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28.06.2023
D.Hira
Court No. 12

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.C.T. 60 of 2022

**The UCO Bank & Ors.
-versus
Smt. Kaberi Chakraborty & Anr.**

**Mr. Subrata Roy.
... for the petitioners/
UCO Bank**

**Mr. Arunava Ghosh,
Mr. Puspall Chakraborty,
Ms. P. Ganguly.
... for the respondent no. 1**

The respondent no. 1 is the widow of one Somnath Chakraborty, who was working as Labour (Un-Skilled) in the Office of Metal and Steel Factory, Ichapur.

A charge memo dated November 30, 2000 was issued and he was removed from service with effect from April 16, 2001.

The employee, Somnath Chakraborty challenged the order of dismissal by filing O.A. No. 1202 of 2001 before the Tribunal. The Tribunal considering the materials placed before it by the order dated January 13, 2006 held that the order of dismissal is disproportionate to the charges levelled against the employee, Somnath Chakraborty and set aside the order of dismissal.

The Tribunal further directed the employee to file revision before the Authority within 30 days and also directed the petitioners to re-instate the employee into service. The petitioners did not re-instate the employee into service but filed a petition being W.P.C.T. no. 181 of 2006 before this Court.

This Court by the order dated May 12, 2016 passed the following interim order:-

“..... The direction of the Tribunal to reinstate the applicant i.e. the deceased employee with immediate effect by treating his absence from duty, as admissible under law has not been complied admittedly by the petitioners. In these circumstances, before we hear the petition, we direct the petitioners to compute the amount that the deceased employee would have earned from 14th January, 2006 till his date of death or retirement, whichever is earlier, within four weeks from today. The amount shall include Basic Pay, D.A. and all other admissible allowances. The amount shall be deposited with the Registrar General of this court. The Registrar General shall invest the amount in a nationalized bank for a period of fifteen days to be renewal thereafter till the writ petition is decided.”

The petitioners complied with the said order. While the said writ petition was pending, the employee died on January 18, 2011.

This Court by the order dated December 19, 2017 modified the order of dismissal that of compulsory retirement with effect from April 16, 2001 and held that the employee is entitled to all the retiral benefits and directed the petitioners to pay amounts after deducting the amounts deposited with Registrar General of this Court. This Court directed the Registrar General of this Court to release the amount, deposited by petitioners in favour of the respondent no. 1.

The respondent no. 1 sought for family pension by filing a Contempt application No. W.P.C.R.C. 137 (W) of 2018 in W.P.C.T. 181 of 2008 when the petitioners did not give the family pension. This Court dismissed the Contempt Application holding that the reliefs sought for by the respondent no. 1 is separate cause of action. Then the respondent no. 1 filed the present O.A. No. 414 of 2019 for sanction of the arrears of pension payable to her husband from the date of his compulsory retirement from service that is on April 16, 2001 to January 17, 2011 till the date of death of her husband and also sought for family pension to her.

The petitioners resisted the same by filing a reply before the Tribunal on the ground that the employee, Somnath Chakraborty did not complete the qualifying service of ten years and the respondent no. 1 is not entitled the family pension.

The Tribunal by the order dated March 21, 2022 taking into consideration that by the earlier order, the dismissal order of the employee was set aside and the petitioners were directed to reinstate the employee into service held that the employee was deemed to be in service and allowed the O.A.

Challenging the said order, the petitioners have come out with the present writ petition.

The contention of learned counsel for the petitioners that this Court by the order dated December 19, 2017 in W.P.C.T. No. 181 of 2006 modified the order of dismissal into compulsory retirement with effect from the date of original order of dismissal that is on April 16, 2001. Therefore, the employee did not complete the qualifying service of ten years and, hence the respondent no. 1 is not entitled to family pension. The said contention cannot be accepted for the reason that the Tribunal by the order dated January 13, 2006 made in O.A. no. 1202 of 2001 directed the petitioners to re-instate the employee into service.

This Court also in Writ Petition no. 181 of 2006 filed by the petitioners by the interim order dated May 12, 2006 taking into consideration the order of the Tribunal directed the petitioners to calculate the amount payable to the employee from January 14, 2006 to till his retirement or death, whichever was earlier.

In view of the order dated May 12, 2006 of this Court the employee was deemed to be in service till his death on 18.01.2011.

The petitioners did not challenge the said interim order dated May 12, 2006 but complied with the same by calculating the amount payable to the employee and deposited the same into account of Registrar General of this Court.

In the order dated December 19, 2017 made in Writ Petition no. W.P.C.T. 181 of 2006, this Court directed payment of amount deposited with the Registrar General of this Court to the respondent no. 1 and did not restrict the amount payable to the respondent no. 1 only up to the date of original dismissal order i.e., on April 16, 2001 while modifying the order of original dismissal order into that Compulsory Retirement.

In view of the same, it is deemed that the employee was in service till his date of death i.e., on January 18, 2011 and the employee has completed ten years of service from March 1, 1993 to January 17, 2011.

The Tribunal has considered all the above materials placed before it on merits and passed orders by giving cogent and valid reasons.

There is no error in the order of the Tribunal warranting interference by this Court.

With the aforesaid observation, W.P.C.T. 60 of 2022 fails and dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ms. V.M. Velumani, J.)

(Rai Chattopadhyay, J.)