



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

WRIT PETITION NO. 681 OF 2023

(Sunita d/o Sukhdeo Gajbhiye and others ..vs.. Smt. Maya alleged wd/o Sukhdeo Gajbhiye and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. J.J. Kataria, Counsel for the petitioners,
Mr. A.R. Fule, Counsel for respondent No.1,
Mr. Pankaj Navlani, Counsel for respondent Nos.2 to 5.

**CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.**

DATE : 06-12-2024

Heard Ms. J.J. Kataria, learned Counsel for the petitioners. The petition question the judgment dated 08-3-2023 passed by the learned Central Administrative Tribunal (Page No.212) whereby the claim of the petitioners for grant of compassionate appointment has been rejected on the ground of inordinate delay. Ms. J.J. Kataria, learned Counsel for the petitioners submits, that considering the fact that there was a succession dispute going on between the parties, which is still pending, there is no delay.

2. What is necessary to note is that the original employee Sukhdeo Gajbhiye who was a Fitter with the Railways, passed away on 10-10-2006. The application for grant of

compassionate appointment came to be filed by the present petitioners only in 2009 and thereafter, has not been pursued at all in view of the succession dispute pending between the petitioners and their brother Vilas on the one hand and one Maya on the other hand, who claimed to be the wife of the deceased Sukhdeo. Mere pendency of an application for deciding succession, in our considered opinion, ought not to have come in the way of the petitioners to prosecute the application for grant of compassionate appointment. Since the application of the year 2009 was not considered, the petitioners ought to have approached the Tribunal earlier in point of time, however, such an approach is only in the year 2020 by the petitioner No.1 who by that time, had already crossed 45 years of age. There is, therefore, delay of eleven years in approaching the Central Administrative Tribunal in view of which, we do not see any reason to interfere in the impugned order.

3. The petitioners also claim entitlement to pension of the deceased Sukhdeo. In so far as pension is concerned, Mr. Pankaj Navlani, learned Counsel for respondent Nos.2 to 5 has tendered across the bar a communication dated

04-4-2005 which speaks about eligibility of divorced/widowed daughter for grant of family pension, which also includes the son, till he attains the age of 25 years. The age of the son Vilas as indicated from the memo of the petition was 51 years of age in 2023 and, therefore, was definitely more than 25 years in 2006 when Sukhdeo had passed away and, therefore, on account of Rule 75(6)(ii)(iii) of the Railway Services (Pension) Rule, 1993 read with the letter of the Board dated 05-11-1997, as indicated in the communication at 'X', since the petitioner Nos. 1 and 2 are married daughters, they would also not be entitled to pension. All that they can claim, is an entitlement to the retiral benefits in terms of gratuity or leave encashment out of which Vilas son of Sukhdeo has already received 50% of the amount, 50% having been paid to Maya who has already deposited a sum of Rs.1,05,243/- in the Court, which has been withdrawn by the present petitioner Nos. 1 and 2. It is claimed that balance amount of Rs.1,13,597/- is still with Maya. Since in the judgment dated 18-3-2019 passed in Miscellaneous Civil Appeal No.226/2017 (Page No.96) on account of remand of the matter back to the trial Court Maya

has been directed to furnish a bank guarantee for the aforesaid sum, the judgment which may be passed in Succession Case No.4/2009 would govern the issue of payment of the aforesaid sum.

4. In that view of the matter, we do not see any reason to interfere in the present petition. The petition is, therefore, dismissed. No costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)

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