

Item No. 1

21.12.2020
Ct. No.24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(Via Video Conference)

WPA No. 9353 of 2020

Smt. Manju Ari

v.

The Calcutta Port Trust & Ors.

Mr. Anil Kumar Chattopadhyay
... for the petitioner.

Mr. Kallol Basu
Mr. Somnath Bose
... for the Kolkata Port Trust.

The husband of the petitioner was an employee of the Kolkata Port Trust. He was appointed in service on January 30, 1992 and his service was made permanent on December 8, 1993. The petitioner remained unauthorizedly absent on and from September 17, 2001.

By an order dated July 20, 2004 the penalty of compulsory retirement from service with immediate effect was passed.

By a notice dated July 27, 2004 the petitioner was intimated that in terms of the order of the Deputy Chairman a penalty of compulsory retirement from the service under the Haldia Dock Complex has been imposed with effect from July 20, 2004. He was requested to return all the Trustee's properties for processing his settlement dues.

The employee expired on November 20, 2013.

The instant writ petition has been filed by the widow claiming arrear pension which was payable to the employee on and from July 20, 2004 to November 20, 2013. The petitioner also prays for grant of family pension in her favour on and from the death of the employee.

The petitioner in an earlier writ petition filed by her prayed for settlement of dues of the deceased employee. In the said writ petition being WP No. 4727(W) of 2019 this Court by order dated June 18, 2019 directed the respondent authorities to disburse the settlement dues which accrued in favour of the deceased employee within a stipulated period. The order has since been complied with by the respondents.

As regards the claim of the petitioner for payment of pension in favour of the employee and family pension the rules of the Port Trust mentions that until and unless an employee completes ten years of qualifying service he will not be entitled to receive any pension.

It has been submitted by the respondents that as the employee has completed about seven years of qualifying service, he is not entitled to receive the pension.

The learned advocate appearing for the petitioner disputes the contention of the Port Trust and submits that the employee concerned was in service for nine

years, seven months and twenty-six days. It has been submitted by the petitioner that the period during which the employee was absent ought to be treated as service without pay and the said period ought to be taken into consideration for the purpose of calculating the qualifying service period of the employee for issuance of pension in his favour.

I am not convinced on the submission made on behalf of the petitioner. After the imposition of penalty of compulsory retirement with effect from July 20, 2004 the employee was alive till November 20, 2013. The employee did not take any steps for drawing pension possibly because he was aware that he was not entitled to receive pension as the qualifying service period was not completed by him.

Six years after the death of the husband the widow has approached this Court with a prayer for releasing the pension in favour of her deceased husband and for payment of family pension.

If the employee was not entitled to receive pension then the question of releasing family pension in favour of the widow does not arise at all. Accordingly, the prayer for grant of pension either in favour of the employee or family pension in favour of the widow cannot be accepted by the Court.

However, the Port Trust Authority if upon consideration of the financial condition of the petitioner opines that she is under extreme financial hardship, then for reasons to be recorded, may dispense or relax the condition of completion of ten years' of qualifying service by the employee and pass necessary orders for releasing family pension in favour of the widow.

A decision shall be taken by the Port Trust within a period of six weeks from the date of communication of a copy of this order.

With the above observations, the writ petition being WPA No. 9353 of 2020 stands disposed of.

Urgent photostat certified copy of this order, if applied for be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)