

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 21887 of 2022

**Kalachand Ghatak and another
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. R.N. Chakraborty
Hearing concluded on	:	14.08.2023
Judgment on	:	21.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are the heirs and legal representatives of Late Sachipati Ghatak. The petitioner no.1 is the son and the petitioner no.2 is the daughter of the said deceased. Late Sachipati died on December 28, 1981. It is alleged that during his lifetime, the said deceased was an employee, being an ambulance driver of the Katwa Sub-Divisional Hospital and had died in harness, leaving behind his wife and children. The wife of Late Sachipati also met her demise subsequently, leaving the petitioners as her only heirs.
2. In the year 1983, the petitioners' mother made an application to the competent authority seeking employment of her son, the petitioner no.1, on compassionate ground. The Sub-Divisional Medical Officer, Katwa, forwarded the application to the Chief Medical Officer of Health, Burdwan. Thereafter, the matter went before several forums

and ultimately, pursuant to a direction of a Division Bench of this Court, was remanded to the West Bengal Administrative Tribunal, which directed the service book of the deceased to be reconstructed. Ultimately, however, the matter went up to the Lokayukta, West Bengal before whom it was disclosed by the respondent-Authorities that nothing had been produced by the petitioners to indicate the continuance of service of Late Sachipati after the year 1965, nor was any information available in such regard in any of the relevant offices where he had worked according to the petitioners.

3. Being thus aggrieved and seeking disbursal of the pensionary/retiral benefits available to the said ex-employee, including compassionate appointment, and interest on such amount, the present writ petition has been filed.
4. Upon hearing the learned advocate for the petitioners, it is evident that the first such application, for compassionate appointment on the demise of Late Sachipati on December 28, 1981, was made in the year 1983.
5. The matter was taken up by the concerned authorities. In a communication dated August 16, 1983 by the Sub-Divisional Medical Officer, Katwa SD Hospital to the Chief Medical Officer of Health (CMOH), Burdwan, it was informed that Late Sachipati Ghatak had worked in the said hospital up to May 18, 1965 as per the records available in the office and was paid salary up to that date, when he was on deputation at the Asansol LM Hospital. However, no other records were available in the office.

6. The matter went before different forums over the next several years, but nothing could be found from the records of the respondent-Authorities to substantiate the continuance of service of Late Sachipati after May 18, 1965. At the same time, no document has been produced by the respondent-Authorities to indicate that Late Sachipati was ever suspended, retrenched or retired from service.
7. Unfortunately, the petitioners also could not produce any document whatsoever to substantiate their claim that Late Sachipati died in harness in December, 1981,
8. Initially, the endeavour on the part of the mother (since deceased) of the petitioners was to seek compassionate appointment of her son, the petitioner no.1.
9. To such end, the CMOH, Burdwan wrote to the Director of Health Services in the year 1984, forwarding for favour and for taking necessary action such request for compassionate appointment, wherein it was mentioned that Late Sachipati Ghatak was an ambulance driver.
10. The same was acted upon and the authorities requested comments on several scores. One of the queries in such communication dated August 2, 1984, annexed at page 18 of the writ petition, was whether the deceased Late Sachipati Ghatak, ex-ambulance driver, Katwa SD Hospital, died in harness. The PA to the Director, Health Service replied to such query of the CMOH, Burdwan, in the positive. Thus, as on August 2, 1984, it is clear from the stand taken by the Director

of Health Services that Late Sachipati, an ex-ambulance driver of the Katwa SD Hospital, had died in harness.

11. The said piece of evidence is one of the important links in the chain in the present matter, establishing that Late Sachipati died in harness.
12. A Three-Men Enquiry Committee had been formed to consider the case of the petitioners as well as another employee. The Special Officer (Pension), Directorate of Health Services, West Bengal also wrote to the Superintendent, Katwa Sub-Divisional Hospital on April 22, 2015, inviting a reference to the disbursal of pensionary benefits of Late Sachipati, asking the Superintendent to furnish the latest development regarding such disbursal of pensionary benefits. In a communication by the Joint Director of Health Services (Personnel), West Bengal dated May 28, 2015, annexed at page 27, written to the Member Secretary, West Bengal Commission for Women, who also took up the issue at the behest of petitioner no.2 and her mother, it was indicated that Late Sachipati was an ex-employee and had died in harness but the request of compassionate appointment was rejected on the ground of late submission of prayer.
13. The West Bengal Administrative Tribunal, *vide* order dated November 26, 2018, also rejected the prayer for compassionate appointment on the ground of delay, by relying on Section 21 of the Administrative Tribunal Act, 1985, but did not take into account the prayer for disbursal of retiral benefits. The order was challenged before a Division Bench of this Court in WPST 5 of 2019, which was decided on

February 25, 2019, *inter alia* remanding the matter to the Tribunal on the issue of the release of death-cum-retiral benefits.

14. By a subsequent order dated September 32, 2019, the Tribunal observed that since there is dearth of records and as it appears from the reply that service book could not be reconstructed due to non-availability of instructions from higher authority, the application was disposed of by directing the CMOH, Burdwan to first decide, by passing an order regarding the identity of the applicants and length of service of the deceased Government Employee Sachipati Ghatak, after verifying the records. If he was satisfied about the identity of the applicant and confirmed the length of service, he was to immediately seek necessary orders for reconstruction of the service book and the Additional Chief Secretary, Department of Health Services was to issue necessary orders for reconstruction, after the matter regarding grant of pensionary and/or retiral benefits being considered by the CMOH as per the said directions.
15. However, even thereafter, nothing happened. Ultimately, the matter was taken to the Lokayukta who, *vide* order dated December 29, 2021, adjourned the hearing and directed the Secretary, Finance Department, Government of West Bengal to expedite the matter considering that the case is long pending and there is an order of the Tribunal as far back as in the year 2019.
16. In short, as of today, the only sanguine factor in the case is that Late Sachipati had worked as an ambulance driver in the Katwa SD

Hospital at Burdwan, having been deputed at Asansol LM Hospital, up to May 18, 1965, till when he was paid salary.

17. It is also sanguine, as established by his death certificate, that Late Sachipati died on December 28, 1981 which, according to the petitioners, is within the tenure of his normal service period.
18. The doubt arises as to whether Sachipati's service continued after May 18, 1965 till his demise in December, 1981.
19. There are two indicators in the materials on record which favour the petitioners' claim that Sachipati's service had continued and he had died in harness. The first is the communication by the Director, Department of Health on August 2, 1984 to the CMOH, Burdwan, which indicated that the deceased Sachipati, an ex-ambulance driver of the Katwa SD Hospital, had, indeed, died in harness (Annexure P-3 at page 18 of the writ petition). Secondly, in a reply to the Member Secretary of the West Bengal Women's' Commission, the Joint Director of Health Services (Personnel) West Bengal, wrote on May 28, 2015 that the compassionate appointment prayer of the petitioners was rejected in view of the delay in filing the same, in the same breath observing that Late Sachipati was an ex-employee who died in harness on December 28, 1981.
20. The petitioners, who were quite young at the relevant juncture when Sachipati was in service and even when he met his demise, cannot be expected to be in custody of relevant papers regarding the service of Sachipati.

- 21.** Insofar as the burden of proof is concerned, it is the employer of Sachipati who ought to have special knowledge regarding Sachipati's continuance in service with the said employer or otherwise. Section 106 of the Evidence Act, 1982 provides that when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him.
- 22.** In the present case, special knowledge lies with the employer, since the matter concerns service of an employee. The heirs of the deceased employee are not expected to carry documents regarding such service. The inability of the employer to produce service records all along, at least since 1983, cannot be justified in any manner.
- 23.** As per Section 106 of the Evidence Act, the burden lies on the employer, having special knowledge, to produce such documents, in the absence of which adverse inference may very well be drawn against the employer.
- 24.** Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. *Illustration (d)* under Section 114 is, that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence.
- 25.** Sachipati's service was admittedly continuing at least till May 18, 1965. In normal course of things, the said service would continue to

subsist till his demise in 1981. Since it is the employer who insists that the same ceased within a period shorter than that, the burden lies on the employers to establish that Sachipati was terminated or retrenched or left service prior to his demise.

- 26.** In the present case, such proof is entirely absent and the respondent-Authorities seek to wash off their hands on the flimsy pretext that the relevant records were not available. The ground of delay cannot be a relevant factor, since a similar stand has been taken by the employer from 1983, when the poor wife of the deceased employee first started the family marathon from pillar to post.
- 27.** Such legacy is still being continued, since the petitioners have been fighting to the hilt, first to get compassionate appointment and then to get disbursal of the pensionary/retiral benefits on the death of their father, Late Sachipati.
- 28.** In the context of the above discussions, it was for the respondent-Authorities to produce the records either to show that Sachipati's service was continuing or that the same was terminated prior to its natural tenure. Having failed to do so, adverse inference has to be drawn against the respondent-Authorities. Accordingly, it is presumed that if the records were produced, the same would operate to the detriment of the employer's interest.
- 29.** Hence, in the absence of any material to show that late Sachipati was ever suspended, retrenched, dismissed or retired from service before his death, the petitioners are definitely entitled to the entire pensionary/retiral benefits due on the demise of their father, Late

Sachipati Ghatak, the ex-employee and ambulance driver with the Katwa SD Hospital, Burdwan on his demise on December 28, 1981.

- 30.** Accordingly, WPA No.21887 of 2022 is allowed on contest, directing the respondent no.7, the Special Officer (Pension) Government of West Bengal, to disburse the entire retiral/pensionary benefits of Late Sachipati Ghatak, an ex-employee of the Katwa Sub-Divisional Hospital, Paschim Burdwan, calculating such pensionary benefits by applying the appropriate scales for the entire period till the demise of Late Sachipati on December 28, 1981. Such disbursal shall be effected within two months from the date of communication of this order to the respondent no.7.
- 31.** It ought to be recorded here that interest is not being awarded on such amount, since I cannot find any patent mala fides on the part of the respondents, as it genuinely appears that the respondents have, over a period of time, made efforts to trace out the records of service of late Sachipati Ghatak and there was a bona fide doubt all along as to the entitlement of the petitioners to the retiral/death benefits of the said employee.
- 32.** The respondent-Authorities are also directed to consider as to whether either of the petitioners is entitled to family pension on the demise of Late Sachipati on December 28, 1981. Upon deciding on such issue, a communication in that regard shall be made to the petitioners by the respondent-Authorities, within one month from date.

- 33. It will be open to the petitioners, if aggrieved by such decision, to prefer a further challenge before the appropriate forum or by way of a properly constituted writ petition before this Court.
- 34. There will be no order as to costs.
- 35. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(**Sabyasachi Bhattacharyya, J.**)