

CASE NO.:
Appeal (civil) 8089 of 2002

PETITIONER:
S.K.Mastan Bee

RESPONDENT:
The General Manager, South Central Railway & Anr.

DATE OF JUDGMENT: 04/12/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

(Arising out of SLPNo.18565 of 2001)

SANTOSH HEGDE, J.

Heard learned counsel. Leave granted.

The appellant in this appeal is the widow of a Railway employee who died in harness on 21st November, 1969. According to the appellant, she was entitled for family pension on the death of her husband, but because of ignorance and lack of legal assistance, she could not stake her claim for family pension till 12.3.1991. When she made an application for grant of family pension to the Divisional Railway Manager (Personal) of South Central Railway (Vijaywada), her claim for said pension was rejected by the Railways on 24.3.1992 on the ground that her husband on the date of his death was not in the service of Railways because he was earlier medically invalidated. The appellant pursued her claim by representations to the Railways which having failed, she filed a writ petition before the High Court of Judicature: Andhra Pradesh at Hyderabad in the year 1992 which came up for consideration before a learned Single Judge of the High Court who was pleased to allow the writ petition and directed the respondent-Railways to fix and pay the family pension payable to the appellant, according to the rules, with arrears w.e.f. the date of death of the appellant's husband i.e. 21st of November, 1969.

While giving the above direction, the learned Single Judge rejected the contention of the Railways that the appellant's husband was medically invalidated. He also rejected the contention of the Railways that under the Rules or the Scheme the appellant was not entitled to family pension. The further contention of the Railways that the appellant had an alternate remedy in approaching the Central Administrative Tribunal was also rejected.

The aggrieved respondent-Railways preferred an appeal before a Division Bench of the same High Court in writ appeal No.1890/99. The Appellate Bench agreed with the learned Single Judge in regard to the right of the appellant for receiving family pension and also rejected the argument of the Railways in regard to the availability of alternate remedy. It, however, held that since there was some laches on the part of the appellant in approaching the court, it applied the principle of law of limitation applicable to suits and confined the retrospective benefit given by the learned Single Judge to a period subsequent to 1.4.1992 the date on which a legal notice was given by the appellant.

In this appeal, the appellant questions this restriction on her right to claim family pension w.e.f. 21.11.1969 the date on which

her husband died. It is submitted on behalf of the appellant that the Division Bench having agreed with the learned Single Judge on the legal right of the appellant to receive family pension ought not to have confined the said right to a date much subsequent to the death of her husband, merely because a demand for payment of family pension was made only in the year 1992. Learned counsel for the appellant pointed out from the judgment of the Division Bench itself that it had held that the denial of family pension to the appellant amounted to violation of her fundamental right to life guaranteed under Article 21 of the Constitution and that the Division Bench had also held that in the circumstances of this case the delay in approaching the railway authorities cannot be considered to be fatal for the maintainability of the writ petition. The learned counsel submitted, based on these findings, that the Division Bench could not have restricted the appellant's claim to a date much subsequent to the date of death of her husband. Per contra, the learned counsel for the railways contended that the delay in approaching the court was so large that it was not a fit case for the exercise of the discretionary remedy under Article 226 of the Constitution and that the High Court was in fact very generous to the appellant in granting the relief from the year 1992.

We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us herein above, 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 1.4.1992. 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 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 1.4.1992.

In the said view of the matter, we allow this appeal, set aside the impugned order of the Division Bench to the extent that it

restricts the right of the appellant to receive family pension only from 1.4.1992 and restore that right of the appellant as conferred on her by the learned Single Judge, that is from the date 21.11.1969. The Railways will take steps forthwith to compute the arrears of pension payable to the appellant w.e.f 21.11.1969 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension.

For the reasons stated above, this appeal succeeds to the extent mentioned herein above and the same is allowed with costs of Rs.10,000/- (Rs. Ten thousand only).

JUDIS