(2005) 06 MAD CK 0097

In the Madras High Court

Case No : Writ Petition No. 3837 of 1998

S. Vijayalakshmi APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Constitution of India, 1950 — Article 21
Industrial Disputes Act, 1947 — Section 12(3)
Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 — Section 3, 3(1)
Tamil Nadu Pension Rules, 1978 — Rule 45, 49(1), 49(2A)

Citation : (2005) 3 MLJ 322 : (2006) WritLR 91

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Arunachalam, for the Appellant; Sudarshana Sundar, for the Respondent

Judgement

P.K. Misra, J.—The facts giving rise to the present writ petition are as follows :-

One L. Venkataramanan, the deceased husband of the present petitioner, was appointed as contingent watchman in the office of the Executive Engineer under the Board. He was in duty since 5.2.1983. On 24.8.1986, while traveling for the purpose of official duty, he met with an accident and subsequently expired on 25.8.1986. The petitioner was aged about 27 and had completed SSLC. She had applied to the Board for appointment on compassionate ground. The Board, however, vide letter dated 23.3.1989, rejected the application of the petitioner on the ground that the services of the husband of the petitioner had not been regularised. It is the contention of the petitioner that since her husband had worked for about 3+ years and had completed more than 480 days of continuous service, he was entitled to be made permanent as per Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In course of time, a settlement u/s 12(3) of the Industrial Disputes Act was entered into between the Board and the Trade Union. As per the terms of the settlement it was resolved to make all the Nominal Muster Roll workmen permanent. Subsequently, on the same analogy, as per the proceedings dated 19.5.1997, personnel engaged on work charged establishment basis and contingent basis were also ordered to be made permanent. It is the case of the petitioner that if permanent status would have been conferred on her husband, she would have been entitled to all the benefits such as appointment on compassionate ground as well as family pension. The petitioner thereafter filed two representations in June and December 1997, but there was no response. The contention of the petitioner is to the effect that even assuming that her husband was employed only as a contingent watchman, she is entitled to family pension as per the provisions contained in Tamil Nadu Pension Rules, which are made applicable to the Board by virtue of Regulation 58 of the Board Service Regulations. It is the further contention of the petitioner that whatever might have been the position in 1986, after the settlement dated 8.8.1996, the benefits should have been given to the petitioner. On the aforesaid averments, the petitioner has filed this writ petition praying for issuance of writ of mandamus directing the Tamil Nadu Water Supply and Drainage Board, hereinafter referred to as the Board, to sanction family pension as per the Tamil Nadu Pension Rules with effect from the date of death of her husband and also a further direction to give her appointment on compassionate ground.

2. On the basis of the aforesaid facts, which are not in dispute, two questions arise for determination. Firstly, whether the petitioner is entitled to get family pension and, secondly, whether direction can be issued regarding employment of the petitioner on compassionate ground.

3. To consider the questions raised, section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is relevant. The provision is to the following effect:-

"3. Conferment of permanent status to workmen.--(1) Notwithstanding anything contained in any law for the time being in force every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty four calendar months in an industrial establishment shall be made permanent.

4. A bare perusal of the aforesaid provision makes it clear that such provision casts an obligation on the employer to confer permanent status on an employee who has completed 480 days work in course of two years. It is of course true that during the lifetime of the husband of the petitioner, no such permanent status was actually conferred by any order of the Management. It is also true that jurisdiction has been conferred on the Inspector to conduct enquiry if necessary to find out whether an employee has completed 480 days or not. However, when facts are not in dispute, merely because no such enquiry had been conducted by the Inspector, the petitioner''s husband cannot be denied the benefits of the Act. In view of the mandatory nature of the provision, it shall be taken that an employee who had completed 480 days in a period of two years

was permanent. This view receives considerable support from the decision reported in S. Gandhimathi Vs. The Dy. Registrar of Cooperative Society (Milk), The Chairman/District Collector, The Managing Director, Cooperative Milk Producers'' Union and The Managing Director Tamil Nadu Cooperative Milk Producers Federation Ltd., .

5. Once it is held that the deceased employee was in law entitled to the benefit of acquisition of permanent status, any consequential benefit cannot be denied to the widow on death of such person or merely because during the life time of the employee no such permanency had been "actually conferred".

6. On the basis of aforesaid conclusion, Rule 49(2-A) of the Tamil Nadu Pension Rules is relevant and on that basis, family pension would be payable. Similarly, the benefit towards Death-cum-Retirement Gratuity as contemplated under Rule 45(b) is also available.

7. Learned counsel for the respondent has however submitted that in view of Rule 49(1)(iii) of the Tamil Nadu Pension Rules, no family pension is payable. This submission however cannot be countenanced in view of the conclusion that on completion of 480 days, the employee concerned had acquired right and, merely because the employer had failed to discharge his statutory obligation, the consequential benefits to such employee or on his death to his dependent wife, cannot be denied.

8. Learned counsel for the respondent has also submitted that the petitioner is making claim regarding pension after a long lapse of time, and therefore, on the ground of delay, such prayer should not be entertained.

9. The ratio of the decision of the Supreme Court in S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, is a complete answer to the contention raised by the learned counsel for the respondent. In the said case, the concerned railway employee had died in harness in 1969 and her widow was entitled to family pension, but because of ignorance and lack of legal assistance, she could not stake her claim till March 12, 1991. Her representation being rejected, a Writ Petition was filed. A learned Single Judge of the High Court of Andhra Pradesh has directed that she was entitled to family pension with effect from the date of death of her husband. In appeal, the Division Bench held that since there was some laches on the part of the applicant, law of limitation was applicable and the benefit was confined to the period subsequent to April, 1992, when the legal notice had been issued. Against this order of the Division Bench, the appeal was filed in the Supreme Court. The Supreme Court observed as follows :- "6. We notice that the appellant''s husband was working as a gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband''s employer, viz., railways, in this case to have computed the family pension payable to the

appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Judge as well as the Division Bench is an erroneous decision on the part of the railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant''s lack of resources to approach the legal forum timely is not disputed by the railways. Question then arises on facts and circumstances of this case, the appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant''s husband on which date she had legally become entitled to the grant of pension. In this case as noticed by us hereinabove, the learned single Judge had rejected the contention of delay put forth by the railways and taking note of the appellant''s right to pension and the denial of the same by the railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned single Judge observed that the delay in approaching the railways by the appellant for the grant of family pension was not fatal inspite of the same it restricted the payment of family pension from a date on which the appellant issued a local notice to the railways i.e. on April 1, 1992. We think on the facts of this case inasmuch as it was an obligation of the railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a gangman in the railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her,that is the date of the death of her husband. Consequently we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to April 1, 1992."

10. What was stated by the Supreme Court in the aforesaid case is squarely applicable to the present case. Therefore, the petitioner shall be entitled to the relief regarding grant of family pension and Death-cum-Retirement Gratuity. The pension payable till the end of July 2005 shall be paid by the end of August, 2005 with 6% interest from the date on which such amount had become payable, and thereafter, future pension shall be continued to be paid. Similarly, the amount payable towards Death-cum-Retirement Gratuity should be paid by the end of August, 2005 with 6% interest from the date on which such amount had become payable.

11. So far as the claim regarding appointment on compassionate ground is concerned, the matter stands on a different footing. As already noticed, the application for appointment on compassionate ground was rejected long back in 1989. Unlike the payment of family pension, which is considered as a part of Article 21 of the Constitution and which is a continuing right, it cannot be said that there is any fundamental right to claim appointment on compassionate

ground. As held by the Supreme Court in several cases, such as Union of India (UOI) and Others Vs. Bhagwan Singh, and State of U.P. and Others Vs. Paras Nath, , the provision providing for appointment on compassionate grounds is to enable his legal heirs or dependents of the deceased employee to get appointment as they should not suffer due to the loss of earning bread winner of the family. In the present case, the rejection letter was communicated in 1989. Thereafter, the petitioner had remained quiet for about a decade. In such view of the matter, the prayer, so far as appointment on compassionate ground is concerned, is obviously hit by the principles of laches and such relief cannot be granted.

12. In the result, the writ petition is allowed in part so far as it relates to payment of family pension and Death-cum-Retirement Gratuity. There would be no order as to costs.

