

15.03.2023

WPCT 5 of 2023

Court : 04
Item : 34
Matter : WPCT
Status : DISMISSED
Bench ID :266048
Transcriber: NANDY

Gouri Devi
Vs.
Union of India & Ors.

Mr. Mahadeb Ghosh, Advocate
Mr. Arun Kumar Paul, Advocate
Mr. Priam Ghosh, Advocate

.....for the Petitioner

Despite service there is no appearance on behalf of the respondents.

A stale claim sought to be resurrected at the behest of the widow of the employee who during his lifetime, was subjected to a disciplinary proceeding which ultimately culminated into an order of removal from service. The claim was restricted to the settlement of dues, pension and pensionary benefits and other benefits attributable to the service of the deceased employee and the decision dated 08.08.2017 passed by the Assistant Personnel Officer- N.G. Railway, Katihar, Bihar, refusing to extend such benefits to the petitioner.

A plea is sought to be taken that the lady being an illiterate and rustic villager was not aware of her rights and, therefore, if she approached the Court for a legally justified claim, the Court should not adopt a rigid view as held by the Supreme Court in ***S.K. Mastan Bee Vs. General Manager, South Central Railway & Anr.,*** reported in ***(2003) 1 SCC 184.***

The argument is advanced by the petitioner that she is entitled to the benefits attributable to the service of her husband and the Tribunal has, in fact, proceeded to decide the proceeding on an extraneous factor *de hors* the core issue involved therein. It is further submitted that the allowances and other benefits cannot be denied as the

order of removal was passed after the death of the delinquent.

There is a fallacy in the submission of the learned Advocate for the simple reason that the petitioner did not challenge the order of removal from service, rather accepted the same, yet claimed the compensatory allowance and other allowances admissible to the said service. The question really arise in the instant case as to whether the petitioner is entitled to all such allowances even after her husband has been removed from service. There is no attempt on the part of the petitioner to assail the order of removal of service and the entire claim was restricted to the payment of the aforesaid allowances. The order passed by the Tribunal would reveal that the husband of the petitioner did not render 10 years of continuous service being the qualifying service for the purpose of pension. It is further highlighted that the aforesaid period of qualifying service is *sine qua non* for granting compensatory allowance.

It is no doubt true that the claim of pension which is a recurring cause of action, the delay should not be projected affront to deny the legitimate right of the party. The Apex Court in S.K. Mastan Bee (supra) was considering the case relating to family pension and found that once the legal entitlement is manifest, the delay should not be taken as a ground to deny such right. The Tribunal has found that the petitioner is not entitled to the aforesaid allowance because of the embargo having created in the Rules applicable in this regard and, therefore, even if we do not taken into consideration the delay and laches attributable to the conduct of the petitioner, yet this Court does not find any infirmity in the order of the Tribunal.

The claim of an allowance, be it compensatory or otherwise, if hedged with the conditions enshrined in the applicable Rules, unless such conditions are satisfied, the Court should not grant the reliefs out of sheer emotions or sentiments nor should take a sympathetic view as the law is paramount.

Learned Counsel appearing for the petitioner is unable to produce any Rules permitting such claim to be given to the petitioner and, therefore, we do not find any infirmity and/or illegality in the impugned order.

The writ-petition being **WPCT 5 of 2023** is **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)