

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1900 of 2017

Smt. Maya Banerjee, W/o. Late K.M. Banerjee, Aged About 55 Years, R/o. C/o. Dipak Dutta (Advocate), Keshav Murra Bhattha Road, Hemu Nagar, Torwa, Bilaspur, District Bilaspur Chhattisgarh
---- Petitioner

Versus

1. Union Of India, Through General Manager, South East Central Railway, G. M. Building, Bilaspur Chhattisgarh 495004.
 2. Divisional Railway Manager, Bilaspur Division, South East Central Railway, D. R. M. Office Complex, Bilaspur Chhattisgarh 495004.
 3. Senior Divisional Personnel Officer, Bilaspur Division, South East Central Railway, D. R. M. Office Complex, Bilaspur Chhattisgarh 495004.
 4. Senior Divisional Operating Manager, Bilaspur Division, South East Central Railway, D. R. M. Office Complex, Bilaspur Chhattisgarh 495004.
- Respondents**

For Petitioner : Mr. Ravindra Agrawal, Advocate

For Respondents : Mr. R.K. Gupta, Advocate

Hon'ble the Chief Justice Shri Arup Kumar Goswami

& Hon'ble Justice Shri Goutam Bhaduri

Judgment On Board

28/10/2021

Per Goutam Bhaduri, Judge

1. Heard.
2. The challenge in this writ petition is to the order dated 09.03.2016 (Annexure P/1) passed by the learned Central Administrative Tribunal, Jabalpur (for short 'the Tribunal') whereby a petition preferred by the wife (petitioner herein) for

retiral dues of the deceased K.M. Banerjee, an employee of Railways was dismissed on the ground that the petition is barred by limitation. Further observation was made that the fact of death of husband of the petitioner was not brought to the notice of the respondent authorities when disciplinary proceeding commenced against him for absconding from duty. As such, the respondent authorities could not know such facts. It was held that the employee K.M. Banerjee (deceased), who was working in Railways was dismissed on 10.10.2001, whereas the application was filed before the learned Tribunal on 06.08.2014.

3. The brief facts, which were pleaded before the learned Tribunal, are that the petitioner is the wife of one K.M. Banerjee, who died on 12.11.2000 while he was in Railway service. He was transferred from Dadhapara Station to Chirimiri in the year 1993 and was working as Lever Man (LM). Subsequently, K.M Banerjee was absent from his duties from September 1993 and eventually was dismissed from service on 10.10.2001. It was stated that after death of the petitioner's husband, she started living at Kolkata along with her brother and went under mental depression and lost her mental equilibrium. It was further pleaded that she is an illiterate lady and in the year 2010, she came back from Kolkata and submitted her claim before the authorities regarding dues payable towards G.P.F., Gratuity, Employee's Insurance etc..

On an application being filed the dues were not released and subsequently on an application filed under RTI, it was informed by letters dated 25.07.2013 & 27.08.2013, that her husband was dismissed from his service on 10.10.2001, whereas it was the case of petitioner that husband had died prior to commencement of departmental enquiry on 12.11.2000. Consequently, on the basis of a departmental enquiry which was proceeded ex-parte, the dismissal order was passed.

4. It was further contended by the petitioner that since there was some confusion over the date of death of petitioner's husband, a Civil Suit bearing No. 269-A/2014 was filed by the petitioner before the Court below wherein the Railways was a party. In the said Civil Suit, a declaratory decree was sought for on the basis of the death certificate issued by the Municipal Corporation about the date of death of husband of the petitioner. The said suit was decreed on 13.02.2015 wherein it was affirmed that the date of death of the petitioner's husband was 12.11.2000. Consequently, the fact about the date of his death is not in dispute. Subsequent to it, since the retiral dues were not paid to the wife (petitioner herein), as such, the application was preferred before the learned Tribunal, which eventually was dismissed by the impugned order. Hence this petition.
5. Learned counsel for the petitioner would submit that in the instant case, the date of death of the husband of the petitioner

was 12.11.2000 which is supported by the decree of the Court wherein the Railways was a party. As such, the finding cannot be a subject of any question since the respondents - Railway did not file any appeal against such judgment and decree. He would submit that after the death of the employee K.M. Banerjee, the Railways initiated a departmental enquiry on 14.03.2001, knowing fully well that the death has already taken place long before. In the result, the departmental enquiry on which the subsequent dismissal order was passed on 10.10.2001, would be a nullity for the reason that the departmental enquiry was held against the dead person.

6. Learned counsel placed reliance on a case law in **S.K. Mastan Bee vs. General Manager, South Central Railway and Another** reported in **(2003) 1 SCC 184** and would submit that in the likewise situation, Hon'ble the Supreme Court, while considering the position of the parties, condoned the delay, which was of 24 years. He would further submit that the principle laid down by Hon'ble the Supreme Court would be applicable in this case wherein the petitioner is also an illiterate lady and wife of an employee of Railways, who was a Lever Man. It is stated that the petitioner being wife lost her mental equilibrium and thereafter when she regained her consciousness, had filed the petition before the learned Tribunal, the same could not be thrown away only on the count of limitation alone.

7. Per contra, learned counsel for the respondents - Railways supports the order of the learned Tribunal. He would submit that the initial order of dismissal was passed on 10.10.2001, whereas the original application was filed before the Tribunal on 06.08.2014. He would further submit that the petitioner's husband was missing from his duties since 1993 and therefore the departmental enquiry was started by giving notice on his last known address and having not responded, eventually, the order of dismissal was passed. Consequently, the petitioner is not entitled for any retiral benefits, which would have otherwise accrued.
8. We have heard learned counsel for the parties and have perused the record. Perusal of the order of the learned Tribunal would show that the petition was dismissed solely on the ground that it is barred by limitation. It was held that, the dismissal order against the husband of the petitioner was passed on 10.10.2001 whereas the original application before the Tribunal was filed on 06.08.2014. Contrary to such fact about the date of death of petitioner's husband, the record contains the judgment and decree dated 13.02.2015 passed by the 6th Civil Judge Class-II Bilaspur (C.G.) in Civil Suit No. 269-A/2014. The order passed therein would show that a declaratory decree was passed to the effect that the husband of the petitioner K.M. Banerjee died on 12.11.2000. Reading of the order of the learned Civil Judge reflects that a death

certificate issued by the Municipal Corporation was placed and was relied on before the Court wherein the date of death was held to be 12.11.2000 instead of 10.05.1997.

9. Perusal of judgment and decree of the Court below would show that in such Civil Suit, the Railways was a party. Admittedly, the said finding about the date of death of the husband of the petitioner i.e. 12.11.2000 was not subject of any challenge before any Appellate court.
10. The respondents - Railways claimed that the departmental enquiry against the husband of the petitioner K.M. Banerjee was initiated in the year 2001 for his unauthorised absence from service. The first notice was issued in the year 2001 and the date of hearing for enquiry was fixed on 12.05.2001. The averments are evident from the enquiry proceeding which is placed on record. According to Railways, subsequently, when the employee did not attend the enquiry, it was proceeded ex-parte and the article of charges were found to be proved, by holding that the employee K.M. Banerjee was not willing to continue in his present post and in the service. The finding was arrived at on 25.07.2001. If the said finding recorded in the year 2001 is placed in juxtaposition with the judgment and decree of the Court, wherein the Railways was the sole defendant, the order does not show that the averment was ever made by the Railways-the respondent that the departmental proceeding already held and stood concluded on 25.07.2001. When the

date of starting point of enquiry and conclusion of it and the date of death of its employee were in conflict with each other, then in such circumstances the conduct and averments on the relevant subject issue before competent Court, made by the respondent would be relevant. The date of death of a person cannot be a variable factor. As observed earlier, since the judgment and decree was not subject of challenge wherein the Railways was a party, the fact finding of the Civil Court will override the official notes/ papers of the respondent – Railways and the Railways would be estopped to challenge the date of death of K.M. Banerjee otherwise than 12.11.2000.

11. In the conspectus of the facts, when the employee died on 12.11.2000, the departmental enquiry which commenced after his death in the year 2001 would certainly be a nullity for the reason that the proceedings were drawn against a dead person. It is also obvious that to whom the notice of enquiry was served, nothing is placed on record by the respondent - Railways that either the notice of the enquiry was duly served or got it published in any paper circulating in the area on the last known address of delinquent employee.
12. The petitioner, who is the wife of employee - K.M. Banerjee claims that she is an illiterate lady and after the death of her husband, she lost her mental equilibrium and was living with her brother at Kolkata. Subsequently, after regaining her consciousness, when she came back and filed the application

with the Railways, the retiral dues were denied on the ground that the dismissal order already exists against her husband in the year 2001. In the similar situation, while considering the delay of a period of time, Hon'ble the Supreme Court in **S.K. Mastan Bee** (*supra*), condoned the delay of an illiterate lady by holding that at the time of death of her husband, she did not know of her legal Right to family pension and remedy to enforce such right and also held that the very denial of her Right to family pension would amount to violation of the guarantee assured to the applicant under Article 21 of the Constitution of India.

13. After going through the judgment and the object which is being laid down by Hon'ble the Supreme Court, when the facts are translated into principle of Hon'ble the Supreme Court, we are of the opinion that the present applicant, who claims to be an illiterate and lost her mental balance after the death of her husband, if had filed the petition before the Railways for retiral benefits, the same was required to be adjudicated giving the benefit of the law laid down by Hon'ble the Supreme Court (*supra*). The denial of Right to family pension by the respondent - Railways cannot be said to be justified in the given facts and circumstances of this case. It is further directed that since considerable time has passed and it appears that the petitioner who is a widow and has attained the considerable age of about 59-60 years, if is again reverted

back to the petitioner, she may have to face another bout of litigation which may otherwise may defeat the very purpose of her legal right. It was obligatory for the employer to have computed the family pension payable to the wife (petitioner herein) without driving her to litigation. Accordingly, it is ordered that the petitioner shall be entitled for her family pension from the year 2014, the time when she approached the learned Tribunal. The petitioner shall be entitled to get the family pension within a time period of 45 days from the date of receipt of this order.

14. In the result, the order of learned Tribunal dated 09.03.2016 is set-aside and the writ petition is allowed with the aforesaid observation/ direction. No order as to cost(s).

Sd/-

**(Arup Kumar Goswami)
Chief Justice**

Sd/-

**(Goutam Bhaduri)
Judge**