

05.02.2024
rpan/A4

COCT 1 of 2021

Union of India & Others

- Versus -

Smt. Lipika Sarkar (Barui)

Mr. Nirbanesh Chatterjee
... for the Petitioners.

Mr. Ashok Sarkar,
Mr. Subrata Banerjee
...for the Respondent.

The present writ petition has been preferred challenging an order dated 19th August, 2020 passed by the learned Central Administrative Tribunal, Kolkata Bench in the original application, being O.A. 350/335/2018.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that the respondent's father, who was an employee of Indian Council of Agricultural Research (hereinafter referred to as the ICAR) retired on 31st December, 1997 and expired on 24th April, 2001. His wife expired prior thereto, on 15th November, 1973. The daughter of the deceased being the respondent herein got married on 6th December, 1985. Subsequent thereto, she filed a divorce suit on 7th April, 2006 and she was granted divorce on 3rd January, 2007. Since the divorce proceeding was initiated and the decree of divorce was passed after the death of the deceased, the respondent's claim was rightly rejected on the basis of office memorandum dated 19th July, 2017. Such

argument, as advanced, was not properly appreciated by the learned Tribunal and the original application was allowed on the basis of an erroneous observation that a vested right had accrued in favour of the respondent to avail the benefits of family pension.

He argues that the respondent was not dependent upon her father, who expired on 24th April 2001. On the date of such demise the respondent was a member of her husband's family as she got married on 6th December, 1985 and instituted the divorce proceeding on 7th April, 2006. 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.

Per contra, Mr. Sarkar, learned advocate appearing for the respondent submits that on the basis of the orders passed by the Hon'ble High Court in previous proceedings, the pension payment order was issued in favour of the respondent *vide* memo dated 2nd May, 2017 sanctioning family pension from the date of her divorce, i.e., 3rd January, 2007. Surprisingly, thereafter the Finance & Accounts Officer of the ICAR sought for a clarification *vide* memo dated 28th July, 2017 and in response thereto, by a memo dated 31st August, 2017 it was directed that the respondent is not entitled to family pension in view of the office memorandum dated 19th July, 2017. Aggrieved thereby,

the respondent was constrained to approach the learned Tribunal and the same was disposed of by the order impugned in the present writ petition rightly observing that the right to receive family pension accrued prior to introduction of the office memorandum dated 19th July, 2017.

We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

Indisputably, the learned Tribunal by an earlier order dated 31st March, 2005 held that the employees of ICAR are entitled to pension. In the said application the respondent's father was a party. ICAR thereafter challenged the said order before this Court and the same was dismissed. In terms of the Court's directive, the respondent produced the succession certificate and thereafter, the pension payment order was issued on 2nd May, 2017 sanctioning family pension with effect from 3rd January, 2007. Subsequently, an office memorandum dated 19th July, 2017 was issued. Clause 6 of the said memorandum runs as follows:

“6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce

took place after their death – provided the claimant fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

The learned Tribunal, in our opinion, rightly discounted the argument of the petitioners, as advanced, placing reliance upon the office memorandum dated 9th July, 2017 since the said memorandum was not given any retrospective effect. Prior to issuance of the said memorandum, the pension payment order was issued on the basis of the order passed in writ proceedings, which attained finality amongst the parties. In the said conspectus, the memo dated 31st August, 2017 was rightly quashed.

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.

Accordingly, the writ petition, being COCT 1 of 2021 is dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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