(2016) 12 DEL CK 0123

In the Delhi High Court

Case No : W.P.(C) No. 11536 of 2016

Mrs. Shobha Kaur — APPELLANT

Vs

Central Bank of India — RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 CLR 998

Hon'ble Judges : Valmiki J. Mehta, J.

Bench : Single Bench

Advocate : Mr. Umesh Singh, Advocate, for the Petitioner; Mr. O.P. Gaggar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.(Oral)—By this writ petition under Article 226 of the Constitution of India, petitioner Mrs. Shobha Kaur, widow of the late employee Sh. Prithvi Paul Singh, seeks the relief for being granted pension to her late husband and also consequent family pension to the petitioner. Petitioner also prayed that petitioner be granted interest on account of late payment of the terminal benefits.

2. The facts of the case are that the petitioner''s husband was granted leave to visit USA in the year 1991. The leave was up to 24.12.1991 where after the petitioner''s husband returned to India but again went back to USA on 19.2.1992 on the ground that petitioner''s mother had suffered a fracture in her hip bone. Petitioner''s husband thus went to USA on 19.2.1992 without getting any leave sanctioned and the petitioner claims that the leave applications were "mercilessly rejected" by the employer vide letters dated 20.4.1992 and 2.6.1992. Petitioner then pleads that petitioner''s husband submitted his resignation to the bank on 23.10.1992 and petitioner''s husband thereafter kept on waiting for his terminal benefits but no intimation was received by the petitioner''s husband of non-acceptance of his resignation. The petitioner''s husband thereafter was removed

from service vide order dated 15.3.1996 on account of continuous unauthorized absence from the office. Petitioner in this writ petition has pleaded that the petitioner''s husband never came to know of the order of removal from services dated 15.3.1996. Petitioner further pleads that the pension scheme came into force by the respondent no.1/employer/Central Bank of India in 1995 and petitioner''s husband was never informed that he should exercise his option for pension. With these averments the writ petition has been filed seeking the following reliefs:-

"PRAYER

In view of the above said facts and circumstances of the case the petitioner humbly prays that this Hon''ble court may kindly be pleased to issue an appropriate writ in favour of the petitioner and:

(A) the Petitioner be awarded Pension for her Husband from the first date of its implementation, as the same shall be subsequent to the deemed date of acceptance (of his Resignation dated 23.10.1992), the same being 23.01.1993 i.e. 3 months after the date of his Resignation dated 23.10.1992 in view of Hon''ble Supreme Court''s order in Civil Appeal nos of 2014 & SLP(c) no. 36909 of 2012, passed on 17.12.2014 in the case of Shashi Kala Devi v. Central Bank of India & Others, as against his eligibility to earn Pension from the date of his normal Superannuation on 30.11.2000, as per Ground (ii) as above, as the same is certainly be more beneficial to the Petitioner.

(B) That in addition to the Pension as above under (A), the petitioner be paid encashment of Ordinary Leave standing to petitioner''s husband''s credit on 24.12.1991, as no Leave has been allowed & debited after the said date.

(C) That in addition to (A) & (B) in view of the Gross violation of its own Rules & Regulations, the Bank be directed to pay interest at Fixed Deposit rates on delayed payments of Terminal Benefits & also on amount payable due to encashment of leave to his credit as on 24.12.1991 i.e. the date after which he was treated on loss of pay, along with interest on amounts due under Pension payable to him from the date of its implementation.

(D) As the Petitioner''s Husband has expired on 14.02.2016, the Petitioner in addition to above reliefs is also entitled to Family Pension from the date of the death of her Husband i.e from 14.02.2016.

(E) The respondent may also be directed to pay the consequential benefits along with interests thereon at the rate of fixed deposit since due date and till the realization to the petitioner;

(F) Any other order or relief which the Hon''ble Court deems fit and proper may also be passed in favour of the Petitioner for which he shall ever remain obliged."

3. If at all there can be a frivolous case then it is the present case. The following facts stated will show as to how frivolous the case of the petitioner is.

4. Petitioner''s husband after removal from service vide order dated 15.3.1996 got his service benefits including Gratuity, Provident Fund of Employers Contribution as PF and Group Insurance Claim and which were given to the petitioner way back around the years 1996-1997. This is so stated in response to the RTI queries of the petitioners whereby the respondent no.1/employer responded to various queries of the petitioner vide letter of the employer dated 30.7.2014 as under:-

"Central Bank of India

Central to you Since 1911

Nodal Regional Office, Delhi (south)

C.o.: Chander Mukhi, Nariman Point, Mumbai-400021

RO(SOUTH): LAW RTI-56:2014:158

Date: 30.07.2014

Speed Post

Shri P.P.Singh

Address A-16, Green Park Extension, New Delhi-110016

Reg: Your application under Right to Information Act, 2005

Ref: 1. Your RTI application letter dated 14.06.2012

2. Our reply letter no.ROA/OPR/2011-12/M-88/1052 dated 25.02.2012

3. Order of CIC letter no.CIC/VS/A/2013/000963 & 1037/SH dated 07.07.2014.

Vide your letter dated 10.07.2012, you have preferred a second appeal to Central Information Commission wherein it is stated that you were not satisfied with the reply of CPIO and Appellate Authority of the information sought by you under Right to Information Act, 2005. On which CIC has passed his order dated 07.07.2014 received by us on 11.11.2014, "to provide to the appellant, within 3 weeks of this order or sworn affidavit if information cannot be traced out in spite of a renewed search".

As per instructions we have made thorough search in the matter and we lay our hands on following records only. Therefore in compliance of the order of CIC we are furnishing the point wise reply as under:

1. Point No.1-The date of resignation was 23.10.1992 and you had been informed about non acceptance of your resignation letter vide our letter No.ROA:PRS:93-94:317 dated 22.04.1993.

2. Point No.2,3,4,6 & 9- In these points, we would like to inform that punishment of removal of service was awarded to you on 15.03.1996 due to unauthorized absence from the office therefore no question arises of resignation given by you.

3. Point No.5-In this point, we would like to inform that leave taken by you beyond date 24.12.1991 were being treated unauthorized and on loss of pay till you were removed from the service.

4. Point No.7-Retirement dues paid to you were as under: Gratuity ?Rs.100000/- PF own contribution ?Rs.156802.41 PF Bank contribution-Rs.176802.41 VPF-Rs. 30814.24 Group Insurance Claim-Rs.4283/ -

5. Point No.8-The above mentioned PF amount, Gratuity, VPF etc. were received by you and credited in you HSS a/c No.8584 under your proper receipt. Since the statement of account you have demanded is old more than 10 years old, we are unable to provide you the same.

6. Point No. 10, 11 and 14-As the matter is 10 year old, hence the record is not available with us.

7. Point No.12-The last date to submit pension option letter was 25.01.1996.

8. Point No.13-Leaves balance on 01.01.1992 were Casual Leave-12, Ordinary leave/privilege leave-159, Sick Leave on half pay-153 and Sick Leave on full pay-1.

9. Point No.15-As per records available, the letter is not available with the Regional Office. In view of above, the orders of CIC have been duly complied with.

Sd/-

(M.K. Gaind)

Senior Rgional Manager/PIO"

(underlining added)

5. Therefore, the fact of the matter is that petitioner''s husband took all retirement benefits in around the year 1997 which includes the Provident Fund amounts and which Provident Fund amount is in substitution of the pension. Now in the year 2016 the petitioner, after the death of her husband, is using the plea of reply to RTI queries for arising the causes of action to claim pension under 1995 scheme. In view of the above facts, petitioner and her husband both are estopped from claiming pension on account of having taken and enjoyed the Provident Fund dues way back in 1997 and which are in substitution of the pension scheme.

6. In fact the present writ petition is hopelessly barred on account of delay and laches inasmuch as the cause of action for claiming pension would have accrued to the petitioner''s husband when the respondent no.1/employer sent its letter dated 10.12.1996 to the petitioner''s husband stating that the petitioner''s husband is not entitled to pension on account of not having opted for the pension scheme. This letter dated 10.12.1996 reads as under:-

CENTRAL BANK OF INDIA

Regional Office-A (South)

ROA: PRS:96-97:4400

Dated: 10-12-1996

Shri Prithvi Paul Singh

2433/8, Barleys Club Drive

ORLANDO FLORIDA-32837

U.S.A.

Reg: Request for release of your PF/Gratuity & Pension.

Ref: Your letter dated 28-11-96.

In the above context, this is to inform you that papers for settlement of your Terminal Dues PF, Gratuity and Group Insurance are already in the process and you may keep in touch with B/o Mehrauli for payment of the same.

Further please note that last date for submission of pension option form was 25th January 1996 and as you have not submitted your pension option form within the stipulated date, your request for pension cannot be considered at this stage. Please be advised accordingly.

Sd/-

(V.B. Mathur)

Asst. Regional Manager"

7. Petitioner today in the end of the year 2016 cannot challenge the decision communicated to the petitioner''s husband vide letter dated 10.12.1996 whereby the petitioner''s husband was clearly informed that he would not be entitled to pension as he had failed to opt for the pension scheme. Supreme Court in the case of State of Orissa and Another v. Mamata Mohanty (2011) 3 SCC 436 has held that though the Limitation Act does not apply to writ proceedings however the principles of limitation can and do apply and consequently the writ petitions which are filed beyond the period of limitation are dismissed on the ground of delay and laches. The relevant paras of the judgment in the case of Mamata Mohanty (supra) are paras 52 to 54 and which paras read as under:-

"Delay/Laches

52. In the very first appeal, the respondent filed Writ Petition on 11-11-205 claiming relief under the Notification dated 6-10-1989 w.e.f. 1-1-1986 without furnishing any explanation for such inordinate delay and on laches on her part. Section 3 of the Limitation Act, 1963, makes it obligatory on the part of the court to dismiss the suit or appeal if made after the prescribed period even though the

limitation is not set up as a defence and there is no plea to raise the issue of limitation even at the appellate stage because in some of the cases it may go to the root of the matter. (See Lachhmi Sewak Sahu v. Ram Rup Sahu and Kamlesh Babu v. Lajpat Rai Sharma.)

53. Needless to say that the Limitation Act, 1963 does not apply in writ jurisdiction. However, the doctrine of limitation being based on public policy, the principles enshrined therein are applicable and writ petitions are dismissed at initial stage on the ground of delay and laches. In a case like at hand, getting a particular pay scale may give rise to a recurring cause of action. In such an eventuality, the petition may be dismissed on the ground of delay and laches and the court may refuse to grant relief for the initial period in case of an unexplained and inordinate delay. In the instant case, the respondent claimed the relief from 1-1-1986 by filing a petition on 11-11-2005 but the High Court for some unexplained reason granted the relief w.e.f. 1-6-1984, though even the Notification dated 6-10-1989 makes it applicable w.e.f. 1-1-1986.

54. This Court has consistently rejected the contention that a petition should be considered ignoring the delay and laches in case the petitioner approaches the Court after coming to know of the relief granted by the Court in a similar case as the same cannot furnish a proper explanation for delay and laches. A litigant cannot wake up from deep slumber and claim impetus from the judgment in cases where some diligent person had approached the Court within a reasonable time. (See Rup Diamonds v. Union of India, State of Karnataka v. S.M. Kotrayya and Jagdish Lal v. State of Haryana.)"

(underlining added)

8. Learned counsel for the respondents is justified in arguing that once the petitioner was removed from services vide order dated 15.3.1996 which has become final on account of the same not being challenged, the effect of removal of service will disentitle the petitioner to the claim of pension.

9. It is seen that the petitioner has been completely ill advised to file the present writ petition. If the petitioner has not been ill advised then the petitioner is guilty of deliberately misusing the process of law by seeking in 2016 reliefs which would, assuming if available, have been available even in the year 1996. In fact in the years 1996/1997 the petitioner''s husband received all the Provident Fund benefits and utilized the same and thus the petitioner and her husband are estopped from claiming pension. The writ petition is barred by delay and laches as the petitioner''s husband did not seek enforcement of the pension scheme by impugning the order dated 10.12.1996 of the respondent no.1/employer. Further though there is no ground to hold that there was a delay in release of terminal benefits to the petitioner, even for the sake of arguments assuming there is a delay, interest today cannot be claimed in the year 2016, well beyond the period of limitation, for payments made to the petitioner''s husband in the years 1996 and 1997.

10. Ordinarily, I would have dismissed this writ petition with costs of Rs.50,000/- because this Court is over-burdened with frivolous litigations, one such litigation being the present litigation, however noting that petitioner is a widow and probably may have been wrongly advised to file the writ petition, no costs are imposed. However, the present para of non-imposition of costs for the reasons stated above will be taken note of in case any further litigation is initiated by the petitioner.

11. Dismissed.

