

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 2561 of 2019

1(a). Sabiha Khatoon,

1(b). Rabiya Khatoon,

1(c). Sahela Khatoon,

1(d). Sufya Khatoon

All daughters of Late Md. Usman and Hadisha Khatoon, resident of Mohalla Quilaghat, Milan Chowk, P.O. Lalbagh, P.S. Laheriyasarai, District- Darbhanga (Bihar).

.... Petitioners

Versus

1. Deleted vide order dated 17.10.2022
 2. Deleted vide order dated 17.10.2022
 3. General Manager, East Central Railway, Hazipur, P.O., P.S. and district Hazipur, Bihar.
 4. Divisional Railway Manager, East Central Railway, Dhanbad Division, Dhanbad, P.O., P.S. and district Dhanbad.
 5. Senior Divisional Personnel Officer, East Central Railway, Dhanbad Division, Dhanbad, P.O., P.S. and district Dhanbad.
 6. Died and Deleted
- 6-A. Jaslin Hena D/o Late Md. Usman R/o Railway QN. 36/31 Type II, Bhuli, P.O. & P.S. Bhuli, Dhanbad

.... Respondents

CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioners	: Mr. P.K. Mukhopadhyay, Advocate
	: Mr. Wazir Ali, Advocate
	: Mr. R.K. Verma, Advocate
For the Respondents	: Mr. Anil Kumar, A.S.G.I.
	: Mr. Prabhat Kumar Sinha, Sr. P.C.
For the Respondent-6(a)	: Mr. Sheyakur Rehman, Advocate

26/Dated: 12th November, 2024

1. This Court before dealing with the issue on merit finally needs to refer herein the order dated 22nd October, 2024 whereby and whereunder the Divisional Railway Manager (hereinafter referred as DRM), East Central Railway, Dhanbad Division, Dhanbad has been directed to appear in person to explain as to why a proceeding of contempt be not initiated against him for flouting the orders passed by this Court.
2. Two affidavits have been filed, first is by way of supplementary counter affidavit and the second is the show cause filed by the DRM.
3. We thought it proper to deal with the show cause filed by Mr. Kamal Kishor Sinha, DRM, East Central Railway, Dhanbad Division, Dhanbad (Respondent No. 2 herein).
4. It has been stated by the DRM that some negligent approach is there by the subordinate officials. As such, the show causes have been issued to the erring officials to deal with the issue so that the instances may not be repeated in future leading to delay in the Court proceedings.
5. However, the reference of one interlocutory application being IA No. 8821 of 2024 has also been made as would appear from Paragraph 15.
6. This Court has considered the said interlocutory application and found that the said interlocutory application was filed on 20th August, 2024, one day before the matter was heard by this Court.
7. The matter was listed before the Coordinate Bench on 21.08.2024. It appears after going through the said order that the Coordinate Bench while referring the order dated 26.06.2024 and 18.07.2024 by which specific direction was given to the respondent to file affidavit

and come out with a chart showing the payment made to the petitioners or the legal heirs but till date i.e. 21.08.2024 the orders of the Court have not been complied with.

8. The Coordinate Bench, in view thereof, had adjourned the matter by way of last indulgence granting three weeks' time for compliance of the order dated 26.06.2024 and 18.07.2024. It appears that although the interlocutory application was filed being IA No. 8821 of 2024 but it has not been moved before the Coordinate Bench, however, the matter was adjourned to be listed after three weeks.
9. The matter was taken up on 30.09.2024 wherein the prayer for extension of time was made to file affidavit, with a prayer to allow further time till receiving of the records/documents for settlement of payment and filing supplementary affidavit in compliance of the order dated 26.06.2024 and 18.07.2024.
10. Thus, it is evident that no specific time was sought for rather a further time was sought till receiving of the required document.
11. The Coordinate Bench, while passing the order dated 21.08.2024 even though the said interlocutory application had not been placed since there is no reference to that effect in the said order, had adjourned the matter by way of last indulgence for three weeks for compliance of the order dated 26.06.2024 and 18.07.2024.
12. As such, the purpose of the filing of the said interlocutory application had already been served, the moment the Coordinate Bench had passed an order on 21.08.2024.
13. The matter thereafter was listed repeatedly i.e. on 30th September, 2024; 1st October, 2024; 15th October, 2024; 22nd October, 2024.
14. This Court considering the repeated directions and by taking note of the submission made on behalf of the learned counsel for the respondent who has submitted that he is getting no instruction and

as such no affidavits is being filed in terms of the order dated 26.06.2024 and 18.07.2024.

- 15.** However, the learned counsel had tried to impress upon the Court on the basis of oral instruction but this Court had not accepted such argument as has been taken note in Paragraph 11 of the order dated 22nd October, 2024 that the writ petition cannot be disposed of on the basis of the oral instruction of the respondents-Railways “that too when this Court, time and again, had passed direction to file affidavit”.
- 16.** This Court, on the aforesaid backdrop of the conduct, has called upon the DRM, East Central Railway, Dhanbad Division, Dhanbad to appear in person to explain as to why a proceeding for contempt be not initiated against him.
- 17.** The show cause has been filed as has been referred hereinabove wherein the unqualified apology has been tendered.
- 18.** It has orally been stated by the DRM that the actions have been taken as per the conduct rule to deal with the officials who have been given instruction to file affidavit.
- 19.** This Court is of the view that the conduct of the authority cannot be appreciated particularly due to the reasons that the matter is with respect to the disbursement of retiral benefits and family pension of the dependent of the deceased employee who had died sometime in the year 2001 as also the appointment on compassionate ground.
- 20.** However, since it has been undertaken by the DRM that the action is being initiated against the erring officials for the purpose of fixing accountability so that such incidence may not occur in future.
- 21.** Further, the DRM since is at the helm of the affairs is also directed to monitor by creating a special cell to deal with the legal issues.

- 22.** This Court, in view thereof, is accepting the show cause with the aforesaid direction/observation, on the assurance being given by the DRM that he will deal with the issue of the erring officials personally so that the incidence may not be repeated in future.
- 23.** Adverting to the merit of the issue, the writ petition has been filed under Article 226 of the Constitution of India assailing the order dated 08.01.2019 passed by the Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi in Case No. CP/051/00030/2018 whereby and whereunder the learned Tribunal has disposed of the original application based upon the compromise entered in between the children taken birth from the wedlock of both the wives of the deceased employee.
- 24.** The ground has been taken that the Tribunal had been approached for two sets of relief in view of the compromise entered in between the children, first is to provide appointment on compassionate ground and second is the disbursement of retiral benefit/family pension.
- 25.** The supplementary counter affidavit has been filed wherein it has been stated that in terms of the compromise entered in between the parties, the appointment on compassionate ground has been granted in favour of the child taken birth from the wedlock of the second wife and the deceased.
- 26.** The concerned dependent is also a party to the proceeding being respondent No. 6-A which is being represented by the learned counsel, Mr. Sheyakur Rahman.
- 27.** He has submitted that the respondent No. 6-A has been appointed on compassionate ground, as would be evident from statement made in the show cause at Paragraph 11 and we have not denied that.
- 28.** The second issue pertains to the disbursement of the arrears with

respect to the retiral benefit and the family pension which in terms of the compromise is to be paid in favour of the children taken birth from the wedlock of first wife and the deceased employee, they are the petitioners herein being represented by learned counsel Mr. P.K. Mukhopadhyay.

- 29.** The learned counsel for the respondents has submitted by referring to the issue of disbursement of retiral/ family pension having stated in Paragraph 22 supported by Annexure R-12, the order issued by the Senior Divisional Personnel Officer, East Central Railway, Dhanbad Division, Dhanbad dated 24.10.2024.
- 30.** Learned counsel appearing for the petitioners has submitted that so far as the arrear of life time pension from 26.07.2001 to 12.11.2022 is concerned, the total amount assessed is Rs. 3998310 paid to the Sufya Khatoon.
- 31.** Further, the family pension as also shown to be sanctioned by the competent authority and sent Account Department from issuing PPO on 13.11.2022 to onward in favour of Sufya Khatoon, the unmarried daughter of the first wife Hadisha Khatoon and Late Md. Usman (the ex-employee). But, Mr. Prabhat Kr. Sinha, learned counsel appearing for the respondent-Railways who is being assisted by the learned Additional Solicitor General of India has submitted that the Pension Payment Order (PPO) has been issued. Such statement has been given by him on the instruction of the DRM.
- 32.** This Court, in view of the communication, as contained in Annexure R-12, is of the view that the second part of the compromise has also be redressed.
- 33.** The learned counsel appearing for the Petitioners, however, has raised two issues, first is that the petitioner is entitled for interest on account of the delayed payment of the arrears and second is that the penal rent has been charged due to the retention of quarter even

after the death of the employee concerned.

34. Learned ASGI has submitted that these two issues are not the subject matter of the list before the learned Tribunal, rather, the same, if any, is by way of a fresh cause of action.
35. This Court is in agreement with such submission advanced on behalf of the learned ASGI in view of the fact that the High Court while exercising the power conferred to this Court under Article 226 of the Constitution of India is to exercise the power of judicial review of the order passed by the CAT in view of the law settled in the case of ***L Chandra Kumar v. Union of India & Others*** reported in **(1997) 3 SCC 261** wherein at **Paragraph-99** it has been held that the order passed by the learned Tribunal i.e., the Court of first instance is to be looked into by the High Court under Article 226 of the Constitution of India in exercise of power of judicial review.

“99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless,

continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

[emphasis supplied]

- 36.** It is evident from the pleading that the issue of interest of the penal rent was not the subject matter before the Tribunal as such this Court refrain in passing any order on that count. However, the petitioner will be at liberty to ventilate their grievance before the appropriate authority/forum.
- 37.** However, the learned counsel for the petitioners has submitted that so far as the lis of the penal rent is concerned, the details had not been given regarding the charging of the penal rent. Upon this, the DRM has stated that the details will be furnished within two weeks.
- 38.** Let the details of the retention of the penal rent be supplied to the petitioners within two weeks from today.
- 39.** The writ petition being W.P.(S) No. 2561 of 2019 stands disposed of.
- 40.** Pending interlocutory application(s), if any, also stands disposed of.
- 41.** The personal appearance of the officer concerned is dispensed with.

(Sujit Narayan Prasad, J.)

(Navneet Kumar, J.)

Samarth/