

09.02.2023

WPCT 137 of 2022

Court : 04
Item : 02
Matter : **WPCT**
Status : DISMISSED
Transcriber: nandy

Union of India & Anr.
Vs.
Falguni Karmakar

Mr. Amit Chakraborty, Advocate
Ms. Sarda Sha, Advocate

.....for the Petitioner

The instant writ-petition pertains to a claim of family pension by the younger daughter of the deceased Government employee when admittedly the elder sister is alive.

The father of the applicant namely Sailendranath Karmakar was an employee in the Eastern Railway, Howrah Division Ex-AME/HWH and died intestate on 29.01.1994 leaving behind his wife, two daughters and a son. Admittedly the eldest daughter being the eldest child of the deceased Government employee is a widow and foregoes her right to claim family pension upon the death of her mother who was admittedly getting the family pension. The applicant being the unmarried daughter, applied for a family pension after obtaining a 'no objection certificate' from her elder sister on the score that she was dependent upon the deceased mother.

Since the authority did not respond to the application filed by the applicant, she was constrained to move the Tribunal and by the impugned order the Tribunal directed to issue the order of family pension in favour of the applicant along with admissible interest within 30 days from the date of receipt of the said order.

At the very outset, we must record that the learned Advocate appearing for the respondent authority before Tribunal acceded to the claim of the family pension in favour of the applicant to be considered expeditiously and on such ground the Tribunal disposed of the application directing the respondent authority to issue an order of family pension in favour of the applicant along with admissible interest.

It is hasten to add that the moment the concession is made, the higher forum shall seldom interfere with the order passed on such concession. We are not unmindful of the proposition of law that the concession of law made by the Counsel cannot be regarded as a concession, acting as deterrent to exhaust the remedy provided in the statute. The moment the party to the proceeding conceded on fact, later on he cannot be permitted to resile or wriggle-out therefrom. After meaningful reading of the impugned order, we find that the learned Counsel appearing for the respondents before the Tribunal acceded to the proposal on the proposition of law. We thus do not find any fetter on the part of the authority to challenge the said order before the higher forum.

As indicated above, the dispute hinges on the entitlement of the applicant to claim family pension upon the death of her mother. There is no doubt that by virtue of statutory provision the family pension is extended to the child of the Government employee but the dispute boiled down to the issue whether the younger daughter is entitled to a family pension when

admittedly the eldest child of the deceased is alive and there is no document forthcoming that she is ineligible to receive the pension. There has been a constant persuasion on the part of the Employees Association of the concerned department of the Government on extension of the scope of family pension to an unmarried daughter vide office memo dated 06.09.2007. The decision was taken to the extent that the family pension can be granted to the unmarried daughter of servants/pensioners to the Central Government even after attaining the age of 25 years. The aforesaid decision was taken to keep the unmarried daughter at par with the widowed daughter/divorced daughter who is entitled to get the family pension after the age of 25 years. The said office memo indicates further clarification that the grant of family pension to the unmarried/widowed/divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible for grant of family pension unless the next above her has become ineligible for grant of family pension.

There is no document forthcoming from the side of the respondent authorities either before the Tribunal or in the instant writ-petition that the eldest widowed sister incapacities herself to receive the family pension. While the said office memo was in vogue, a further issue cropped up in relation thereto when the eldest daughter forego her claim of family pension in favour of the younger sibling.

By virtue of the clarificatory memorandum dated 07.11.2014, the decision was taken by appropriate

authority that there is no provision in Railway Services (Pension) Rules, 1993 regarding one eligible family members foregoing his/her claim for family pension in favour of another family member.

The cumulative of the aforesaid service memos leaves no ambiguity that the family pension can be extended to the unmarried daughter keeping her at par with the divorced/widowed daughter even after attaining the age of 25 years provided she is the eldest child of the deceased Government employee of the Central Government. There is no scope for foregoing the claim of family pension in favour of any other family members and, therefore, even after 'no objection certificate' is issued by the elder sister in favour of the applicant, the same cannot be construed to have been made in accordance with the statutory provision. The moment the embargo is created and the clarification has been issued by the competent authority, the Tribunal cannot usurp the power and issue writ of mandamus commanding the authority to do an act forbidden by law.

The order impugned, therefore, cannot be sustained. The same is hereby set aside.

The writ-petition being **WPCT 137 of 2022** thus succeeds and **disposed of** accordingly.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

