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01.05.2024
Ct. No. 11
Jayanta

WP.CT 168 of 2023

**Union of India & Ors.
vs
Sima Chowdhury**

Mr. Pulakesh Bajpayee
..... For the Petitioners.
Mr. A. K. Paul
Ms. Shikha P. Chowdhury
..... For the Respondent.

The present writ petition has been preferred challenging an order dated 2nd March, 2023 passed by the learned Tribunal in the original application, being O.A. No. 1011 of 2022. The operative part of the said order runs as follows:

‘In view of the above, the dismissal order dated 17.10.2002 and speaking order conveying the decision based on the dismissal order dated 17.10.2002, are quashed. The applicant is given liberty to file a comprehensive representation for release of family pension within 30 days of this order, and, the respondents are directed to consider her representation untrammelled by either the order of dismissal of Subhas Chandra Chowdhury dated 17.10.2002 or the alleged delay in making the representation, within 60 days thereafter.

If, after due consideration of the representation, the applicant is found to be eligible for family pension, respondents will pay the monthly family pension to the

applicant within 30 days of arriving at the decision, along with admissible arrears’.

Records reveal that the husband, namely, Subhas Chandra Chowdhury (in short, Subhas) of the original applicant, namely, Sima Chowdhury (in short, Sima) was employed under the North Frontier Railways. He was absent from his duties unauthorizedly since 17th November, 1996 and as such the authorities were constrained to impose a punishment of dismissal from service with effect from 25th October, 2002 in application of the provisions of the relevant Rules. Considering a representation dated 5th September, 1996 filed thereafter by Sima, the dues of GIS and Provident Fund amounting to Rs. 6095/- only was paid to Sima. Subsequent thereto, on 7th March, 2020, Sima applied for payment of family pension and for compassionate appointment of her son. As such prayer was not considered, Sima filed an original application which was disposed of directing the competent authority to consider her claim. Pursuant to such direction, a reasoned order was passed on 26th November, 2021. Challenging the same, Sima preferred the original application, being O.A. No. 1011 of 2022. The order passed in the same has been impugned in the present writ petition.

Mr. Bajpayee, learned advocate appearing for the writ petitioners/respondents in the original application submits that Subhas was dismissed from service for

unauthorized absence and he had forfeited all his service benefits and as such Sima was not entitled to family pension. It would also be explicit from the records that Sima approached the authorities belatedly and the records pertaining to the disciplinary proceedings of Subhas being more than 25 years old could not be produced and the authorities are not under any obligation to preserve documents more than 25 years old. 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.

Ms. Chowdhury, learned advocate appearing for the respondents denies and disputes the contention of Mr. Bajpayee and submits that the petitioners miserably failed to answer the queries of the learned tribunal pertaining to the alleged disciplinary proceeding initiated against Subhas. The petitioners feigned ignorance of the fact that Subhas went missing though such fact, fortified by a certificate issued on 28th August, 2002 by the police authorities, was duly communicated to the petitioners by a representation dated 5th September, 2002 and abruptly thereafter the impugned order of dismissal was passed.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The petitioners herein miserably failed to establish that any disciplinary proceeding was at all initiated

before issuance of the order of dismissal. In the communication dated 17th October, 2022 it was stated that Subhas was absent from duty unauthorizedly since 17th November, 1996 and in exercise of the power conferred under D & A rules, 1968, the competent authority decided to impose the penalty of dismissal of service with effect from 25th October, 2002. There is no reflection in the said communication as regards any proceeding having been initiated for imposition of the said major punishment of dismissal. No material could be produced by the petitioners in support of the contention that any enquiry was conducted upon appointment of any enquiry officer and/or that the provisions of D & A rules were followed.

In the said conspectus, the learned Tribunal rightly set aside the order of dismissal of Subhas and granted liberty to Sima to file a comprehensive representation and the authorities were directed to consider the same untrammelled by either the order of dismissal of Subhas dated 17th October, 2022 or the alleged delay in making the representation.

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.

In view thereof, we are not inclined to interfere with the order impugned and the petitioners' prayer in the writ petition is refused.

As the writ petition was filed before this Court on 25th August, 2023 challenging the order of the learned Tribunal dated 2nd March, 2023, Sima could not file the representation within the time specified and as such, we extend the time for filing such representation for a period of four weeks from date.

With the above observations and directions, the writ petition is disposed of.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

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