
(2006) 08 MP CK 0075

In the Madhya Pradesh High Court

Case No : Writ Petition 6387 of 2006 (S)

Shukhavariya Bai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 17-08-2006

Acts Referred:

CCS (Pension) Rules — Rule 54
Constitution of India, 1950 — Article 21

Citation : (2007) 1 MPJR 64

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Advocate : Dilip Pandey, for the Appellant; S.A. Dharmadhikari, Advocate for respondents No. 1 to 3 and Mr. Rajesh Maindiretta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Invoking the extraordinary jurisdiction of this Court, the petitioner has called in question the defensibility of the order passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (in short "the Tribunal") in O.A. No. 200/2006.

The facts which are requisite to be stated are that the petitioner's father late Bahoriil Jaiswal, who was working in the GCF Jabalpur expired after retirement as a consequence of which family pension was sanctioned in favour of his wife Gundi Bai, and the said pension was paid upto October, 1979. As the pension was not paid thereafter, the mother of the petitioner requested many a time to the respondents for payment of family pension and its arrears but the said request was not taken note of and nothing fruitful ensued. As pleaded, the mother of the petitioner breathed her last on 28.8.2004. Being the only surviving legal heir of late Bahorilal, the petitioner knocked at the doors of the Tribunal for grant of family pension and its arrears. In support of the application, it was set forth before the Tribunal that her mother, Late Gundi Bai, was paid pension upto October, 1979 and after her death, petitioner had made several representations for grant of arrears of family pension. Because of submission of said

representations, the Account Officer, Pension, the respondents No. 2 herein, south certain informations from the State Bank of India Milouniganj, Branch the respondent No. 5 herein. Despite the said communication, no positive response was shown by the respondent No. 5 initially. Later on, the respondent No. 5 replied that it had not received the Pension Payment Order and other documents regarding the family pension of the petitioner's mother. When the situation came to such a pass, the petitioner was compelled to approach the Tribunal. The Tribunal, as contended, misinterpreted Rule 54 of the CCS. (Pension))Rules (hereinafter referred to as the Rules") and declined to entertain the application. Being dissatisfied with and aggrieved by the aforesaid order, the present writ petition has been filed on the backdrop that her mother was entitled to get family pension till her death and as that was arbitrarily denied, she is entitled to the arrears of the same as the sole legal representative and hence, the claim was tenable before the Tribunal.

A counter affidavit has been filed by the respondents No. 1 to 4 contending, inter alia, that the order passed by the Tribunal is in consonance with Sub Rule 6 of Rule 54 of the Rules and the construction placed by the Tribunal on it cannot be found fault with. It is urged that as the petitioner is a married daughter and aged about 45 years, she is not entitled to the family pension. It is the stand in the return that in accordance with the Office Memorandum dated 21.08.1970, a Board was constituted for destruction of the old records in February, 2005 and in the said proceedings of the Board, the record from 1932 to 1969 with regard to pension papers, files, service books, etc, were decided to be destroyed and as the pension case in the present case relates to the year 1963, the papers relating to the Same were destroyed. A note-sheet taking the decision to destroy such papers and the decision taken therein, have been brought on record as Annexure-R-1 and R-2. The name of the father of the petitioner Bahori finds place at Sr. No. 114 whose pension papers were destroyed.

A return has been filed by the respondent No. 5. stating that a letter was issued by the District Treasury Officer, Jabalpur to the Bank is question that a Pension Payment Order was issued on 31.8.87. The District Treasury Officer Jabalpur further sought information from the respondent-Bank as to till what date the family pension was paid to Late Gundi Bai and at what rate. The Bank, upon scrutiny of its record, endorsed on the letter itself that it had not received any Pension Payment Order in respect of the family pension payable to Smt. Gundi Bai and as per their record no family pension was ever paid by the respondent-Bank.

We have heard Mr. Dilip Pandey, learned counsel for the petitioner, Mr. S. A. Dharmadhikari, learned counsel for the respondents No. 1. to 3 and Mr. Rajesh Maindiretta, learned counsel for the respondent No. 5.

Questioning the correctness of the order passed by the Tribunal, it is contended by Mr. Pandey that the impugned order is absolutely cryptic and the interpretation placed on the relevant rule by the Tribunal is absolutely unsound.

Learned counsel further submitted the reasons that have been ascribed by the Tribunal for not entertaining the claim of the petitioner cannot be sustained, inasmuch as, the petitioner being the sole legal representative, was entitled to get the arrears of family pension that was due to her mother.

Mr. Dharmadhikari, learned counsel for the respondents No. 1. to 3 submitted that the Tribunal has absolutely correctly interpreted the rule and, therefore, the order passed by it cannot be found fault with. It is his further submission that the claim is absolutely stale and such stale claim cannot be entertained more so when the rules do not so permit and there are no records to lend any kind of credence to the claim put forth by the petitioner.

Mr. Rajesh Maindiretta, learned counsel for the respondent-Bank has supported the stand taken in the return that the Bank had never received the pension payment order and therefore, it has no role to play in the cavil between the petitioner and the respondents No. 1 to 3.

At the very outset, we think condign to address ourself with regard to delay and laches in putting forth the claim before the Tribunal. Mr. Dilip Pandey, learned counsel for the petitioner submitted that the claim put forth by the petitioner could have been adverted to in detail by the Tribunal as the delay and laches do not destroy the right of the petitioner. He has commended us to the decision rendered in the case of S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, . In the aforesaid the Apex Court took note of the fact that the husband of the appellant therein was a Gangman in the Railways who died in the year 1969 while in service. She was illiterate and did not know of her legal rights to family pension and the remedy to enforce her such right. On the death of husband of the appellant it was obligatory on the part of the husband's employer i.e. Railway to compute the family pension payable to the wife and offer the same to her without her making a claim and without dragging her to a litigation. Their Lordships further expresses the view that the very denial of right to family pension amounts to violation of the guarantee assured to the appellant therein under Article 21 of the Constitution of India.

In the case at hand, as is patent, the mother of the petitioner was given the family pension for a considerable length of time. It was denied to her in October, 1979. She did not assail the same till her death in 2004. The petitioner preferred an application in 2004. It would not be out of place to state here that the mother had abandoned her claim way back in 1979. She accepted the position till 2004. Any litigant, who has a grievance and wants mitigation of the same, has to remain vigilant. In view of the aforesaid the decision rendered in the case of S.K. Mastan (supra) in our considered opinion, is distinguishable.

The next aspect that we would like to address is whether the interpretation placed by the Tribunal on the rule is correct and sound or not. Sub Rule (6) of Rule 54 of the said Rules reads as under :

The period for which family pension is payable shall be as follows:

(i) In the case of a widow or widower, upto the date of death or remarriage, whichever is earlier.

(ii) xxx

(iii) In the case of an unmarried daughter, until she attains the age of 25 years or until she gets married, whichever is earlier.

In the case at hand, it is an admitted fact that the petitioner is aged about 45 years and has married to one Shri Motilal Jaiswal. Hence she would not be entitled to family pension. Submission of Mr. Pandey is that she is not claiming to get family pension but as per her own right, she should be given the arrears to which her mother was entitled to.

True it is, the grant of pension is not a bounty but the question that arises for consideration is whether an inordinate stale claim can be entertained by a statutory Tribunal to confer a benefit to a legal representative, as if it has become a computable amount. The doctrine of delay and laches is always not applicable in absolute terms. It can be satisfactorily explained to approach a legal a forum at the earliest point of time. When we say so, we may not be understood to have said, if a period of limitation is provided, one cannot file an application beyond the said period subject to the applicability of provisions of Limitation Act. It is worthwhile to mention here that Section 21 of the Administrative Tribunals Act, 1985 (for brevity the Act) provides for limitation. One facet lays a postulate that the Tribunal cannot take cognizance of certain grievances. In the other spectrum, the Tribunal can take cognizance but it has to be preferred within a specified period as prescribed under the statute. As far as the second aspect is concerned, the Tribunal has power to condone the delay. As regards the first aspect, the Tribunal has no jurisdiction to take cognizance. The cause of denial of benefit of pension may be a continuing cause of action but we do not intend to advert to the same as we are inclined to apply the doctrine of delay and laches to the case at hand. Apart from the doctrine of delay and laches, abandonment of the claim by the mother of the petitioner, when the pension was stopped is also to be taken note of. Be it noted, the Tribunal became functional after 1985 when the Act came into force. She allowed the lis to die a silent death for a period of a quarter of a century. As is evincible from the documents filed by the respondents, the decision was taken to destroy the papers. The same were destroyed in February, 2005. Such destruction was done restricting the period upto 1969,36 years gap as given. The name of the husband of Late Gundi Bai finds place at Sr. No. 114. When the mother of the petitioner had resigned to her fate, it is inconceivable that the daughter would rise like a phoenix, to put forth a claim to get monetary benefit on the backdrop that the mother was entitled to it. Submission of Mr. Pandey is that justice should be done to the petitioner as she is not claiming pensionary benefits but the arrears of it which were due to her mother. Learned counsel contended that there was a legal sanction to confer the benefit of pension and hence, there is a clear legal justification, an active one, to get the same on the part of the petitioner. At this juncture, we think it

appropriate to quote a passage from the Selected Writings of Cardozo, Pages 223-24, Falcon Publications, 1947) which has been referred to in the case of Delhi Administration Vs. Gurdip Singh Uban and Others, . It reads as under:

The web is tangled and obscure, shot through with a multitude of shades and colours, the skeries irregular and broken. Many hues that seem to be simple are found, when analysed to be a complex and uncertain blend. Justice itself, which we are want to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectivity its standards or even to describe them, have never wholly succeeded.

We have referred to the above mentioned passage only to indicate the effective sensitivity of the cause and concern of justice. The mother, Late Gundi Bai, if we allow ourselves to say so, slept like Rip Van Winkle but never to wake up to see a different kind of world inasmuch as she has slept till her life spark ended and her right stood extinguished. The daughter, as it seems, has arisen like a mythical survivor. The concept of inherence in the present case is indubitably indeterminable. The fiction of continuance of right to carry forward the torch of a dead person does not arise here. The daughter has not really inherited any right as there has been no determination of the mother's right at any stage as the death took her away in October, 1979. What the petitioner actually wants is an adjuration, which is beyond the realm of possibility because of three reasons viz. (i) acceptance of the situation by the mother; (ii) applicability of the doctrine of delay and laches; and (iii) the enormous passage of time as a result of which the petitioner requires the respondents to do an act which is impossible. It is well settled that the law does not require someone to do an act which is impossible.

Possibly the petitioner is aspiring that her claim is within the frame work of attainable justice. But unfortunately, it is an illusion, inasmuch as, she has totally become oblivious to the rules of the game. A desire, to be fructified under law requires vigilance. Abandonment or complacent attitude or unnecessary experimentation or having a wandering proclivity to achieve a miracle, have no place in law. The mother had forgotten that delay has dangerous results and procrastination is the cause of the death of tomorrow and inactivity is the thief of time. A philosophical silence or unsystematic reflection eventually tantamount to an inability to concretize thoughts into action. In the ultimate eventuate it becomes a fate accompli and a blunder beyond cure.

It would not be out of place to state here that a mythical character like Kumbhakaran may wake up from sleep and get food but such a thing does not happen in all cases. The claim that has been put forth by the petitioner to get the arrears of family pension payable to the mother by way of succession or inheritance, may be a money claim, but it does not have any justification to be determined at this juncture. He who sleeps over his rights eventually becomes a victim of delay. Hence, judged from all spectrum, we do not find any fallibility in the order passed by the Tribunal.

Consequently, the impugned order contained in Annexure P- 8 passed by the Tribunal is given the stamp of approval and the writ petition stands dismissed without any order as to costs.