2024:BHC-NAG:4329-DB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2471 OF 2020

1) Union of India,
through General Manager,
South East Central Railway,
Bilaspur – 495004.

2) Divisional Railway Manager,
South East Central Railway,
Nagpur – 440001.

3) Chief Workshop Manager Motibagh,
South East Central Railway,
Nagpur – 440014.

4) Financial Advisor & Chief Accounts
Officer, South East Central Railway,
G.M.'s Office, Bilaspur – 495004.

5) Financial Advisor & Chief Accounts
Officer, South Eastern Railway,
Garden Reach, Kolkata – 700043. .... **PETITIONERS**

VERSUS

1) Ku. Sayyada Naima Akhatar,
Unmarried Daughter of Shri
Hussain Ali, Aged 51 years,
Occupation – Nil.

2) Shaukat Ali s/o Hussain Ali,
Aged 59 years, Occupation – Labour,

Both R/o C/o Ahmad Haji, Panai
Peth Road, in front of Manjusha
Covent, Timki, Post-Monimpura,
Nagpur – 440018. .... **RESPONDENTS**

Shri S.A. Chaudhari, Counsel for the petitioner,
None for the respondents.

CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.

DATED : 29th FEBRUARY, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

Heard. **Rule**. Rule made returnable forthwith.

Though served, none appears for the respondents.

2. The petitioners being aggrieved and dissatisfied by the order dated 23-1-2020 passed by the Member, Central Administrative Tribunal, Mumbai Bench at Nagpur (in short- the "*Tribunal*") in Original Application No.2173/2016, whereby the petitioners are directed to determine the amount payable on account of the arrears of the family pension to the widow or widows of the deceased employee and then proceed to determine the amounts due to their legal heirs on production of requisite documents.

3. This is the third round of litigation between the parties regarding the claim of arrears of family pensions by the legal heirs of the deceased employee. Firstly, in the year 2009, O. A. No.2152/2009 was filed which was partly allowed on 21-2-2014. The second round of litigation was filed vide O. A. No.211/2015 which was decided on

24-11-2015. This is the third round of litigation vide Original Application No.2173/2016 which came to be decided on 23-01-2020. The said order is under challenge.

4. In brief, the facts of the case are as under :

(a) The father of the respondents late Shri Hussain Ali s/o Pir Ali was working with petitioner No.3 and was retired on 30-6-1959. After retirement, he was receiving a monthly pension till his demise on 07-08-1975. Thereafter, no family pension was offered to the family members of the deceased employee.

(b) On 18-4-2000 the mother of the respondents i.e. wife of the deceased employee died. In the year 2009 respondent No.1 had filed Original Application No. 2152/2009 before the Tribunal and sought reliefs that (i) the petitioners be directed to grant her monthly family pension and arrears thereof with effect from 06-9-2007 i.e. from the date the pension becomes admissible along with interest; (ii) the petitioners be directed to pay arrears of family pension of her mother with effect from the death of her father i.e. 07-08-1975 till the death of her mother i.e. 18-04-2000 with interest thereon.

However, the said application was partly allowed thereby holding that respondent No.1 is entitled to receive a family pension from 06-09-2007 till her lifetime and also entitled to get arrears with interest thereon at the rate of 9% per annum.

(c) In the year 2015 the respondents filed Original Application No.211/2015 before the Tribunal, which came to be disposed of with the direction to petitioner Nos.2 and 3 to consider and decide the representation dated 19-10-2015 pending with them and pass a reasoned order thereon.

(d) Consequently, in the year 2016 they filed Original Application No.2173/2016 before the Tribunal, which came to be allowed as under :

> *"In the circumstances, we direct the Respondents to firstly, determine the amount payable on account to the arrears of the family pension to the widow or the widows of the deceased employee and then, to proceed to determine the amounts due to their legal heirs on production of necessary, acceptable documents from a competent civil Court of relevant jurisdiction and then to disburse the amounts. This exercise shall be carried out by the respondents within a period of three months and ensure that the disbursements are made within two weeks thereafter."*

Being aggrieved by the said order, the petitioners have preferred this petition.

5. Shri S.A. Chaudhari, learned Counsel for the petitioners vehemently argued that the petition is hit by Section 3 of the Limitation Act as same is filed beyond the period of limitation as the cause of

action arose to claim the pension in the year 2000 i.e. after the death of their mother and therefore, he submitted that on that ground alone the impugned order is liable to be set aside.

6. It is further claimed that the mother of the respondents passed away on 18-04-2000. She had never approached the Railway Administration for family pension, so also there is no record of particulars of the family members of the deceased employee in the service record. Therefore, it cannot be said that the Railway Administration was at fault in not releasing the family pension to the family members of the deceased.

7. To buttress his contention, he has relied on the judgment of the Hon'ble Apex Court in ***Union of India and others v. Tarsem Singh, (2008) 8 SCC 648***.

8. The moot question arises in the present petition is that whether the application before the Tribunal was time-barred or hit by Section 3 of the Limitation Act.

9. On perusal of the record, it seems that this is a third round of litigation between the parties. It is pertinent to note that in the first round of litigation the petitioners i.e. respondents in Original

Application No. 2152/2009 have categorically admitted that the applicant i.e. respondent No.1 herein, being the unmarried daughter of the deceased is entitled to receive the family pension from 06-09-2007. We would like to quote paragraph 4 of the said order :

> *"4. In their reply, the respondents have admitted the fact that the applicant being the unmarried daughter of the deceased, she is entitled to receive the family pension from 06-09-2007. This being the position, the prayer clause 1 is allowed and the respondents are directed to pay the family pension to the applicant w.e.f. 06-09-2007 and to pay all the arrears till date along with interest thereon at the rate of 9% p.a. and continue to pay the same till her lifetime. The up-to-date arrears should be paid within a period of eight weeks from the date of receipt of a copy of this order."*

By this order, the petitioners were directed to pay family pension to respondent No.1 with effect from 06-09-2007 with interest thereon. It is to be noted that said order has not been challenged by the petitioners till this date and therefore, said order has attained finality.

10. That being so, the fact remains that '*whether the respondents are entitled to arrears of family pension from the date of death of their father i.e. 17-08-1975 till the death of their mother on 18-04-2000 and thereafter.*'

11. In view of the submissions of the learned Counsel Mr. Chaudhari on the point of entitlement of the family pension, it would

be appropriate to reproduce the relevant Clauses of the Family Pension Scheme as under:

> "*1. A copy of Railway Board's letter No. F(E)III.PN1/19 dated 26-7-85 together with the enclosures is published to all concerned for information, guidance, and immediate action.*
>
> *The contents of this letter should be given wide publicity to all concerned. Such claimants be directed to send their applications either directly to Hd. Qrs. Sett. Sec. or their applications be directed and sent to settlement Sec. G/R/C.*
>
> *Copy of Railway Board's letter No. F(E)III.85.PN1/19 dated 26-7-85 addressed to the General Managers. All Indian Railways and others.*
>
> > *Grant of Family Pension to Families of Railway employees governed by the Pension Scheme who retired or died before 1.1.64 or are otherwise not covered by the Family Pension Scheme for Railway employees – 1964 – implementation of the judgment of the Supreme Court.*
>
> *As per the existing orders, there are at present two family Pension Schemes as incorporated in Chapter VIII of the Manual of Railway Pension Rules, 1950 namely the Liberalised Railway Pension Rules, 1950, and the Family Pension Scheme for Railway Employees, 1964. The 1950 Scheme was of a restricted nature. The Family Pension Scheme for Railway Employees-1964 as issued vide this Ministry's letter No.F(P)63-PN-1/40 dated 21-1-1964 applies to ; (Estt.Srl.No.5/64)*
>
> > *(a) a Railway servant who entered in the Railway service in a pensionable establishment on or after the 1st January 1964; and*
> >
> > (b) a Railway servant who was in service on the 31st December 1963 and came to be governed by the provisions of the Family Pension Scheme for Railway employees, 1964 contained in this Ministry's letter No. F(P)63. PN-1/40 dated 2.1.1964 as in force immediately before the issue of this order.
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> 2. ---------

3. ---------
4. ---------

5. Consequent upon the judgment of the Supreme Court, the President has been pleased to decide that :-

(a) the benefit of the Family Pension Scheme, 1964 may be extended to all the eligible members of the family in accordance with the provisions of this Ministry's letter No. F(P).63-PN1/40 dated 2-1-64.

(b) all the eligible persons, including dependents, shall be allowed the increased pension rates as introduced from 1-1-1973; (Estt.Srl.No.5/74)

(c) the arrears of family pension may be granted w.e.f. 22-9-1977 (the date on which contribution of two month's emoluments by pensioners was dispensed with) or from a subsequent date they become eligible for family pension, whichever is later. The benefit will also be available in cases where the death of the pensioner occurs hereafter.

(d) persons who are now to be granted the benefit of family pension will not be required to contribute two months' emoluments. Similarly, no demand for a refund of contributions already made by pensioners will be entertained by the Government; and

*(e) life-time arrears of family pension would also be payable in respect of widows/**eligible members of the family of the deceased Railway employees who were alive on 22-9-1977** and who died subsequently to this date, for the period from 22-9-1977 to the date of death.*

6. It has also been decided that in addition to the family pension, dearness relief on the family pension sanctioned from time to time shall also be admissible.

7. The respective Heads of Department/Office or other authorities who are competent to sanction family pension may compute the family pension including dearness relief in terms of the provisions of this letter with effect from 22-9-1977 or from a later date from which the family pension is admissible and sanction payments.

8. The eligible members of the family would have to apply for a family pension to the Head of Office from which the Railway servant retired. In case a Department has been abolished or merged, with another Department, the family pension would have to be processed and sanctioned by the Office in which the parent Department of the retired Railway servant is merged or the office which is keeping the records of the abolished office. The application for family pension should be made in the attached. The Head of Office/Department would verify the particulars, compute the family pension including dearness relief as prescribed in the previous para, and send the application, etc. to the Accounts Officer which means the authority who originally issued Pension Certification/Pension Payment Order.

9. The applicant will have to satisfy the Head of Office that she/he is a widow/widower or eligible child of the Railway servant concerned, and establish identity by production of relevant documents viz. the P.P.O. of the late Railway servant, wherever possible. The family pension/revised family pension would be authorised for payment by the Accounts officer as defined in the previous para, on receipt of papers from the Head of Office/Department from which the Railway servant retired. Further, since the entitlement of family pension in accordance with the provisions of this letter would initially be worked out by the Head of Office/Department which the pensioner last served at the time of retirement or death, ***it would also be the responsibility of the Head of the Office or Department to determine the beneficiary who would be entitled to receive payment of life time arrears, mentioned in para 5(e) of this letter****.*

10. The family pension may be paid through Pension Disbursing Authority/Authorised Public Sector Banks/Post Offices as may be desired by the family Pensioner concerned.

11. ***With a view to extend the benefits of these orders to the Railway Pensioners who retired or died before 1-1-1964*** *as well as in respect of those who opted out of the Family Pension Scheme for Railway employees, 1964 and retired or died subsequently, the Board desire that wide publicity be given to these orders by all possible means/ways i.e. by publishing the contents of this letter in local newspapers, Notifications through Railway Gazette, etc.”*

12. Upon reading the above Clauses it seems that consequent to the judgment of the Hon'ble Apex Court the benefit of the Family Pension Scheme, 1964 is extended to all the ***eligible members of the family of the deceased Railway employees who were alive on 22-9-1977***, including dependents in accordance with the provisions of the Scheme. Also, lifetime arrears of family pension would be payable in respect of widows/eligible members of the family of the deceased railway employees who were alive on 22-9-1977 and from that date, the arrears are allowed to be granted to them.

13. As per Clause 7 of the Scheme, it was an obligation of the Head of the Department/Office or other authorities who are competent to sanction family pension may compute the family pension including dearness relief in terms of the provisions of this letter with effect from 22-9-1977. As per Clause 9 of the Scheme, it was also the responsibility of the Head of the Office or Department to determine the beneficiary who would be entitled to receive payment of lifetime arrears as mentioned in para 5(e) of said letter.

14. The aforesaid Family Pension Scheme categorically depicts that it was the responsibility of the Head of the Department/Office or authorities to determine the beneficiaries and to sanction the family pension to the eligible members of the family and the arrears of the family pension be granted to them with effect from 22-9-1977.

15. Having considered the facts of the case, we would like to refer to the judgment of the Hon'ble Apex Court in ***S.K. Mastan Bee v. General Manager, South Central Railway and another, (2003) 1 SCC 184***, wherein the facts are similar to the facts in the case in hand. In the said case the facts were that the appellants' husband was a Gangman in the Railways. He died in 1969. His heirs made an application for a grant of family pension in the year 1991 i.e. after a period of twenty-two years, which was rejected by the railway authorities. Therefore, she has preferred a writ petition before the High Court which came to be allowed, and railway authorities were directed to fix and pay the family pension to the appellant therein with arrears with effect from the date of death of the appellants' husband and said order was confirmed by the Hon'ble Apex Court. We would like to quote paragraph 6 of the said judgment.

> *"We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the <u>appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right</u>.* ***On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case, to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to litigation****. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounts to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources*

*to approach the legal forum timely is not disputed by the Railways. The question then arises on facts and circumstances of this case, was the Appellate Bench justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? <u>In this case, as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her</u>. The Division Bench also while agreeing with the learned Single Judge observed <u>that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal</u>, in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. **We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is illiterate, the learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband.** Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992."*

16. On a perusal of the aforesaid paragraph, it reveals that the Hon'ble Apex Court has categorically held that on the date of death of the husband of the appellant therein, it was obligatory on the part of her husband's employer i.e. Railways to have computed the family pension payable to the family members of the deceased and offered the same to her without her having to make a claim or without driving her

to the litigation, but pay pension to her as soon as it became due. Denial of the same *amounts to a violation of the guarantee assured to the legal heirs of the deceased/respondents under Article 21 of the Constitution of India.*

17. *Furthermore*, conjoint reading of the Clauses of the Family Pension Scheme and law laid down by the Hon'ble Apex Court, it is evident that the respondents were not at fault but petitioner Nos. 2 and 3-Authorities were at fault for not performing their duty/obligation to provide family pension to the eligible family members of the deceased employee or make them aware of the Family Pension Scheme in pursuance of Clauses 7 and 9 of the Family Pension Scheme. Therefore, for their fault, it cannot be said that the respondents are not entitled to the family pension and it is barred by law of limitation. In fact, the duty was cast on the employer to make a proposal of pension papers in the name of family members of the deceased employee.

18. In the aforesaid backdrop, we are of the opinion that it was the duty of the employer i.e. the petitioners to offer the family pension to the family members of the deceased employee as well as to make them aware of the entitlement of the family pension. *Moreover, it has come on record that the deceased was working in the workshop*

as a worker (Mistry), who might have been illiterate, his legal heirs were also illiterate, they did not know of their legal rights and had no access to any information as to their right to family pension and to enforce their rights. Therefore, it cannot be said that the respondents were at fault for non-approaching to claim family pension in time. In such an eventuality, the petitioners cannot shirk their responsibility on someone else for their fault to release the family pension in favour of the family members of the deceased employee. Thus, in our view, the question of non-claiming of the family pension by the respondents in time does not arise at all. Except for the aforesaid ground no other ground has been raised by the petitioners.

19. Besides, the order dated 21/02/2014 passed in O.A. No.2125/2009 with M.A. No.2101/2009 itself shows that respondent No.1 is entitled to the family pension from 06-09-2007. So also, an M.A. for condonation of delay was allowed. That being so, the petitioners are estopped from saying that the petition is hit by the law of limitation. By impugned order, the Tribunal has directed the petitioners to determine the amount payable on account of arrears of the family pension to the widow or widows of the deceased employee and then proceed to determine the amount due to their legal heirs on production of necessary, acceptable documents of the competent Civil

Court and then to disburse the amount. The grant of arrears from 06-09-2007 to respondent No.1 is not in dispute. The petitioners have not questioned the entitlement of the family pension by respondent No.1 from 06-09-2007. In that case it would be obligatory on the part of the Railway Authorities to *extend the benefits of these orders to the Railway Pensioners who retired or died before 1-1-1964 from 22-09-1977* instead of challenging the impugned order on the point of limitation.

20. That being so, in our opinion, as per the Clauses of the Railway Family Pension Scheme and the law laid down by the Hon'ble Apex Court, we do not find substance in the contention of the learned Counsel for the petitioners that the application made by the respondents before the Tribunal was time-barred or hit by Section 3 of the Limitation Act. Likewise, the observations made in the judgment cited by the learned Counsel for the petitioners are not helpful for them in support of their defence. As a result, the petitioners have failed to make out their case to show that the respondents are not entitled to the relief as granted by the Tribunal. Per contra, the petition lacks merit. Hence, we do not find any error apparent in the impugned order in granting the relief to the respondents. Consequently, we do not find substance in the petition as well as the submissions made by the learned Counsel for the petitioners in that regard.

21. In the aforesaid circumstances, we proceed to pass the following order :

(i) The petition is dismissed.

(ii) The interim order granted on 28-10-2020 stands vacated.

22. Rule stands discharged.

(ABHAY J. MANTRI, J.) **(NITIN W. SAMBRE, J.)**

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