



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3740/2019

Smt. Shashikala Wd/o Prabhakar Rao Naik
Vs.

Union of India, through General Manager, Central Railway, Mumbai
CSTM and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mrs. Rashi Deshpande, Advocate for Petitioner
Mr. C.J. Dhumane, Advocate for Respondent Nos.1 to 4

CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATED : 29th AUGUST, 2024

1. Heard.
2. On 14.08.2024, the following position was recorded.

“2. The policy indicated by the communication dated 12.07.1989 (page 49) regarding grant of Ex-post facto sanction for regularization of 2727 casual labour/employees engaged in Civil Engineering (C) I and II Division of the Central Railway engaged after 18.12.1980 is not disputed.

3. It is also not disputed, that in pursuance to the same the employment of the husband of the Petitioner who passed away on 26.09.1992 and admittedly was employed on 29.07.1984 onwards (page 52), the Petitioner was granted pension which has continued for the period of four years after his demise, but has been withdrawn which is

the subject matter in question.

4. The Respondents contend, that the name of the husband of the Petitioner was not included in the list of 2727 casual labour/employees as indicated in the sanctioned order dated 12.07.1989. However, it is equally an admitted position that such a list of employees is not available, neither it was placed before Central Administrative Tribunal in the original proceedings filed before it. In absence of such list, the burden is upon the Respondents to establish non-inclusion of the name of the husband of the Petitioner in the list as contemplated by the sanctioned order dated 12.07.1989, without that being done, the plea of non-entitlement may not be sustainable.

5. Mr. Dhumane, learned Counsel for the Respondents, submits that for the purpose of regularization, an additional requirement of screening was to be done which has not been done. However, there is no policy placed on record to indicate that it was necessary or this was done in respect of the 2727 employees as indicated in the sanction order dated 12.07.1989. He, therefore, seeks time to place appropriate material on record, considering which, list the matter on 22.08.2024.”

3. Today, Mr. Dhumane, learned counsel for the respondents submits, that no record whatsoever is available with the respondents to indicate or demonstrate, that the employment of the deceased husband of the petitioner was not regularized. The learned Central Administrative Tribunal in its judgment dated 27.05.2015, has rejected the claim for continuation for grant of family pension which

was withdrawn by the respondents on the ground, that there was no specific order issued by the respondents to show, that screening was conducted and the services of the husband of petitioner was regularized.

4. In our considered opinion, the respondent / Department being the custodian of all the service records of the deceased husband of the petitioner and other employees, it was their bounden duty to have presented the same in this Court, in support of their contention, that there was no regularization of the employment of the deceased husband of the petitioner, failure to do which, leaves us no other option than to accept the plea by the petitioner, specifically in the light of the admitted position, that for a period of four years, the petitioner was granted pension, which could only have been done if the employer was satisfied of the entitlement of the deceased employee to it. It is also material to note, that not a single document, in relation to any of the 2727 employees has been placed on record to substantiate the contention raised by the respondents now that there was no regularization. This position has not been considered by the Tribunal and it has shifted the burden upon the petitioner to demonstrate regularization, when in the teeth of the admitted position regarding grant of pension, and the fact that the respondents were the custodian of the

records, it was the obligation of the respondents to have demonstrated non-regularization and non-entitlement. Such shifting of burden in our considered opinion was not permissible. Though reliance is placed upon **Union of India and others Vs. Tarsem Singh (2008) 8 SCC 648**, to contend, that the claim beyond the period of three years ought not to be granted, we are unable to agree with the same for the reason that in the **Union of India and others Vs. Tarsem Singh** (supra) itself the Hon'ble Apex Court has held, that in case the issue relates to payment or refixation of pay or pension, relief may be granted inspite of delay as it does not affect the rights of the third parties.

5. In view of the above, the impugned judgment dated 27.5.2015 in O.A. No. 2192/2011, as well as the order dated 09.10.2017 in Review Application No. 211/00012/2016 by the learned Central Administrative Tribunal as well as the communication dated 07.07.2011 by the respondent No.4 are hereby quashed and set aside and it is held, that the employment of the deceased husband of the petitioner stood regularized, on account of which, the petitioner is entitled to family pension.

(SMT. M.S.JAWALKAR,J.)

(AVINASH G. GHAROTE,J.)