

27.9.2022
sl.59
Ct No. 21
Sk

W.P.A. 20894 of 2022
Smt. Karunamayee Adhikary
vs
The Union of India & Ors.

Mr. Masta Fizur Rahaman
.....for the petitioner.

Mr. Kallol Kr. Basu
Ms. Ashima Roy Chowhdury
...for the respondent nos. 1 & 2.

In this writ petition the petitioner has prayed for consideration of a representation dated March 17, 2022 for payment of family pension in accordance with law.

The writ petitioner's case is that her husband during his service with the Kolkata Port Trust now known as Shyamaprasad Mookherjee Port Trust) was permanently invalidated on January 25, 1988. He died-in-harness on April 15, 1989. Immediately upon the demise of the writ petitioner's husband, she made an application on May 12, 1989 for grant of family pension. Upon such representation being made the Deputy Chief Engineer, the River Training Wing by office order dated November 5, 1993 issued letter to the Chairman recommending the grant of family pension to the writ petitioner. Thereafter, no steps taken by the respondent authorities for release of the

family pension neither was their intimation why such release was not being made.

In the meantime, the writ petitioner's son has got an employment with the Kolkata Port Trust on compassionate grounds.

After a long span of time, the writ petitioner has made representation before the Senior Accounts Officer (Pension Section), Kolkata Port Trust for grant of family pension.

Mr. Masta Fizur Rahaman, learned Counsel appearing on behalf of the writ petitioner submits that even though a long delay in renewal of the writ petitioner's prayer for grant of family pension, the same may be considered since the failure to grant the same was a continuance cause of action on the part of the respondent authority. He submits that in the event the petitioner is granted family pension the same would not entail the writ petitioner for reopening any settled rights in favour of a third party. Furthermore, the petitioner would restrict her claim for grant of the arrears to past three years and will not cause unnecessary loss to the exchequer by claiming from 1989 when she initially made her prayer for grant of her family pension.

Mr. Kallol Basu, learned Counsel appearing on behalf of the respondent authorities relying on a decision reported in (2014) 4 S.C.C. 108, (Chennai

Metropolitan Water Supply and Sewerage Board & Ors. –vs-T.T.Murali Babu) submits that the writ petitioner should not be allowed to approach the Court at her own leisure or pleasure and it is a legal obligation on the part of the court to scrutinize whether the writ is filed in a belated stage should be entertained or not. He submits that delay comes in the way of grant of an equitable relief.

Having considered the rival submissions of the parties and materials placed on record, this court finds that an application for grant of pension was made immediately upon the death of the writ petitioner's husband.

Furthermore, her prayer was considered in 1993 and a recommendation was made in her favour by the Deputy Chief Engineer to the Chairman.

There is no materials placed on record to show that any explanation has been given to the writ petitioner as to why despite the recommendation the family pension was not granted to her.

This Court finds that no third party rights will be unsettled in the event the representation of the petitioner for family pension is considered. Furthermore, no unnecessary burden on the exchequer will be put since the petitioner undertakes to restrict her claim for arrears of three years only.

The case of **T.T.Murali Babu(supra)** does not

come to an end to the respondent since the facts are completely distinguishable. In that case the petitioner's husband was penalized by the disciplinary authority on account of misconduct since he was an habitual absentee from his work place. Hence, the disciplinary authority passed an order of dismissal. The writ petitioner approached the High Court under Article 226 of the Constitution of India which was filed in belated stage in entertaining the writ petition. The High Court held that the delay was not patent to the lis.

Reversing the order of the Hon'ble Single Bench of this High Court as well as the Hon'ble Division Bench of this High Court and the Hon'ble Apex Court held that interference by the High Court with regard to the punishment being disproportionate offence was unwarranted and unsustainable. The facts of the aforesaid case did not aid the respondents since this writ petitioner has not violated any provision of law has only brought for grant of family pension upon the death of her husband and that too immediately upon his death.

In the circumstances, this court directs the writ petitioner's representation to be considered by the Senior Accounts Officer, Pension Section/respondent no. 3 within three weeks from date upon giving a personal hearing to the petitioner.

Let the representation be disposed of with a reasoned order and the same be communicated within two weeks of passing thereof.

Since no affidavits have been invited in the present writ petition, all the allegations contained in the writ petition are deemed not to have been admitted by the parties.

With the aforesaid directions, the writ petition being **WPA 20894 of 2022** is **disposed of**.

There will be no order as to costs.

All parties to act on the server copies of this order duly downloaded from the official website of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Lapita Banerji, J.)