

02 03.07.23

Ct. No. 04

akd

RVW 96 of 2023

CAN 1 of 2023

**Gouri Devi
Vs.
Union of India & Ors.**

**Mr. Asim Kumar Niogi,
Mr. A. K. Paul,
Mr. Vaskar Pal.
... for the petitioner.**

The instant review application is taken out assailing the order dated 15th March, 2023 by which a writ petition being WPCT 5 of 2023 was dismissed. The aforesaid writ petition was filed assailing the order of the Tribunal dismissing the tribunal application on the ground that the belated claim of the writ petitioner cannot be entertained in view of the statutory period for filing having elapsed.

At the time of disposal of the writ petition we invited attention of the learned Advocate for the petitioner as to whether the husband of the writ petitioner was entitled to pension after the disciplinary proceeding initiated against him culminated into an order of removal.

Bearing in mind the distinction between the *removal from service* and *the dismissal or termination of service*, we held that since the said order has not been challenged staring at the face of the writ petitioner, in absence of any express Rule which permits the removed or terminated employee to get pension provided he successfully completed the qualifying service, it would not be extended to the family.

Considering the observations as an error apparent on the face of the record the present application for review is taken out citing Rule 75 of the Railway Services (Pension) Rules, 1993 saying that there is a provision of family pension for railway servants. It is sought to be contended that there is an error apparent on the face of the record in holding that there is no Rule in this regard and the reliance appears to have been placed upon the judgement of the Supreme Court in case of *Giridhari Lal Gupta vs. D. N. Mehta & Anr.* reported in AIR 1971 SC 2162.

There is no difficulty, if the Court while disposing of the proceeding observed that in absence of any Rule the relief claimed in the petition cannot be granted and proceeded to deny such relief, the application for review would be maintainable if the Rule is in existence and have an impact on the core issue. Such is not the case for the instant matter. The aforesaid observations was restricted on the perceived notion that in absence of any express provision of Rules entitling removed or terminated employee to get pension, the relief claimed by the writ petitioner cannot be extended.

Rule 75 of the said Rules does not imbibe within itself such situation rather it is applicable to a case where railway servants retire or dead after completing the qualifying service to receive pension or family pension.

We thus do not find that Rule 75 of the said Rules has any manner of application in the instant case, as the removed or terminated employee is not entitled to pension and, therefore, we do not find that

there is any ground for review made out in the instant petition.

The review application is thus dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied within three days from the date of application.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)