DL-23

26.06.2024
Court No.26
(AD)

FMA 1090 of 2021
With
IA No.: CAN 1 of 2023
With
IA No.: CAN 2 of 2023

Smt. Soma Saha
Vs.
Union of India & Ors.

Mr. Tarapada Das
Mr. Chandan Dutta
Mr. Goutam Malik
… for the appellant.

Mr. Satyendra Agrawal
Mr. Bijoy Bag
… for the E.P.F.O-respondent.

In Re.: **IA NO.: CAN 1 of 2023**

1. IA No.:CAN 1 of 2023 is an application seeking condonation of delay of 163 days in preferring the appeal.
2. Department gave a note stating that the appeal was filed within time in view of the order of the Supreme Court dated March 23, 2020 relating to covid period.
3. In such circumstances, **IA No.: CAN 1 of 2023** is disposed of by holding that the appeal is within time.

In Re.: **FMA 1090 of 2021**
With
IA No.: CAN 2 of 2023

4. By consent of the parties, the appeal is taken up for final hearing.
5. Appeal is at the behest of the writ petitioner and

is directed against an order dated February 9, 2021 passed in WPA 10568 of 2016.

6. Learned Advocate appearing for the appellant draws the attention of the Court to a Memorandum dated July 19, 2002 issued by the Department of Pension and Pensioner's Welfare of the Ministry of Personnel, Public Grievances and Pensions, Government of India and submits that, appellant is entitled to family pension. He also refers to the Employees' Pension Scheme, 1995 and contends that, the appellant is entitled to family pension. He submits that, although, the appellant is aged about 58 years, nonetheless, appellant is entitled to family pension as, she is a widow.

7. Respondents are represented.

8. It appears from the records that, appellant applied for family pension which was rejected by the authorities. Thereafter, an appeal was preferred by the appellant which was disposed of by an order dated February 18, 2015. The authorities noted the contentions of the appellant and found that the appellant was 34 years of age when he was seeking family pension. Authorities referred to paragraph 16(3)(c) of the Employees' Pension Scheme, 1995 and stated that, monthly children pension shall be payable until the child attains the age of 25 years. Since the appellant as a

daughter of the deceased employee attained an age in excess of 25 years at the point of time when family pension was sought for by the appellant, such claim was rejected.

9. Being aggrieved by such decision, the appellant preferred the writ petition which was dismissed by the impugned order dated February 9, 2021.

10. We find no material irregularity in the order of the authorities rejecting the claim for family pension at the behest of the appellant. Appellant was aged 34 years when the prayer for family pension was made. Family pension of the deceased employee was governed by the provisions of the Employees' Pension Scheme, 1995. Nothing is placed on record to suggest that, the decision of the authorities dated February 18, 2015 is perverse.

11. Learned Single Judge, by the impugned order, found that, the appellant as the writ petitioner was without any legal right to claim family pension.

12. As noted above, family pension is payable to a child of the deceased till such time such child attains the age of 25 years as on the date for applying the family pension, in accordance with the Pension Scheme applicable. The appellant was in excess of prescribed age of 25 years. Consequently, we find no merit in the present appeal.

13. **FMA 1090 of 2021** along with all connected applications are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)