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**(1999) 07 AP CK 0165**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 8759 of 1992**

Sk. Mastan Bee

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 18-07-1999

**Acts Referred:**

Constitution of India, 1950 — Article 21, 226

Railway Services (Pension) Rules, 1993 — Rule 101(1), 618

**Citation :** (1999) 5 ALD 246

**Hon'ble Judges :** R. Ramanujam, J

**Bench :** Single Bench

**Advocate :** Mr. P.V. Mruthunjaya Rao, for the Appellant; Mr. Gouri Shanker Sanghi, SC for Railways, for the Respondent

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## **Judgement**

1. This is Public Interest Litigation case taken up at the instance of the Andhra Pradesh State Legal Aid and Advice Board, Hyderabad.

2. Smt. S. K. Mastan bee, wife of late Sheik Abdul Quadir, is the petitioner herein. Her husband joined in the service of the South Central Railway on 12-12-1964 as a Gangman and was working at Bitragunta. Undisputedly the post of Gangman is pensionable post. On 4-11-1969 the petitioner's husband was examined by the Divisional Medical Officer, Vijayawada, to ascertain whether he was medically fit to render further service under the Railways. The Divisional Medical Officer after examining him declared that he was unfit for any further service under the Railways. He gave a certificate to that effect. Prior to this, the petitioner's husband was on leave.

3. According to the petitioner, her husband died while on medical leave on 21-11-1969. It appears that the petitioner was paid gratuity amount of Rs.420/- during 1970. According to the Railways, that is the only benefit to which she is entitled to under the Rules. According to the petitioner, she is also entitled to family pension under the then existing Rules also.

4. The petitioner made an application on 12-3-1992 to the Divisional Railway Manager (Personnel), Vijayawada, requesting him payment of exgratia and family pension. On 24-3-1992 the Divisional Railway Manager (Personnel) rejected that request on the ground that the petitioner's husband died after discharge from Railway Service on 4-11-1969 and, therefore, she is not eligible to claim family pension or exgratia. Thereafter she made an application and the same was received by the Andhra Pradesh State Legal Aid and Advice Board on 2-5-1992. On the basis of that application, this case was taken up to the file of this Court on 7-7-1992.

5. The respondent-Railways filed their counter. The case of the petitioner is that her husband was not discharged/ relieved on 4-11-1969, at the time of his death on 21-11-1969 but was on medical leave, thus he was in the service of the Railways on the date of his death, and, therefore, she is entitled to family pension, according to the Rules. In support of this contention, reliance was placed on Rule 101(1) read with sub-Rule (2)(b)(ii) of the Rules.

6. Mr. R.S. Sanghi, learned Standing Counsel for respondent-Railways, strongly disputes the contention of the petitioner. He submits that: (a) on receiving the medical invalidation certificate dated 4-11-1969 he was discharged from service on 4-1-1969 itself; (b) he was no more in the service of the Railways on the date of his death on 21-11-1969; and (c) since he was not in the service of the Railways on the date of his death, the petitioner is not entitled to claim family pension under the aforesaid Rule 101(2)(b)(ii).

7. It is now appropriate to refer to Rule 101 of the Rules, which reads thus:

"Rule 101.(1) The Retirement benefits under these rules for a permanent Railway servant comprise of two elements viz:-

- (i)(a) ordinary gratuity/pension; and
- (b) death-cum-retirement gratuity; and
- (ii) Family Pension.

The benefits are admissible to all permanent Railway servants except those who are removed or dismissed from service or resign from it before completion of 30 years" qualifying service.

(2) In the case of a temporary Railway servant the benefits comprise-

- (a) if he quits service on account of superannuation, invalidation or reduction of establishment--a terminal gratuity;
- (b) if he dies while in service-
  - (i) a death-gratuity to his family; and
  - (ii) a family pension, if, at the time of death, the employee had completed one year"s continuous (qualifying) service."

A careful reading of the aforesaid Rule makes it clear that if a Railway employee dies while in service, after completing one year's continuous service, his family will be entitled to family pension.

The question now to be considered is:

"Whether the petitioner's husband died while in service or died after his discharge/relief from service?"

If he was relieved from service prior to his death, then his family will not be entitled to family pension according to sub-rule (2) (b)(ii) of Rule 101 of the Rules. 8. In her petition, the petitioner clearly stated that her husband, who was suffering from Tuberculosis (T.B) disease, died on 21-11-1969 during his service period (sick period). As already noted, this was strongly disputed by the learned Standing Counsel for Railways. According to him, the petitioner's husband was relieved from service on 4-11-1969 itself. However, the learned Counsel could not produce the said relief/discharge order. He states that order, being an old record, was destroyed long back as per Rule 1052 of the Rules. However, placing reliance on certain documents, he wants to prove that the petitioner's husband was actually relieved from service on 4-11-1969. One such documents is a xerox copy of Top Sheet of Settlement of Special Contribution to Provident Fund Dues. In this documents it was noted that the date of termination of the service of the petitioner's husband was 4-11-1969. This Top Sheet was prepared and signed by Divisional Personnel Officer. Another document is the copy of the 1st page of Form No.30 (Application of Pension and Gratuity and Death-cum-Retirement Gratuity). In this also it was shown that the service of the petitioner's husband ended on 4-11-1969. This documents was also prepared and signed by Divisional Personnel Offer. Another document is the copy of the particulars of service of the petitioner's husband. It was prepared by the Accounts Branch of the respondent-Railways, wherein it was stated that her husband's service came to an end on 4-11-1969. Another document is the copy of Service Certificate prepared and signed by the Divisional Personal Manager. Therein also it was shown that the petitioner's husband's service ended on 4-11-1969. It may be noted here that the petitioner is not a party to any one of these documents. All these documents were prepared and signed by the concerned Railway Officers during the year, 1970. It is pertinent to note here that there is no reference to the discharge/relief order in any one of these documents.

9. The learned Counsel for the petitioner submits that these documents do not prove that the petitioner's husband was, in fact, discharged from service on 4-11-1969. He points out that the entries in those documents regarding the date of ending of the service of the petitioner's husband were made under a misconception that an employee who was medically invalidated is discharged from service on the very date of issue of the certificate without any further order of relief/discharge. He further submits that Rule 618 of the Rules clearly enjoins that a relief/discharge order has to be issued after receiving the medical invalidation certificate. I am inclined to accept this contention. Rule 618 reads as

under:

"Rule 618, Date of Invalidation :--A Railway Servant who is declared by the medical authority referred to in para 609 to be completely and permanently incapacitated for further service shall, if he is on duty, be invalidated from service from the date of relief of his duties which should be arranged without delay on receipt of a report from the medical authority or if, he is granted leave under Rule 2237-R.II. On the expiry of such leave. If, however, he is on leave at the time of receipt of the Medical Certificate, he shall be invalidated from service on the expiry of such leave of extension of leave, if any granted to him under Rule 2237-R.II."

A careful reading of this Rule clearly shows that an employee is not automatically discharged or relieved on issue of a certificate by the Medical Officer. But, a discharge/ relief order has to be issued-on receipt of the Medical Invalidation Certification. Therefore, if the petitioner's husband was really discharged/ relieved from service, there must have been an order to that effect by the competent authority. The Counsel for the respondent-Railways states that there was such an order, but it was destroyed as per Rule 1052 of the Rules. In spite of giving my anxious consideration, I am not able to persuade myself to accept this submission. As already noted, almost all the papers relating to other terminal benefits, which were prepared in the year 1970, were preserved. That being so, there is no reason as to why the discharge order, if there was one, was not preserved. The discharge/relief order being a basic order the need to preserve it is more than the other documents which are preserved. Further, as already noted there is no reference to this basic document in any one of the documents produced by the Railways. All these circumstances lead to an irresistible inference that in fact no discharge/relief order, as contemplated under Rule 618 of the Rules, was issued. Therefore, it should be deemed that the petitioner's husband was in service as on the date of his death on 21 -11 -1969.

10. Undisputedly the petitioner's husband rendered more than one year's continuous service as on the date of his death. The petitioner is, therefore, entitled to payment of family pension under Rule 101(1) read with sub-rule (2)(b) (ii) of the Rules. However, the learned standing Counsel for Railways forcefully submits that no relief can be given to the petitioner in view of the long delay of more than 20 years in filing the claim petition. I am not able to accept this contention. The petitioner, is an illiterate and poor Muslim woman. She may not be aware of her right to receive Family Pension to claim the same soon after her husband's death. Family Pension has to be paid, every month, during her life time. Hence, the cause of action is a continuous one and her claim cannot be thrown out on the ground of delay. Further, Denial of Family Pension violates her fundamental right guaranteed under Article 21 of the Constitution of India. Mere delay in making the claim cannot defeat that fundamental right.

11. The learned Standing Counsel for Railways also strongly urged that this writ petition is not maintainable as it relates to service condition of deceased

employee and the petitioner has to approach the Central Administrative Tribunal for appropriate relief.

12. I do not see any merit in this contention also. As already noted, this is a taken up case of public interest, as per the guidelines issued by the Supreme Court. Further, the Central Administrative Tribunal has no jurisdiction to entertain public interest litigation petition. See the decision of the Supreme Court in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., . A Division Bench of this Court in The Chief Postmaster-General and Another Vs. Mirza Jaffer Ali, , held that this Court, but not the Administrative Tribunal, has jurisdiction to entertain petition seeking compassionate appointments. That principle applies to the cases of Family Pension, like the present case, also.

13. For the aforementioned reasons, the petition succeeds. A writ of mandamus is issued directing the respondent-Railways to fix and pay the Family Pension payable to the petitioner, according to Rules, with arrears with effect from the date of death of the petitioner's husband i.e., 21-11-1969. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

14. The writ petitioner is accordingly allowed. No costs.

15. That rule nisi has been made absolute as above.