

WPCT 75 of 2008
(Union of India & Ors. Vs. S. Uma Maheswari)

Mr. Dilip Kr. Chatterjee
Mr. Ashok Halder

.... For the petitioners

Mr. Ujjal Ray
Mr. Arpa Chakraborty

..... For the respondent

The present writ petition has been preferred by the Union of India and its functionaries challenging an order dated 27th November, 2007 passed by the learned Tribunal in the original application (hereinafter referred to as the OA), being OA 1 of 2007.

Records reveal that the respondent earlier preferred an OA being OA 1004 of 2003 challenging an order dated 3rd June, 2003 by which the respondent's prayer for grant of family pension on account of the service rendered by her husband was turned down by the competent authority. The said OA was disposed of on 28th December, 2005 directing the competent authority to consider the respondent's claim keeping in view the judgment delivered by the Hon'ble Supreme Court in the case of *Prabhavati Devi Vs. Union of India & Ors.*, reported in 1996 SCC (7) 27. Pursuant to such direction the petitioner no. 3 herein passed an order on 2nd March, 2006 again rejecting the respondent's claim. Challenging the same the respondent preferred the OA 1 of 2007 which was disposed of by the order impugned in the present writ petition. During pendency of the present writ

petition, the respondent preferred a miscellaneous application being MA 93 of 2022 for execution of the order dated 27th November, 2007 and the same was disposed of on 6th May, 2024 with liberty to the respondent to file a comprehensive representation for consideration of the competent authority.

In the present writ petition, an order was passed on 10th April, 2008 directing the parties to exchange their affidavits and the Administration was directed to calculate the pension amount and to give the figures to the learned advocate appearing for the respondent. It was also observed that no pension amount shall be released and the respondent would be entitled to interest @ of 9% if the application fails. The said interim order was directed to continue till 31st October, 2008 or until further orders whichever is earlier. Subsequently, the writ petition was dismissed for default on 20th March, 2009. Thereafter, by an order dated 1st March, 2010, the writ petition was restored. Pursuant to the direction of this Court the parties exchanged their affidavits in the present writ petition.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that the learned Tribunal erroneously arrived at a finding that the respondent is entitled to a pensionary benefits as per the dictum laid down by the Hon'ble Supreme Court in the case of *Prabhavati Devi* (supra) failing to appreciate that the said judgment is clearly distinguishable on facts.

He argues that a substitute employee cannot be deemed to be a railway servant unless he is absorbed in the regular railway service as per the Railway Services (Pension) Rules, 1993. Admittedly, the respondent's husband was not regularized and that he was not screened and granted temporary status. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

According to Mr. Chatterjee, as per the paragraph 5 of SE Rly. Estb. Sl. No. 5/2004 family pension is applicable to all regular employees on pensionable establishment, temporary or permanent and that substitute employees do not come under the purview of pensionable establishment. The respondent's husband was engaged as a substitute on 21st June, 1971 and he expired thereafter on 19th December, 1972 and his service for one year five months and 28 days was not regularized before his death. In the said conspectus, respondent is not entitled to family pension.

Mr. Ray, learned advocate appearing for the respondent, however, denies and disputes the contention of the petitioners and submits that the order passed in the earlier OA 1004 of 2022 was accepted by the petitioners and the same was not challenged and as such the findings arrived at in the said order attained finality amongst the parties but while passing the order impugned in the OA 1 of 2007, the petitioners did not abide by the observations made by the learned Tribunal in the earlier OA 1004 of 2022. In view

thereof, the order dated 2nd March, 2006 impugned in OA 1/2007 was rightly set aside and the respondents were directed to reconsider the matter and to grant family pension.

He further submits that treating the respondent's husband to be a regular railway employee, the petitioners granted compassionate appointment to the respondent.

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

In the case of *Prabhavati Devi* (supra) the Hon'ble Supreme Court was considering the claim of a substitute working in a regular scale of pay. In the said judgment the Court observed that as per the rules applicable to the railway establishments, the substitutes are entitled to all the rights and privileges as may be admissible to temporary railway servants, on completion of six months continuous service. Indisputably in the instant case, the respondent's husband worked for more than six months having been appointed as a substitute upon screening. He continuously discharged service for more than one year prior to his unfortunate death. The facts and circumstances involved in the present *lis* are, thus, similar to the facts and circumstances involved in the case of *Prabhavati Devi* (supra).

In OA 1004 of 2023 the learned Tribunal observed that the judgment delivered in the case of *Prabhavati Devi* (supra) was neither set aside nor reversed and that the said judgment is binding upon the learned Tribunal and that as

such, it cannot take any different view. The said order dated 27th November, 2007 passed in OA 1004 of 2023 was admittedly not challenged by the petitioners and accordingly they cannot wriggle out of the rigors of the said order passed arriving at a finding as regards screening and appointment of the respondent's husband. The observations made in the earlier OA were reiterated in the subsequent OA 1 of 2007 and on the rudiments of such findings arrived at in the earlier OA, the learned Tribunal rightly set aside the order dated 2nd March, 2006.

A patent error is an error which is self-evident, i.e., which can be perceived and demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning.

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

The writ petition, being WPCT 75 of 2008 is, accordingly, dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Supratim Bhattacharya, J.) (Tapabrata Chakraborty, J.)