

22.11.2021

Ct. no.04
Item No.15
Avijit Mitra

W.P.C.T. No.31 of 2020 (through video conferencing)

In re: An application under Article 226 of the
Constitution of India;
And

Mrs. Ambia Khatun
- Versus -
Union of India & ors.

Mr. Fasiur Rahaman Molla,
Mr. Sandip Mandal
For the petitioner
Mr. Debapriya Gupta,
Mr. Sourav Mondal
For the respondents

The petitioner is the widow of one Abdul Khaleque
(in short, Abdul) and she has approached this Court
primarily praying for the following relief :

“A Writ in the nature of Mandamus commanding the respondents to disburse/pay the salary for the intervening period of absence from the date of premature retirement and the date of re-instatement, difference of pay re-instatement, balance gratuity and difference of pension from 1980 to March, 1988 and onwards and non-payment of relief allowance all with interest.”

Mr. Mandal, learned advocate appearing for the petitioner submits that Abdul was working in the post of Superintendent in H.E. Division in Geological Survey of India. He was compulsorily retired with effect from 31st January, 1976 and upon consideration of an application for review he was re-instated with effect from 30th January, 1978 and as such he became entitled to difference of pay upon such re-instatement together with

balance gratuity and difference of pension. The intervening period of absence from 31st January, 1976 to 30th January, 1978 was illegally treated as leave due but not as duty and accordingly his pay stood reduced. Aggrieved thereby, Abdul approached the learned Tribunal but unfortunately during pendency of the original application, Abdul expired and the petitioner herein and others were brought on record. The said original application was thereafter disposed of by an order dated 25th July, 1995 observing *inter alia* that Abdul may get average emoluments during the period of leave but his actual basic pay cannot be less. The learned Tribunal directed the respondents to re-examine the said issue upon constituting a Special Committee.

According to Mr. Mandal, the said issue was not appropriately considered by the Special Committee and without considering the compliance report, the contempt application preferred by Abdul was also disposed of by an order dated 7th March, 2002. The learned Tribunal did not consider the issue as to whether the respondents have appropriately considered Abdul's claim as per directions contained in the order dated 25th July, 1995.

Mr. Gupta, learned advocate appearing for the respondents submits that the original application was disposed of in the year 1995 and the contempt application was disposed of on 7th March, 2002. However, without any explanation the present writ

petition has been belatedly preferred about 18 years after the disposal of the contempt application.

He further submits that the parent order in the original application dated 25th July, 1995 has also not been challenged in the present writ petition. The Special Committee which was constituted as per the order dated 25th July, 1995 appropriately considered the Abdul's claim and filed a compliance report in the contempt application and as such no interference is called for in the present writ petition.

In reply, Mr. Mandal submits that the contempt application was disposed of in the absence of the petitioner and as such, necessary arguments could not be advanced.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

We do not find any irregularity in the order dated 25th July, 1995 passed by the learned Tribunal in OA No.383 of 1988 inasmuch as the learned Tribunal rightly directed the respondents to re-examine the issue as regards fixation of pay upon constituting a Special Committee since Court is not an expert body to determine the actual basic pay to which Abdul was entitled to upon re-instatement.

Records further reveal that an order passed in the original application in the year 1995 and an order

passed in a contempt application in the year 2002 had been sought to be challenged after a substantial period of time. There is also no explanation as regards the delay which has occurred. In fact, none appeared on behalf of the petitioner on three occasions in the contempt application which was finally disposed of on 7th March, 2002.

In the said conspectus, we are unable to grant any relief as prayed for by the petitioner and the writ petition being WPCT 31 of 2020 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties upon compliance of all necessary formalities.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)