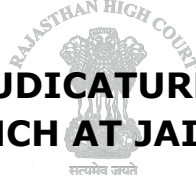




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 3489/2023

Smt. Leela Devi W/o Late Shri Ramlal, Aged About 67 Years, R/o House No. 1122/34, Kumhar Mohalla, Jadugar, Ajmer (Rajasthan)

----Petitioner

Versus

1. Union Of India, Through General Manager, Head Quarter Office, North-Western Railway, Jagatpura Jaipur.
2. Dy. Chief Material Manager, Office Of Dy. Chief Material Manger, North- Western Railway, Nagra, Ajmer.
3. Chief Workshop Manager, Locomotive Workshop, North-Western, Railway Ajmer.

----Respondents

For Petitioner(s) : Mr. Veyankatesh Garg

For Respondent(s) : Mr. P.C. Sharma

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

REPORTABLE

23/09/2024

1. Delay is condoned.
2. The instant petition is filed with the following prayers:
 - (a) *To allow the Writ Petition and issue appropriate directions to the Respondent to forthwith pay the family pension to the Petitioner w.e.f. date of impartment of the succession certificate with 18% interest per annum and continue to pay the family pension to the applicant as per the PPO order dated 08.08.2016.*



(b) *The Respondents may be directed to acknowledge the petitioner and her daughter as legally entitled for the receipt of the family pension and all other pensionary benefits given to the family members of the Respondent organisation.*

(c) *The respondents may kindly be directed to disburse the difference of family pension amount Rs. 33,600/- (3,24,450-2,90,850) along with the interest of 12% p.a.*

(d) *The cost of the Writ Petition may kindly be awarded in favour of the Petitioner.*

(e) *Any other order or direction, which this Hon'ble Court may deem just and appropriate in the facts and circumstances of the case and in the interest of justice, may kindly be passed in favour of the Petitioner.*

3. The nitty-gritty of the instant matter is that the petitioner's husband Lt. Shri Ramlal was appointed in Indian Railways on the post of 'binder' on 13.05.1965, and served the said department on the said post, for a period of approximately 27 years. Thereafter, took a voluntary retirement on 31.05.1992 (Annexure-1). The family and the petitioner's husband pension at the time of retirement were fixed as Rs. 476 per month and after commutation were fixed as Rs. 138 per month (Annexure-2). However, the petitioner's husband died on 30.12.2008, and ever since then the petitioner with her two daughters Narayani and Maya have suffered irreparable loss and faced severe travails. It is



pertinent to mention that the petitioner is illiterate women, has no knowledge about the legal intricacies and has no survivor, moreover, no such relative or family member were/are present who could have/can guided/guide the petitioner about her rights qua the family pension.

4. The neighbors of the petitioner saw her pity and guided her qua her rights regarding the family pension. Resultantly, the petitioner approached the respondents in the year 2012, demanding her family pension.

5. In this backdrop, learned counsel for the petitioner has submitted that the petitioner's husband was required to fill a nomination form, for availing the benefits under the Railway Employees Insurance Scheme. Hence, the same was executed on 19.12.1977, wherein, the name of the petitioner was entered as the wife of Sh. Ramlal (now deceased) and the name of their two daughters as nominee, qua the same. It is further submitted that the said form is a part of the service record of the petitioner (Annexure-4).

6. Further, it is submitted that the respondents replied upon the letter furnished by the petitioner in the year 2012 on 17.04.2012 and have stated that since the name of the petitioner is not listed as the nominee to Sh. Ramlal, she is not entitled to attain the family pension. In reply to the said letter the petitioner again furnished another letter wherein, she also annexed various documents to substantiate her contention, of being the lawful wedded wife of Sh. Ramlal (Annexure- 5, 6 and 7). Subsequently, the petitioner filed a suit under section 372 of the Indian Succession Act, 1925 (Application for certificate), to attain/obtain



a succession certificate. One of the issues framed whilst adjudication of the said suit was that "whether the petitioner is a widow of deceased Ramlal". Moreover, the said issue was adjudicated in favour of the petitioner, and the learned Trial Court had issued the succession certificate to the petitioner. It is further submitted that the petitioner had also annexed a schedule wherein, the computation regarding the arrears [Rs. 2,90,850/- (Rupees Two Lacs ninety thousand eight hundred fifty only)] qua the family pension, till that date were mentioned, and the learned Trial Court was pleased to grant the same in favour of the petitioner.

7. Thereafter, in pursuance to the order dated 04.05.2015, the respondents prepared a PPO dated 08.08.2016 and issued a disbursement order of Rs. 2,90,850/- i.e. the family pension in-between the period of 01.01.2009 and 31.07.2013, in favor of the petitioner on 08.08.2016.

8. At this juncture, learned counsel has drawn the attention of the Court upon note-sheet dated 12.07.2016 (Annexure-15) and has submitted that respondent no. 2 by themselves have brought to the notice of the Dy. Financial Advisor, that the petitioner wrongly computed the family pension of Lt. Shri Ramlal, and have categorically stated that the actual amount of which the petitioner is entitled of is Rs. 3,24,450/- (Rupees Three Lacs Twenty Four Thousand Four Hundred Fifty Only) as the family pension till 31.12.2013. Nonetheless, till date the petitioner has not received the said arrears i.e. Rs. 33,600/- (Rupees Thirty Three Thousand Six Hundred Only).



9. It is an admitted fact that the petitioner has already received the cumulated family pension in-between the period of 01.01.2009 and 31.12.2013 as Rs. 2,90,850/-, however, no further family pension is rendered to the petitioner. Learned counsel for the petitioner has submitted that it is a settled principle of law that once the family pension is allotted to a person, the same has to be continued for the lifetime of the said person. Hence, the petitioner is entitled to receive the regular pension.

10. In support of the contentions made insofar, learned counsel has placed reliance upon the ratio encapsulated in **S.K. Mastan Bee vs. General Manager, South Central Railway and anr.** reported in **(2003) 1 SCC 184**, **Sampati Vs. Central Administrative Tribunal** reported in **(2012) SCC OnLine Raj 224**, **G.L. Bhatia Vs. Union of India** reported in **(1999) 5SCC 237** and **M.L. Patil Vs. State of Goa** reported in **(2023) 1 SCC 660** and has submitted that the act of the respondents not only has caused a grave travail qua the petitioner and her daughters but has also violated the fundamental rights of the petitioner(s) as enshrined under Article 14 and 21 of the Constitution of India.

11. *Per contra*, learned counsel representing the respondents has stoutly opposed the contentions made by the learned counsel for the petitioner and has raised a preliminary objection qua the fact that the instant dispute pertains to the year 2008 and the instant petition is filed at a belated stage, in the year 2023.

12. Learned counsel representing the respondents has further submitted that the petitioners have failed to avail the alternative efficacious remedy available in law, and have straight-forward



approached this Court. Further, learned counsel has placed reliance upon Annxure-R-1, R-2 and has submitted that at the time of voluntary retirement, the requisite family details were not filed by the petitioner's husband, nor in the nomination form any of the present petitioners were named as the nominee/entitled qua the said family pension.

13. It is further submitted that even the learned Trial Court vide order dated 04.05.2015 (Annexure-12) has opined to grant the pension amount in-between the period of 2009 and 2013, moreover, the petitioner has failed to seek future benefits and future pension. Lastly, learned counsel has placed reliance upon the order dated 01.03.2021 passed by District and Sessions Judge, Ajmer, whereby, learned Trial Court under Section 152 of C.P.C. had set aside the order dated 16.03.2019 (Annexure-R-3).

14. In support of the contentions made insofar learned counsel representing the respondents has placed reliance upon the ratio encapsulated in **Union of India Vs. Deep Chand Pandey** reported in **1992 (4) SCC 432** and **Kendriya Vidyalaya Sangathan Vs. Subhash Sharma** reported in **2002 (4) SCC 145**.

15. Upon an assiduous scanning of the record, considering the aforementioned facts and circumstances of the case, considering the judgments cited at the Bar and taking note of the arguments averred by the learned counsel for the parties this Court, prior to commenting upon the merits/demerits of the matter in hand, deems it appropriate to jot down indubitable facts:



15.1 That the husband of the petitioner (Lt. Shri Ramlal) was appointed on the post of binder on 13.05.1965 in the Indian Railways.

15.2 That no evidence is placed on record qua the educational qualifications of the deceased, however, upon a perusal of the signature made by him in the nomination form, it is deduced that the deceased was barely literate.

15.3 That it is an evident fact that as on date, no person survives to tender efficacious help and guidance to the petitioner. (Daughter also died during the currency of the instant petition).

15.4 That the deceased after serving the respondent department for approximately 27 years, took voluntary retirement on 30.05.1992.

15.5 That the succession certificate annexed in the instant petition, explicitly substantiates the contention made by the learned counsel for the petitioner qua the fact that the petitioner is the legally married wife/spouse of the deceased-employee.

15.6 That a part of the arrears of the family pension (Rs. 2,90,850/-) was paid to the petitioner in the year 2013.

15.7 That upon a perusal of the records placed before the Court, it can be concluded that the said nomination form (Annexure-R-1, 2) is filled by some other person/clerk and not the petitioner's husband, who *prima facie* has erroneously omitted to fill in the credentials/entries qua the petitioner and her daughters in the said form.

16. Considering the aforementioned observations; juxtaposing the averments raised by the learned counsel for both the sides



and taking note of the provisions and settled position of law, this Court is of the following stance:

16.1 The substantive right of a citizen cannot be denied on account of procedural lapses, that too in a situation wherein, the petitioner is hand to mouth for her survival and from a prolonged period is made a subject to grave mental distress and financial agony.

16.2 The respondent-Railway authorities instead of providing proper, reasonable and appropriate guidance to the petitioner, qua her rights of family pension have extracted benefit of the petitioner's illiteracy and emotional instability.

16.3 At this juncture, this Court while condoning the delay qua filing of the instant petition, deems it apposite to place reliance upon the dictum enunciated in in **S.K. Mastan Bee (Supra)** wherein, it was categorically stated that considering the vulnerability of the petitioner, who is deprived of the family pension by the Railway authorities, the petition and the claim ought to be made maintainable. The relevant extract from the afore-cited ratio is retreated herein below:

*"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 the appellant's husband on which date she had legally become entitled to the grant of pension?** In this case as noticed by us hereinabove, 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. The Division Bench also while agreeing with the learned Single Judge observed*



that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal, 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 01.04.1992. **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 that 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 an 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 01.04.1992."**

16.4 Additionally, reliance can also be placed upon the ratio encapsulated in **Smt. Sampati (Supra)**, qua the objection of alternative efficacious remedy being available in law, nonetheless, the same not being availed by the petitioner. The relevant portion of the afore-cited dictum is reproduced herein below:

"In the instant matter it is not at all in dispute that the petitioner was having a right to avail option for family pension under a decision of the Railway Board. The petitioner is a member of scheduled caste and she is an illiterate woman. Her husband Shri Malaram was holding a post of Pointsman i.e. quite a petty post in the establishment of Railways. Shri Malaram died in the year 1973 and after his death an information was given to the petitioner vide letter dated 28.10.1974 about having an opportunity to move from provident fund scheme to the pension scheme, but that was not availed by the petitioner and that appears to be quite obvious. **An expectation that a poor widow mostly confined the household (at**



*least in the year 1974 as then social conditions existing), belonging to the lowest rung of social as well as economic hierarchy with a curse of illiteracy will act upon a letter that too in English is quite high and is contrary to the objective conditions prevailing in Indian society. If such an opportunity would have been given in life time of her husband and he would have not exercised the option as given, then the position would have been different as the chances to know about such scheme at the working place is quite high, but the same yardstick cannot be applied in the case of present petitioner. **The family pension is a little assistance to the destitute widows and also to the family members of a deceased government servant, and that should not be denied on technical grounds, but should be accorded, if any substantive right for that exists. The illiteracy and other social practices are also required to be taken into consideration while considering the issues pertaining to the family pension in the light of socio-economic set up. Hon'ble Apex Court by considering such eventualities allowed family pension in the case of S.K. Mastan Bee (supra). The law laid down by the Apex Court is fully applicable in the present set of facts also.***

16.5 Lastly, this Court deems it apposite to place reliance upon the ratio encapsulated in **G.L. Bhatia (Supra)**. The relevant extract from the afore-cited ratio is reproduced herein below:

"2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of



*the provisions contained in Rule 54 of the rules. **It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.***

3. Under Rule 54 sub-rule (14)(b)(i) the expression "family" has been defined thus:

"54"(14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant...."

16.6 This Court is of the opinion that the judgments cited by the learned counsel for the respondents are on a distinguishable factual matrix, and have no applicability upon the matter in hand.

16.7 That it is an evident fact that the respondents have already released a portion of the petitioner's (husband's) family pension i.e. in-between 2009 – 2013. Therefore, the respondents at this belated stage cannot abstain themselves, from not releasing the further/future pension of the petitioner/ petitioner's husband and are barred by the principle of estoppel.

17. In summation of the aforementioned, it can deduced that the petitioner is an underprivileged, non-conversant, illiterate old lady, who has suffered over the years from severe mental harassment and financial instability, due to the inappropriate actions of the respondents. Moreover, it is evident that the respondents have duly released the arrears for the period in between 2009 and 2013, upon intervention of the Court and as on date are finding loop-holes to escape from their responsibility and duty. It is a settled position of law that in matters where the aggrieved person is illiterate or possess zilch knowledge about the



legal formalities, he/she cannot be made a prey to the technicalities and complexities of law.

18. In light of above, all prayers made by the petitioner are allowed. Withal, qua the mental distress and financial loss borne by the petitioner, over the years, a cost of Rs. 1,00,000/- (Rupees One Lacs Only) shall be deposited by the respondents to the petitioner's bank account, by way of appropriate measures, within a period of one month. The said cost is awarded taking note of the aforementioned observations; especially for the maintenance of the petitioner, safeguarding her fundamental rights as enshrined under Article 21 of the Constitution of India.

19. Accordingly, the instant petition is allowed with aforementioned directions. Pending applications, if any, shall stand disposed of.

(SAMEER JAIN),J

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