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Reserved

Central Administrative Tribunal

Allahabad

Registration T.A.No.234 of 1986(Original Suit No.46 of 1985)

Smt. Durga Devi and 3 others Plaintiffs.

Vs.

Union of India and 2 others Defendants.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This original suit has been received by transfer from the Court of Civil Judge Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985. The plaintiff no.1 is the widow of one ex-railway employee Saligram and the plaintiff nos. to 2 to 4 are the minor children of the said Saligram and the plaintiff no.1. Saligram had joined the service of the North Eastern Railway on 25.1.1946 and when he was posted as Driver grade 'C' in the Loco Shed Bareilly City, he was compulsorily retired on 25.5.1976 under rule 2046-A of the Indian Railway Establishment Manual and rule 620 of the Pension Rules. The validity of the said order of premature/compulsory retirement was challenged by Saligram by filing suit no. 389 of 1978. During the pendency of the suit, Saligram died on 30.4.1979. The application moved by the plaintiffs for their substitution as his legal representatives was rejected by the trial Court on 11.3.1980. The Civil Revision no.1 63 of 1980 filed by the plaintiffs against the said order was also dismissed by the VI Additional District Judge, Bareilly on 11.12.1980. Thereafter, the plaintiffs filed the present suit after giving a notice under Section 80 of the Code of Civil Procedure for a decree of Rs.17,246.20P claiming the arrears of pay which Saligram would have drawn in case he had not been retired by the defendants. The

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defendants have contested the suit and in the written statement filed on their behalf it has been stated that the validity of the order of compulsory retirement of their predecessor-in-interest Saligram cannot be challenged by the plaintiffs in the present suit. On the death of Saligram, the cause of action did not survive to his legal representatives and the matter was finally decided in the earlier proceedings between the parties. The predecessor in-interest of the plaintiffs had not claimed any pay, allowances or difference in pay in the suit filed by him and the same cannot be claimed by the plaintiffs in this case. On completing the qualifying service of 30 years on 24.5.1976, Saligram was rightly retired w.e.f.25.5.1976 by the DME who was his appointing authority. His case was reviewed by the reviewing committee carefully and on its recommendations, Saligram was retired compulsorily under the law. The suit is barred by O.II R.2 CPC and O.XXII R.9 CPC. The suit is also barred by time and the plaintiffs are not entitled to any relief.

2. The learned counsel for the parties were heard mainly on the question of maintainability of this suit. The parties have not filed the copies of the pleadings and the orders passed in suit no.389 of 1978 and Civil Revision No.163 of 1980. It is, however, an undisputed case of the parties that Saligram had challenged the ^{validity of} order dated 25.2.1976 of his compulsory retirement. It is also their undisputed case that during the pendency of the suit filed by Saligram, he died and on his death, the plaintiffs had moved an application for being brought on record as his legal representatives. Their application was rejected by the trial Court and the revision filed by them against the said order was also dismissed by the Addl.District Judge. It has now to be seen whether the plaintiffs could file a fresh suit on the basis of the said cause of

action i.e. wrongful compulsory retirement of Saligram.

3. O.XXII R.1 CPC provides that the death of a plaintiff shall not cause the suit to abate if the right to sue survives. Rules 2 and 3 of O.XXII of the Code further provide that where there are more plaintiffs than one and the right to sue survives to the surviving plaintiffs and within the time limit fixed by law no application for substitution is made, the suit shall abate so far as the deceased plaintiff is concerned. O.XXII R.9 (sub-rule (1)) of the Code provides that where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action. Sub-Rule (2) provides that the person claiming to be legal representative of the deceased plaintiff may apply for an order to set aside the order of abatement or dismissal. We are not aware ~~as to~~ on what ground the application of the plaintiffs for their substitution as the legal representatives of their predecessor-in-interest Saligram was rejected in the earlier suit. It could be either on the ground that no cause of action had survived to the plaintiffs or it could be on the ground of unexplained long delay on their part in moving the application for substitution. Whatever could be the reason, the same consequence i.e. the suit stood abated, should follow. As the plaintiffs remained unsuccessful in prosecuting the said case on the death of Saligram as his legal representatives and the suit stood abated or dismissed, their present suit on the same cause of action is clearly barred by Sub-rule (1) of rule 9 of O.XXII of the CPC. In view of this legal position, it is unnecessary to enter into the merits of the case and the suit has to be dismissed.

4. The suit is accordingly dismissed as not maintainable without any order as to costs.

LSM
25.9.87
MEMBER (A)

S. Narayana
25/9/87
MEMBER (J)

Dated Sept. 25, 1987
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