions after judicial intervention, yet the respondents-petitioners cannot apply the law uniformly and thereby guilty of hostile discrimination.

9. The employee being a model employer, therefore, cannot be permitted to act differently in similar situations and, therefore, once the discretion has been exercised by the Tribunal on the strength of such similar judgments of this very Court, this Court may not interfere



with the impugned judgment and allow the benefits to be extended to the respondent-applicant.

10. On the issue of laches, learned counsel submits that there were laches in the other cases as well which have been decided where the benefits have been extended and, therefore, any delay on the part of the respondent-applicant to approach the Tribunal should not be taken as a disadvantage for the extension of the benefit which otherwise, according to law, is admissible to the respondent-applicant, that too even in the case of a widow of an employee who has served a long years with the respondents-petitioners.

11. Learned counsel further submits that the ratio of the judgment in the case of ***Indian Council of Agricultural Research*** (supra) would not apply on the facts of the present case where the respondents-petitioners themselves have proceeded to extend such benefits to others in compliance of the judgments of this Court.

12. We have considered the submissions raised and the first issue is with regard to laches where we



find that there is no valid explanation much less a plausible explanation on the part of the respondent-applicant who has approached the Tribunal after more than eight years. Apart from this, the deceased employee had also not approached the Tribunal during his life time.

13. Then there is yet another fact. The Rules, which are applicable, their validity or applicability, otherwise, were not questioned by the respondents-petitioners. It is, thus, evident that the Tribunal simply proceeded on the basis of the judgments which, in our opinion, were not binding ratio inasmuch as, none of the judgments had considered the impact of the respective Clauses that have been extracted hereinabove in the Circular Letter on which reliance has been placed by the petitioners.

14. Thus, not only on laches, but even under the relevant Circular Letter which is applicable to the controversy, the respondent-applicant could not succeed and we find that this issue was neither raised nor decided in either of the cases that have been relied upon by the



respondent-applicant against which the SLPs. were dismissed before the Apex Court. Consequently, for the purposes of this writ petition, even if the SLPs. have been dismissed, the same would not be a binding precedent, keeping in view what has been stated hereinabove.

15. The question of applying the same principle has been done in the cases of those widows who had approached the Tribunal and have been extended the benefits, on facts, we find this case to be substantially dissimilar for the reasons stated hereinabove.

16. In such a situation, the claim of parity and the contention of violation of Article 14 of the Constitution of India against the respondent-applicant would, therefore, not be tenable on the facts of the present case.

17. For all the reasons aforesaid, we find even though it to be a hard case for the respondents/petitioners, yet keeping in view the position of law as explained hereinabove, there is no option, but to reverse the decision of the Tribunal.

18. We, accordingly, allow the writ petition



and set-aside the judgment dated 27th March, 2018.

No order as to costs.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.10.2019
Transmission Date	N/A

