

Bashnurbi Vs. Divisional Accounts Officer, M.G. South Central Railway

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Court : Mumbai

Decided On : Nov-15-1991

Reported in : (1991)93BOMLR1012; (1992)IILLJ391Bom; 1992(1)MhLj14

Judge : V.V. Kamat, J.

Appeal No. : W.P. No. 3839/1989

Appellant : Bashnurbi

Respondent : Divisional Accounts Officer, M.G. South Central Railway

Judgement :

Sukumaran, J.

1. The petitioner before us is a widow aged over 77 years by now, going by the information given in the representation dated May 3, 1989 addressed by the petitioner to the Hon'ble Chief Justice of High Court of Bombay. Her husband passed away on February 18, 1967. She applied for family pension. That was acknowledged by the Railway authorities, according to the representation, on June 13, 1986. The Railway put up the inscrutable face of a sphinx. In 1989 a notice was issued from this Court to the Railway; even this did not evoke any response. The matter, as such, was taken up for final hearing today November 15, 1991. We have had the assistance of counsel for the Railway in the matter. (No return has been filed so far).

2. Initially, it was submitted that this is a matter which should go to Central Administrative Tribunal. Reference was made to Section 14 of the Administrative Tribunal Act, 1985 and the definition of the term 'service matters' as contained in Section 3(q). The relevant portion of the definition may be extracted for considering the contention of the Railway. 'Service matter, in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or Society owned or controlled by the Government, as respect.'

3. It is evident, from the definition that the matter which is coming within the purview of service matters, would be in relation to the person who approaches Court or the Tribunal as the case may be. In the present case, it is not the employee who has come before the Court, claiming pension. It is his widow. The pension sought for is not her service matter as defined in the Act.

4. Counsel for the Railway submitted that the widow is entitled to the pension only because of the fact that pension had been earned by the employee. There is no force in the contention. The Court is not concerned with the source of claim or the soul of the benefit. Whether the claim or benefit is her service matter is the crucial question. Clearly, it is not. That should entail a rejection about the ouster of jurisdiction of this Court to entertain the writ petition.

5. We are at the question of interpreting a statutory Provision which is relied on as excluding the jurisdiction of a Court, of the High Court in this case. It is well settled that such provisions which seek to exclude the jurisdiction of Courts have to be subjected to closer scrutiny for finding out a clear exclusion. Even otherwise, on a literal interpretation on the definition of 'service matters' alluded to above, we are clear in our mind that it has to be linked with the person who is seeking relief. In the present case, it is not a service benefit of the widow that is sought to be enforced. Consequently, it is not a service matter of an employee, that forms the subject matter of the writ petition.

6. We shall now consider the claim on merits and adjudge the justification or the absence of it, in delaying the disbursement on the pension.

7. We shall preface our observations on this aspect by extracting a passage from a recent judgment rendered by the Bombay Bench of which one of us (Sukumaran, J.) was a party - *Janbee v. The Union of India*. W.P. No. 581/1990 decided on October 4, 1991 :-

'The law on question is no longer in gray area. The Court will certainly exercise its power when official default in disbursement of pension is established. In a decision rendered seven years back, one of us (Sukumaran. J.) reminded the State of Kerala that the days when pension was treated as a bounty of State are long ago gone (vide *Balakrishna Nair v. State of Kerala* 1984 KLT 502. The State of Kerala, unnecessarily exercised over that decision, took the matter in appeal to the Supreme Court. The Supreme Court did not disturb the decision. Speaking through Tulzapurkar. J. the Supreme Court only added to the obligations of the State by declaring its liability to pay interest at the Bank rates. The Court also declared an accountability on the part of the officers for the payment of the additional amount of interest brought about by their delay (see - *State of Kerala v. Balakrishna Nair* : (1985)ILLJ511SC '.

We have no hesitation in the above circumstances to direct the M.G. South Central Railway, Secunderabad :-

(a) to disburse the entire arrears of pension due to the petitioner as claimed in the pension papers within three weeks from today.

(b) to pay interest on the defaulted payment of pension at the rate of 12% per annum from the respective date of default.

(c) to report to the Court, with appropriate evidence in that behalf, the disbursement of the pension in the matter indicated above. The Divisional Accounts Officer, shall be the person responsible for the payment and for the submission of the report.

8. In the present case, the facts stated in the representation by the petitioner have not been denied. The uncontradicted averments indicate that pension was due in 1967. It was the duty of the Railway to disburse the family pension. It should have taken the initiative in effecting the payment. This is particularly necessary when the claimant is a helpless widow. The Railway cannot excuse itself by saying that the application has not been received from the claimant. Even after the receipt of papers on June 13, 1986, there was a culpable inaction on the part of the Railway. The pitiable plight of a widow 75 years old, and finding it difficult to work at that age (which should be appreciated by any cultured human being) and without any other source of livelihood would elicit compassion from any reasonable authority. It is unfortunate in the extreme that the Railway - a symbol of system and clock-work precision in many countries turned out to be an exception. We express our unhappiness in the inaction of the Railway. The further conduct after the receipt of the notice in not filling a return, and in not even instructing its counsel, is wholly reprehensible. It makes us sad to note that this attitude has been displayed by one of the biggest employers, and in the public sector. We are clear in our mind that the helpless widows or retired employees should not be exposed to continued cruelty and unabated agony in such circumstances. Many Governments have now issued circulars impressing upon the officials the necessity to disburse pension expeditiously and prescribing an outer period of less than six months. We direct the Ministry of Railways, Union of India, to issue appropriate instructions in the above lines. This shall be done within one month from the date of receipt of a copy of this Judgment. A report of the action taken in that behalf shall be submitted to this Court on or before December 12, 1991 to which date the case would stand for further orders on the action taken, as also on the disbursement of pension as directed earlier.

9. The writ petition is allowed as above. We exercise great restraint in not ordering costs. The Registrar shall forward directly and forthwith a copy of the Judgment to the petitioner, Smt. Bashnurbi, to Secretary to Government. Ministry of Railways, New Delhi and to the Respondent Divisional Accounts Officer, M.G. South Central Railway, Secunderabad.

10. Counsel for the Railways sought a certificate of this Court for appeal to the Supreme Court, by an oral application. We do not see any reason for grant of leave, as no point of law which needs to be decided by the Hon'ble Supreme Court is made out in this case. The request is declined.

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