

16

O.A. No. 119 OF 2004

Order dated: 22.11.2006.

Short facts of this case are that Subasini Devi is the widow of Madhaba Ghadai The said Madhaba Ghadai was appointed an Asst. Teacher in the Mixed Primary School of S.E.Railways (erstwhile) Khurda Road w.e.f. 01.09.1960. While continuing as such, he resigned his post on 05.01.1968. Thereafter, he joined and continued up to 31.08.1980 in the Homeopathic Dispensary of the Railway, on honorary basis. Vide order dated 1.8.1980 of the Divisional Railway Manager (P) S. E. Railways, Khurda Road, the husband of the applicant was re-appointed an Assistant Teacher in the D.T.Primary School, at Talcher from where he retired from service on 31.08.1987 on attaining the age of superannuation. On his retirement, vide order dated 05.01.1988, he was sanctioned the service gratuity amount to Rs. 13,748/-. But no monthly pension was sanctioned in his favour as he does not have the minimum qualifying service of ten years. He also submitted representation for grant of pension which was rejected in order dated 12.04.1988. After his death on 23.10.1989, the present Applicant pursued the grievance for payment of pension/family pension but no heed having been paid to her request.

she has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:

- “ (i) The applicant be provided with family pension for the service rendered by her husband;
- (ii) The applicant be provided the arrear pensions to which her husband was entitled to;
- (iii) The applicant be allowed 12% interest on the arrear pensionary dues.”

Factual aspects of the matter are not in dispute. However, the Respondents in their counter have stated that payment of pension, after retirement is subject to fulfilling the conditions provided in the rules. As the applicant does not have the qualifying ten years of regular continuous service, he was not granted the pension and as a consequence the applicant is also not entitled to family pension. They have also stated that honorary service rendered by the applicant is not counted towards pensionary benefits. Pension is admissible to a Railway servant if she/he has the qualifying regular continuous service of ten years.

Heard learned counsel appearing for both sides and went through the materials placed on record.

Learned Counsel appearing for the applicant has argued that the husband of the applicant initially joined as an Assistant

Teacher in the Railway School on 1.9.1960 and continued till 4.1.1968. On 5.1.1968 he resigned in order to get appointment as a Homeopathy Doctor against a sanctioned vacancy in the Railway Homeopathic dispensary. He was allowed to continue in the said dispensary till 31.8.1980 i.e. till appointment of a regular Homeopathic Doctor. Under Annexure-A/3 dated 1.8.1980 on his reappointment as an Assistant Teacher Gr. IV in the D.T.Primary School at Talcher, he was asked to resign the post of Homeopathy Doctor and accordingly her husband resigned and joined in the D.T.Primary School of the Railways. It was further argued that since the husband of the applicant resigned to take up a new employment in railways, non-consideration of the grievance of the husband of applicant/applicant for grant of pension/family pension is nothing but was an arbitrary action of the Railways/Respondents. According to the Applicant, since the resignation was to take up another employment in the Railways, in no stretch of imagination it can be said that the applicant's husband did not put in the minimum qualifying period of service of ten years. He has therefore, submitted that denial of pension and pensionary benefits amounts to violation of the constitutional mandate enshrined under Article 311 and 21 of the

Constitution of India. In this connection, Learned Counsel for the applicant has taken me through the decisions of this Bench made in case of Raja @ Rajkishor Parida v. Union of India and others, 96 (2003) CLT 4 (ATC)(CAT).

On the contrary, Learned Counsel appearing for the Respondents has submitted that none of the arguments of the Applicant is of any help for the applicant to get pension/family pension when Rules specify that no pension is payable unless one puts in 10 years of regular continuous service. He has also argued that as the husband of the applicant resigned not for accepting employment elsewhere , the Respondents have rightly rejected the claim of the husband of the Applicant for grant of pension. He has also submitted that this is also not maintainable being barred by limitation. He has submitted that in this OA the order of rejection of the prayer of the husband of the applicant is not challenged by the Applicant. By stating so, he fervently prayed for dismissal of this OA.

The crux of the matter is that whether under the Rules the husband of the applicant is entitled to count the entire period of service for pensionary benefit with consequential family pension.

Relevant portions of the Railway Services (Pension) Rules, 1993 are quoted herein below:

“14. Periods which shall not be treated as service for pensionary benefits-

Periods of employment in any of the following capacities shall not constitute service for pensionary benefits, namely-

....
(iv) work done on payment of a fee or honorarium.
....
(ix) resignation from service save as indicated under rule 41.

Rule 41 of the Railway Services (Pension) Rules, 1993 provides as under:

“41. Forfeiture of Service on Resignation:

(1) Resignation by a railway servant from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority shall lead to forfeiture of his past service.

(2) A resignation shall not lead to forfeiture of past service, if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent under the Government where service qualifies for pension.”

The applicant did not corroborate the stand that the resignation of her husband was duly accepted by the authorities to enable him to take up new assignment. The husband of applicant resigned on 5.1.68 on his own and joined as Homeopathic Doctor on honorary basis. Again he resigned on 31.08.1980 suo motto and

joined as an Assistant Teacher in D.T.Primary School Talcher on 01.09.1980. Under the Rules, quoted above, work done on honorary basis cannot be taken into consideration for the purpose of qualifying service so as to enable a railway employee to get pension. Therefore, under no circumstances it can be said that the husband of the applicant was entitled to count the entire period of service for the purpose of qualifying service for pension. The applicant has also not challenged the order rejecting the grievance of her husband for grant of pension. The decision of this Bench made in the case of Shri Raja (supra) and relied on by the Learned Counsel appearing for the Applicant has no application to the present case as that was a case where the applicant had continuous engagement in the railways first on casual, thereafter on temporary status and finally he retired as a regular railway employee. Therefore, this Tribunal directed the authorities to grant minimum pension to the applicant by taking into such of the periods from his casual/temporary status period of service.

In view of the above, I find no merit in this OA which stands dismissed. No costs.

13072
(B.B.MISHRA)
Member (A)