



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

WRIT PETITION No. 8408 OF 2023.

Prashant Devidas Moone,
Aged about 50 years, Occupation -
Nil, Resident of Gorakshan Ward,
District Wardha.

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PETITIONER.

VERSUS

1.All India Institute of Medical
Sciences (A.I.I.M.S.), through its
Director, Ansari Nagar,
New Delhi 110029.

2.Chief Administrative Officer,
All India Institute of Medical
Sciences, Ansari Nagar,
New Delhi 110029.

3.Mrs. Panchsheela Ratan Khairkar,
Aged about 46 years, Occupation
Housewife, resident of Buddha
Vihar, Hinganghat Fail, Pulgaon,
District Wardha.

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RESPONDENTS.

Rgd.

Mr. S. Marathe, Advocate for the Petitioner.
Mr. N.S. Deshpande, D.S.G.I., for Respondent Nos.1 and 2.
Ms R.R. Hiranwar, Advocate h/f. Shri D.C. Chahande, Advocate for
Respondent No.3.

CORAM : VINAY JOSHI AND
M.W.CHANDWANI, JJ.

DATE : AUGUST 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule made returnable forthwith and by consent of the learned Counsel for the parties, the matter is taken up for final disposal.

2. The subject matter of challenge in this petition is to the order dated 26.09.2023 passed by the Central Administrative Tribunal, Mumbai (Circuit Bench at Nagpur) in Original Application No.464/2022, whereby the Original Application filed by the petitioner / applicant came to be dismissed.

3. The petitioner's wife Surekha was employed as Grade-I

Rgd.

Nurse with the respondent All India Institute of Medical Sciences (AIIMS), since the year 1996. She expired while in service on 07.05.2007. Few days prior to her death, by executing a Registered Will she has bequeathed her assets to her minor son Siddhant. On the date of death, she has filled in a nomination form by which she nominated her minor son, through guardian, for pensionary benefits. In such a background, the petitioner being widower of deceased employee, has applied to the respondent employer for release of pension to him.

4. In response, the respondent vide communication dated 16.03.2013 has declined to grant family pensionary benefits to the petitioner by referring to Rule 81 [2][b][i] of the Central Civil Services (Pension) Rules, 1972. Being aggrieved, the petitioner has approached to the Tribunal with a claim for release of family pension in his favour.

5. It reveals that the learned Member of the Tribunal has observed that since the deceased has completed her services only for

Rgd.

11 years and 5 months, it is not a pensionable service and thus, no one is entitled for family pension. The impugned communication on the other hand, which was the subject matter of challenge before the Central Administrative Tribunal, disclose that the petitioner is not entitled for pension, but, the nominee minor son is entitled for pension. It reveals that the issue which was not before the Central Administrative Tribunal was adjudicated.

6. Both sides are in agreement that in view of Rule 54[2][a] of the 1972 Rules, the eligible person is entitled for family pension even after one years qualifying service of the deceased employee. The learned Counsel for the petitioner has relied on Rule 54[8][iii] of the 1972 Rules to contend that the petitioner widower is the only eligible person to get family pension. He would submit that the nomination would not denude the widower from getting family pension, and for this purpose, he has relied on the decision of Supreme Court in case of **G.L. Bhatia .vrs. Union of India and another – [1995] 5 SCC 237.**

7. Infact the issue about entitlement was a disputed question

Rgd.

before the Central Administrative Tribunal, which has not been dealt with. As observed above, the deceased had put qualifying service and thus, being eligible, is entitled to consider him for family pension. The only aspect which is required to be decided by the tribunal was as to who is entitled for family pension. In the circumstances, the matter requires reconsideration, hence, the following order.

ORDER

- [i] Writ Petition is allowed.
- [ii] We hereby quash and set aside the order dated 26.09.2023, passed by the Central Administrative Tribunal in Original Application No.464/2022. The matter is remanded back to the Tribunal for fresh adjudication on merits in the light of above observations, within a period of two months of the date of passing of this order.
- [iii] Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE