

06.02.2024
Item No.06
Court No.11
Avijit Mitra

WP.CT 19 of 2024

In re: An application under Article 226 of the Constitution
of India;

And

Union of India & ors.
-Versus -
Smt. Buby Hela

Mr. Amitabha Nayak
...for the petitioners
Ms. A.A. Gayen
...for the respondent

Affidavit of service filed by the petitioners be kept on
record.

The present writ application has been preferred the
Union of India and its functionaries challenging an order
dated 19th July, 2023 passed by the learned Tribunal in a
modification application being M.A. No.480 of 2021 filed in
connection with an original application being OA
No.350/01138/2018. By the said order, the learned Tribunal
dismissed the application being M.A. 480 of 2021 and passed
a direction towards issuance of notice to the respondents to
file their show cause in connection with the contempt
application being CPC No.87 of 2022 preferred alleging

violation of the order dated 15th July, 2021 passed in OA No.350/01138/2018.

Mr. Nayak, learned advocate appearing for the petitioners submits that the learned Tribunal did not take into consideration the fact that by an order dated 13th December, 2005, the husband of the respondent herein was rightly removed from service *inter alia* on the ground of unauthorised absence for a substantial period of time. The respondent's husband was a habitual absentee and no explanation was furnished as regards his absence in service and in view thereof, the respondent's claim was rightly refused by the order dated 19th April, 2018 impugned in the original application. There was no infirmity in the decision-making process and the learned Tribunal erroneously acted as an appellate authority and interfered with the order of punishment. Such argument, as advanced, was glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Ms. Gayen, learned advocate appearing for the respondent denies and disputes the contention of the petitioners and submits that the respondent's husband while working as a safaiwala under the railways was illegally removed from service by an order dated 13th December, 2005 without furnishing any reason. The respondent's husband ultimately expired on 3rd June, 2010. The respondent submitted a representation to the authorities for disbursement of the pensionary benefits. As such claim was

not considered, she was constrained to prefer an original application being O.A. No.1341 of 2017 which was disposed of by an order dated 22nd November, 2017 directing the competent authority to consider and dispose of the respondent's representation. Pursuant thereto, an order was passed on 19th April, 2018 which was assailed in the original application being O.A. No.350/1138/2018. Upon contested hearing, the learned Tribunal by an order dated 15th July, 2021 quashed the order dated 19th April, 2018 and directed the respondents to disburse the benefits of family pension, gratuity, compassionate allowance and other financial benefits. The said order dated 15th July, 2021 was not challenged by the petitioners, instead they filed a modification application about two months thereafter. The learned Tribunal upon considering the said sequence of facts rightly dismissed the modification application.

Heard the learned advocates appearing for the respective parties and perused the materials on record.

Indisputably, the original application being O.A. No.350/01138/2018 was disposed of by an order dated 15th July, 2021 upon contested hearing. The said order was not challenged before the higher forum and as such the same attained finality amongst the parties therein. The argument of the petitioners that the learned Tribunal before passing the order impugned ought to have noted that the respondent's husband could not explain the period of absence and was rightly removed from service, was rightly

discounted by the learned Tribunal as such contention could have been advanced in an appeal against the order dated 15th July, 2021 passed by the learned Tribunal.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned.

The writ petition being WPCT 19 of 2024 is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)