

10
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.564 OF 1993

Cuttack, this the 30th day of June, 1997

K. Chittiamma and another

...

Applicants

Vrs.

General Manager, South Eastern Railway & ors ... Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes
- 2) Whether it be circulated to all the Benches of the ~~NO~~ Central Administrative Tribunal or not?

Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN
20/6/97

19

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 564 OF 1993
Cuttack, this the 30th day of June, 1997

C O R A M :

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

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1. K.Chittiamma, w/o late K.Surya Rao,
2. K.Jyoti D/o late K.Surya Rao
Both are At/PO-Bhanjanagar,
District-Ganjam.

Applicants.

Vrs.

1. General Manager, South Eastern Railway,
Garden Reach, Calcutta (West Bengal).
2. K.Babuji S/o K.Appa Rao
3. Kumari K.Potty D/o K.Appa Rao
Sl. Nos. 2 and 3 are residing at
Block No.T-39-A/I,Unit-14,Gole Kholi,
PO-Kharagpur,Dist.Midnapur (W.B.)
4. Divisional Railway Manager,
South Eastern Railway, Kharagpur ...

Respondents

Advocates for applicants - M/s A.Routray,S.Mohanty,
S.Misra & P.K.Padhi.

Advocate for respondents - Mr.L.Mohapatra
(For respondents 1 & 4)

O R D E R

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SOMNATH SOM, VICE-CHAIRMAN

In this application, the petitioners have prayed for a direction to General Manager, S.E.Railway, Calcutta (respondent no.1) to pay them all the service benefits, such as, G.P.F., Gratuity, Family Pension and compassionate appointment, as petitioner no.1 is the wife and petitioner no.2 is the daughter of one K.Surya Rao, a regular employee under S.E.Railway, who after retirement from service had passed away.

12

-2-

2. Facts of this case, as per the Original Application, are that petitioner no.1 is the legally married wife and petitioner no.2 is the daughter of one K.Surya Rao. As the husband of petitioner no.1, during his life time, did not look after her and ill-treated her and also did not pay for her maintenance, she filed a maintenance case against him which was decreed on 16.9.1980 holding that petitioner no.1 is the wife of K.Surya Rao who was directed to pay Rs.100/- per month for her maintenance. After which happened death of the husband, seven years before filing of the application, none of the retirement benefits has been given to the petitioners. It is further alleged that respondent nos. 2 and 3 styling themselves as the son and daughter of K.Surya Rao had obtained the retirement benefits from respondent no.1. Petitioners had made representation and have also sent a pleader's notice but without any result. That is why, they have come up in the present application.

3. The respondents in their counter have pointed out that initially they had great difficulty in locating the service particulars of K.Surya Rao. Ultimately, those were traced and it was found that K.Surya Rao was working as Shuntman under Chief Yard Master, Nimpura. He retired from service on superannuation on 30.6.1985 and died on 16.10.1986. K.Surya Rao during his service had submitted a statement in proper form indicating the details of his family for the purpose of family pension. Copy of this statement is at Annexure-R/1 to the counter. In this statement, K.Surya Rao stated that his wife had expired and K.Simachalam is his only son. The respondents have stated that according to this statement, all the retirement benefits had been given to K. Simachalam. It has been further stated that after retirement

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-3-

K.Surya Rao did not vacate the Railway quarters and this resulted in holding up of the gratuity.Ultimately, penal rent for unauthorised occupation of the quarter from 1.7.1985 to 18.1.1986 and electricity charges were recovered from the gratuity, and the balance amount and the commuted value of pension were sanctioned and paid to K.Simachalam who, according to K.Surya Rao, was his only son. The respondents have stated that as K.Surya Rao had himself noted that his wife had expired, the prayer for granting family pension and other retirement benefits to petitioner no.1 is without any merit.

4. I have heard Sri A.Routray, the learned lawyer for the applicant, and Sri L.Mohapatra, the learned counsel appearing on behalf of respondent nos. 1 and 4. I have also perused the record. The private respondents did not appear in this case. In any case, from the above averments of both the sides, it seems that the two private respondents did not get any retirement benefits of K.Surya Rao. K.Surya Rao had also not mentioned them as his son and daughter and therefore, these two private respondents are in no way concerned with this application.

5. From the decree of S.D.J.M., Bhanjanagar, in MC No.313/79, it appears that petitioner no.1 is the legally married wife of K.Surya Rao. In July 1954 she came to her parents' house at Bhanjanagar for delivery and a daughter was born to her. In 1957 she went back to her husband who ill-treated and assaulted her and did not give her food and clothes. According to petitioner no.1, on one occasion, K.Surya Rao took her to the

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Railway Station and both of them boarded a train for going to Shalimar and when the train was about to start, he got down from the train leaving petitioner no.1 alone. Petitioner no.1 with great difficulty reached her brother's house. Thereafter she seems to have stayed at Bhanjanagar and maintained herself and her daughters with the help of relatives. In this decree, on the basis of evidence of P.Ws. 1 and 2 that petitioner no.1 is the legally married wife of K.Surya Rao, having two daughters out of K.Surya Rao, monthly maintenance of Rs.100/- was granted. In this maintenance case, K.Surya Rao did not appear even though he got notice and accordingly he was set ex parte and this order of maintenance was passed ex parte. It has been submitted by the learned lawyer for the petitioners that the declaration that petitioner no.1 is the wife of K.Surya Rao is a declaration in rem and therefore, respondent no.1 is bound by the above declaration and is obliged to treat petitioner no.1 as the legally married wife of K.Surya Rao. Admittedly, Railways were not party in the maintenance case and therefore, this decree cannot be said to be binding on the Railways. In a similar case dealing with the question of date of birth, a decree obtained by an employee against the Andhra University changing her date of birth has been held to be not binding on the employers of the Government servant. This decision is reported in 1992 SCC (I&S) 78, Director of Technical Education and another v. K.Sitadevi (Smt.).

In that case, the Hon'ble Supreme Court have held that while the decree is not binding on persons who are not parties to the litigation, it is a relevant piece of evidence to be considered.

14
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-5-

6. The respondents have taken the stand that because K. Surya Rao, the deceased Railway employee, had given the declaration that his wife had expired, no family pension is payable to petitioner no.1. This is not correct. First thing to be noted is that at present the Railways are not paying family pension to anybody. K. Simachalam, who has been declared as the only son by K. Surya Rao, the deceased Railway employee, has already been provided with employment and obviously, he is not in receipt of family pension. Family Pension Scheme, 1964 inter alia provides that on the death of pensioner, his widow, son and unmarried daughter would be entitled to family pension. In case of widow, family pension will be payable till date of death or re-remarriage whichever is earlier; in case of son it is payable till the date of attaining the age of 25 years, and in case of unmarried daughter, it is payable till the date of marriage or the date of attaining the age of 25 years, whichever is earlier. There is nothing in the Scheme that family pension is dependent upon a declaration given by the Government employee about his wife. Family pension is payable to the widow because of her relationship with the deceased Government employee/pensioner. In this case, there is material on record that petitioner no.1 was not pulling on well with her husband. Because of this, the husband might have spitefully indicated in the statement at Annexure-R/1 that his wife had expired. On this basis alone, the prayer for family pension cannot be denied to petitioner no.1. Least that the Railway authorities should have done was to make an enquiry into the prayer of petitioner no.1 and take a view whether she is the legally married wife of K. Surya Rao, the deceased Railway employee/pensioner. In consideration of the

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30.6.97*

above, it is ordered that respondent nos. 1 and 4 should get an enquiry made into the assertion of petitioner no.1 that she is the legally married wife of K.Surya Rao, ex-employee of the Railways, who retired as Shuntman on 30.6.1985 and was in receipt of pension, and in case it is found that she is the widow of K.Surya Rao, then family pension, according to the Rules, should be paid to her. The enquiry should be conducted and a final view taken within a period of 4 (four) months from the date of receipt of copy of this order and family pension, if payable, should be paid within thirty days thereafter, with effect from the date of death of ex-employee of the Railways.

7. As regards the petitioners' prayer for compassionate appointment, it is seen that K.Surya Rao passed away after retirement and even taking the petitioners to be the widow and daughter of K.Surya Rao, a case for compassionate appointment is not made out and this prayer is, therefore, rejected.

8. The last prayer is for getting the share of G.P.F., gratuity and commuted value of pension. These items are discussed below separately. In case G.P.F. has been received by K.Surya Rao in his life time after retirement, the petitioners cannot lay a claim to the G.P.F. In case, however, G.P.F. has been paid to K.Simachalam who has been noted by K.Surya Rao as his only son, then the Railway authorities will have to see if G.P.F. has been paid on the basis of nomination made by K.Surya Rao and if according to such nomination, the G.P.F. has been paid to K.Simachalam, then also the petitioners would have no claim to the G.P.F. If, however, G.P.F. has been paid to K.Simachalam on the declaration that he is the only son and heir

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30.6.97*

of K.Surya Rao, then obviously a mistake has been committed. In case it is held finally that petitioners are the widow and daughter of K.Surya Rao, the Railway authorities will have to pay the proportionate share of G.P.F. to the petitioners and recover the amount wrongly paid to K.Simachalam. As regards Gratuity and commuted value of pension, the prayer of the petitioners for those amounts should also be disposed of in the same manner indicated in respect of the G.P.F. dues. It is, however, made clear that in case the Railways come to a finding that petitioner no.1 is not the widow and petitioner no.2 is not the daughter of K.Surya Rao, the petitioners will have the liberty to approach the Tribunal again for establishing their rights.

9. In the result, the application is allowed in terms of the directions given in paragraphs 6,7 and 8 of this order. There shall be no order as to costs.

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VICE-CHAIRMAN
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