

10.05.2024
Item No.
ML-380
Court No.5
Saswata

**CPAN 401 of 2023
with
CAN 3 of 2023
CAN 4 of 2023
in
W.P.A. 2630 of 2013**

**Shanti Kumari Burah
Versus
Samir Kumar**

Mr. Dilip Kumr Samanta
Mr. Biswapriya Samanta

...For the applicant

Mr. K.P.Chatterjee
Mr. Rajendra Banerjee

...For the alleged contemnor

CPAN 401 of 2023 with CAN 4 of 2023

1. This application being CAN 3 of 2023, is an application for modification of the order dated 22nd November, 2022 passed in WPA 2630 of 2013. The writ petition being WPA 2630 of 2013 was filed challenging the order dated 30th October, 2012 passed by the Member (Staff) of the Railway Board.
2. Records would reveal that the petitioner's husband Ramjee Burah who was an employee of the Railway Protection Force unit of Chittaranjan Locomotive Works, was dismissed from service by an order dated 29th November, 1979. Challenging the aforesaid order of dismissal, a writ petition being CR No. 1048 (W) of 1981 was filed. During pendency of the writ petition, the petitioner's

husband reached the age of superannuation. On contested hearing by an order dated 29th April, 1991, a Coordinate Bench of this Court while allowing the writ petition, directed the respondents to pay all settlement dues within 6 months by treating said Ramjee Burah, since deceased, not to have been removed from service.

3. The petitioner's husband died on 16th May, 2004. Subsequent to the death of the petitioner's husband, a representation was made for appointment of the petitioner's son on compassionate ground. Since such representation was not considered, a writ petition being WP no. 5366 (W) of 2009 was filed. The said writ petition was disposed of by judgment and order dated 22nd May, 2009, *inter alia*, observing that the respondents ought to have taken into consideration the provisions contained in Rule 50 of the Rules which enables the Central Government to grant appointment in special cases. While granting liberty to the petitioner to file an appropriate representation before the Secretary, Ministry of Railways giving full facts and figures of her sufferings and miseries, the Court directed the Secretary, Ministry of Railways upon receipt of such representation to consider the same in accordance with law after giving opportunity of

hearing to the petitioner or her representative and thereafter to pass a reasoned decision on the petitioner's prayer.

4. Records reveal that in terms of the liberty afforded by the Co-ordinate Bench of this Court, the petitioner had submitted a representation addressed to the Secretary, Ministry of Railways, Rail Bhavan, New Delhi. Unfortunately, the same was disposed of by the Member (Staff) of the Railway Board on 30th October, 2012, who did not have the jurisdiction to dispose of the same.
5. Being aggrieved, the writ petition being WPA 2630 of 2013 was filed.
6. Upon hearing the parties, this Court by an order dated 22nd November, 2022 by setting aside the order solely on the ground of lack of jurisdiction on the part of the Member (Staff) of the Railway Board to exercise jurisdiction of the Secretary, Ministry of Railways, had directed the respondent no. 2 being the Secretary, Ministry of Railways to forthwith comply with such direction. When the writ petition being 5336 of 2009 or the aforesaid writ petition being WPA 2630 of 2013 was disposed of, the learned advocates appearing for the Union of India did not raise any objection, nor did they point out that the post of Secretary, Ministry of Railways is non-existent.

7. When the present contempt application was filed for non compliance of the order dated 22nd November, 2022, it is for the first time that a disclosure has been made with regard to the factum of the post of the Secretary, Ministry of Railways being non-existent. In fact in the affidavit in opposition filed by the respondents it was claimed that the respondent no.3 is in the hierarchy of the Secretary, Ministry of Railways, there was not event a whisper that the said post was non-existent.
8. It is rather unfortunate that the respondents had permitted this Court to pass orders for having the representation of the petitioner to be considered by the Secretary, Ministry of Railways which according to them was a non-existent post. Be that as it may, considering the peculiar facts of the case I am of the view that justice would be sub-served if having regard to the disclosure made by the Secretary, Railway Board and on the basis of the representation made by the learned Advocates for the parties, the Chairman, Railway Board is directed to consider the petitioner's representation in terms of the direction passed by this Court on 22nd November, 2022 read with the judgment and order dated 22nd May, 2009 passed by the Hon'ble Justice Dipankar Datta in WP no. 5366 (W) of 2009.

9. The representation dated 9th July, 2009 addressed to the Secretary, Ministry of Railways be treated as a representation addressed to the Chairman, Railway Board and the Chairman, Railway Board is directed to forthwith comply with the directions passed by the Coordinate Bench of this Court in terms of the judgement and order dated 22nd May, 2009 passed in WP no. 5366 (W) of 2009, by treating the direction on the Secretary, Ministry of Railway as a direction on the Chairman Railway Board, within a period of 6 weeks from the date of communication of this order upon giving an opportunity of hearing to the petitioner or her authorised representative.
10. Such decision must be taken in terms of the observations made in the judgment and order dated 22nd May, 2009. The delayed consideration of the representation should not be a bar for consideration of the representation in terms of the direction passed by a Coordinate Bench of this Court on 22nd May, 2009. The said representation must be considered on the basis of the facts and circumstances that existed on the date of making the representation.
11. In view thereof, the order dated 22nd November, 2022 stands modified to the extent indicated hereinabove, and the above modification has been

necessitated in the peculiar facts of the case. The application being CAN 4 of 2023 is accordingly disposed of.

12. Having regard to the aforesaid, since nothing survives in the contempt application being CPAN 401 of 2023, the same is accordingly dropped and dismissed. The application filed by the respondents, being CAN 3 of 2023 having become infructuous is also disposed of.

13. All parties to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)