

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

DATED: THIS THE <sup>October</sup> 3<sup>rd</sup> DAY OF SEPTEMBER 1997

Coram : Single Member bench of Hon'ble Mr. D.S. Baweja AM

ORIGINAL APPLICATION NO. 937 of 1993

Smt. Gaura Devi wife of late Nanku Harijan  
resident of Mawwaiya, Post office and police  
station Cheelh, Tappa 84-Pargana Kantit,  
District Mirzapur - - - - - Applicant

C/A Sri Chandra Prakash

Versus

1. The Divisional Railway Manager,  
Eastern Railway, Mughalsari,  
District Varanasi.
2. The Union of India through the General  
Manager, Eastern Railway, Fairlie place,  
Calcutta-7000 01.
3. The Dy. Chief Personnel Officer,  
C & W Workshop, P.O. Liluah,  
District Howrah. - - - - - Respondents

C/R Sri D.C. Saxena

ORDER

By Hon'ble Mr. D.S. Baweja A.M.

This application has been filed by the widow of late Sri Nanku Harijan who while working as Peon in the office of Dy. Controller of Stores, Carriage and Wagon workshop, Liluah, Eastern Railway died on 8.1.1983. Her case is that late Nanku Harijan left behind widow (applicant) in the present Original application and six childrens.

Being the legal heir as well as the nominee as per the nomination declaration given by her husband in the office, she made representation on 27.1.1983 to the respondents to pay her all the settlement dues as well as to give compassionate appointment to the applicant. This was followed with reminders as well as <sup>she also</sup> ~~was~~ pursued the matter personally in the office. No action was, however, taken by the respondents. However, she was given to understand that one Smt. Shanta Devi alongwith Panna Lal had filed a Title suit no.1318/83 in the City Civil Court, Calcutta, claiming to be widow and son respectively of late Nanku Harijan. The applicant was impleaded as defendant no.2, defendant no.1 being the official respondents in this case. The applicant contested this suit by making appearance as well as by filing a written statement with the averments that the applicant was the legal wife of late Nanku Harijan and was also the nominee to receive the settlement dues as per nomination declaration executed in the office. The applicant also alleged that the plaintiff's claim is fictitious and the suit, has been instituted on false and fictitious contentions. The applicant submits that this suit was finally dismissed for default as per judgment dated 20.9.1988. After the dismissal of this suit, the applicant took up the matter with the respondents for payment of retiral benefits and giving her compassionate appointment as there was no legal impediments left. She pursued the matter but no action was taken by the respondents. Being aggrieved, the present application has been filed on 21.6.1993 with the prayer for the following reliefs

- (a) to direct the respondents to pay the applicant all the settlement dues consequential to the death of Late Sri Nanku Harijan.





(b) to pay interest at the rate of 18 percent per annum on all the amounts due from the date the said amounts are due till the actual date of payment.

(c) to consider the applicant for appointment in a suitable capacity.

(d) to certify and transmit the entire records relating to the case.

2. The respondents have filed the counter reply contesting the application. The respondents have admitted the fact with regard to the death of late Nanku Harijan and ~~execution of the nomination~~<sup>the</sup> nomination declaration made by the late employee in the name of the applicant and family. The respondents, however, submitted that payment of the settlement dues and consideration of the applicant's name for appointment could not be done in view of the pending suit no. 1318/83. This suit has been finally decided as per the judgment dated 9.9.1992 on merits in favour of Smt. Shanta Devi. In view of this judgment, the applicant has no legal claim for the payment of the settlement dues and therefore the application is devoid of merit and deserves to be dismissed.

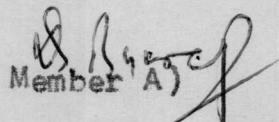
3. The applicant has filed a rejoinder reply reiterating the submissions made in the Original application. The applicant maintains that the suit filed by Smt. Shanta Devi and others had been dismissed as per the judgment dated 20.9.1988. As regards the judgment dated 9.9.1992 referred to above by the respondents in the same suit, the applicant denied the same making averment that no copy of the judgment has been filed by the respondents.

4. I have heard Shri Chandra Prakash and Shri D.C.Saxena, learned counsel for the applicant and respondents respectively and the materials<sup>brought</sup> records has also been perused. The learned counsel for the applicant and the respondents were directed to submit the certified copy of the judgment dated 20.9.1988 and 9.9.1992 of the suit no.1318/83 as referred to by the applicant and the respondents in their averments. During the hearing, learned counsel for the respondents also filed the certified copy of the Decree in the Original suit no.1318/83.
5. From the averments of either parties, it is admitted fact that the payment of settlement dues of late Nanku<sup>Ram</sup> Harijan was not made by the respondents in view of the rival claim by filing suit no. 1318/83 made by Smt. Shanta Devi and Pannal Lal claim to be widow and son of late Nanku<sup>Ram</sup> Harijan respectively. The main thrust of argument of the applicant is that the suit no.1318/83 filed by Smt. Shanta Devi and another had been dismissed for default and as such the legal right of the applicant has been established. The respondents on the other side have brought out the copy of the judgment in the same suit dated 9.9.1992 under which the matter has been decided on merit in favour of Smt. Shanta Devi. Since rival claims were being made by either parties based on these 2 judgments, the applicant and the respondents were asked to file the certified copy of the judgment. As indicated above, certified copy has been brought on record. There is no doubt that the suit had been dismissed by the order dated 20.9.1988 for default. However, it appears that the suit was subsequently



restored and has been finally decided on merits through judgment dated 9.9.1992. I have gone through the judgment dated 9.9.1992 and find that the suit had been decided in favour of Smt. Shanta Devi and Panna Lal Plaintiff nos. 1 and 2. upholding them as the legally married wife and son respectively of Late Nanku Harijan. During hearing, the learned counsel for the applicant was pointedly asked to reconcile the averments of the applicant in view of the judgment dated 9.9.1992 but he could not give any explanation for the same. In view of the judgment dated 9.9.1992 in the suit no. 1318/83, the legal claim of Smt. Shanta Devi and Sri Panna Lal has been established. The learned counsel for the applicant has not made any averment either in the rejoinder or during hearing that any appeal has been filed against the judgment and in such <sup>an</sup> ~~the~~ event, ~~the~~ judgment becomes final. With this legal position obtaining, the application of the applicant for the reliefs prayed for is not sustainable. <sup>there are</sup> In case ~~more~~ than one claimant is legal heir of the deceased employee for receiving the settlement dues and other benefits, ~~in the matter~~ requires to be adjudicated through a civil suit and such an issue is not a service matter. In the present case, this legal claim has been adjudicated upon through judgment dated 9.9.1992 and, therefore, the present application does not remain maintainable. In view of this application does not deserve to be considered on merit.

6. In light of the above, application is not maintainable before the Tribunal and, therefore, the same is dismissed accordingly. No order as to costs.

  
Member A)