

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM &
ARUNACHAL PRADESH)**

WRIT PETITION(C) 1148/2015

Union of India & 2 Others	-----	Petitioners
	-versus-	
Smti Munni Devi	-----	Respondent

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. AJIT SINGH
HON'BLE MR. JUSTICE MANOJIT BHUYAN**

Advocate for Petitioners	::	Mr. H.K. Das Ms. P. Dutta
Advocate for the Respondents	::	Mr. D.K. Sarmah Ms. A. Talukdar Mr. H. Borah
Date of Hearing	::	04.09.2017
Date of delivery of Judgment	::	04.09.2017

JUDGMENT & ORDER

(Manojit Bhuyan, J)

1. Facts leading to the institution of the present writ petition by the Union of India may be noticed. The sole respondent Smt. Munni Devi is the widow of late Sohan Singh who served N.F. Railways, Lumding Division as a Sanitary Cleaner, initially on temporary basis. His service was confirmed with effect from 13.09.1971. On his death on 26.10.1997, Munni Devi made representation for grant of family pension. As the same was not forthcoming, she filed O.A. No. 303/2012 before the Central Administrative Tribunal, Guwahati Bench. The same was disposed of on 26.11.2012 by holding that there was no merit in the O.A. as Munni Devi was sleeping over her rights and no proper explanation was offered as to the inordinate delay in

making claim for family pension. However, a direction was made to consider the representation dated 22.02.2012 made by Munni Devi as per law. This order of the Tribunal dated 26.11.2012 was assailed in WP(C) 1222/2013 and this Court disposed of the same on 09.04.2013 with direction to the concerned Railway Authorities to consider her case and to take a decision thereon in accordance with law. In the said order of this Court dated 09.04.2013 it was observed that a person's right to receive pension is a right in continuity and such right cannot be said to have been barred by law if she was otherwise entitled to receive pension. This Court also held that the refusal on the part of the Tribunal to adjudicate upon the rights of Munni Devi was not tenable in law. This Court also noted as follows:

"It is also imperative to note that if what the petitioner contends is true, her husband, while working on temporary basis, as Sanitary Cleaner, had been placed under suspension w.e.f. 23.08.1980 and, since thereafter, neither the suspension was revoked nor was he reinstated. At the same time, according to the petitioner, as already indicated above, no disciplinary proceeding was drawn against her husband and when the matter remained so poised, her husband died on 28.10.1997. If what the petitioner contends is true, the respondents have the responsibility to do the needful in accordance with law."

2. In terms of the directions made in WP(C) 1222/2013, the Railway Authority passed Speaking Order dated 26.06.2013 rejecting the claim of Munni Devi, which again constrained Munni Devi to institute O.A. No. 243/2013. Before the Tribunal Munni Devi filed an affidavit on 03.02.2014 to bring on record eight documents, on consideration of which the Tribunal concluded that even if late Sohan Singh was placed under suspension, the operation of the order could not have subsisted beyond 1981, which is the year where GPF contribution receipt was available on record. The Tribunal also took note of the stand of the Railway Authorities as regards non-availability

of records, as a result of which family pension could not be settled. In this respect, the Tribunal directed as follows:

"14. As the respondents submitted, due to non-availability of record, they could not settle the family pension, this Court directs the Railways to use the information available in the office order dated 24.09.1975 where along with the name of the applicant, other employees' names have been given along with date of confirmation. On the basis of next below rule, family pension etc. of the applicant be calculated on prorata service basis and disbursed along with other benefits as per GPF records."

Accordingly, O.A. No. 243/2013 was allowed with direction to the Railway authorities to disburse the post retirement benefits including GPF and Pension within a period of three month.

3. According to the petitioners herein, for the purpose of effectuating the Tribunal's order, an enquiry was set in motion and in the course of the said enquiry the statement of one Sri Sankar Chandra Dey was recorded on 05.09.2014, who stated that he had worked with late Sohan Singh and that late Sohan Singh remained absent from duty now and then and eventually he was removed from service. On the basis of the statement of Sri Shankar Chandra Dey, the petitioner has filed the present writ petition challenging the order of the Tribunal and also denying any liability to pay family pension to Munni Devi. The argument advanced is that since late Sohan Singh was removed from service, as such, there was no question for paying any retirement benefits and family pension to the widow.

4. To test the stand of the petitioners, this Court called upon the counsel representing the petitioner to demonstrate from records the fact of removal of late Sohan Singh from service. Sadly, not an iota of evidence could be produced by the petitioner, save and except, the statement of Sri Shankar Chandra Dey. Also, no service record of late Sohan Singh could be produced. Justification made is that no records

whatsoever are available in the office with regard to the service career of late Sohan Singh.

5. It is well settled in law that burden lies on the party if a point is to be established. The dispute raised with regard to the alleged removal from service is only a bald statement shorn of any documentary support. In this view of the matter we are not impressed or satisfied with the stand taken by the petitioners. The ground taken to deny retirement and pension benefits to Munni Devi does not stand vindicated by any supporting documents. In the absence of any tangible evidence, the only reasonable view open to this Court is that merely on the basis of a statement that late Sohan Singh was removed from service, the benefits to which Munni Devi is legitimately entitled to, cannot be denied. In this view of the matter, a direction is made to the petitioners to work out and pay the retirement benefits as due to Munni Devi on the demise of her husband who was a confirmed employee under the N.F. Railways, Lumding Division. In so far as payment of family pension is concerned, a direction is made to pay the same with effect from the period prior to three years from the date when the first Original Application No. 303/2012 was instituted by Munni Devi before the Central Administrative Tribunal, Guwahati Bench. Ordered accordingly. The present writ petition accordingly fails and stands dismissed. The direction of the Tribunal in its Order dated 28.05.2014 in O.A. No. 243/2013 stands modified to the extent above. No costs.

JUDGE

CHIEF JUSTICE

sds