
(2012) 05 DEL CK 0312

In the Delhi High Court

Case No : Writ Petition (C) No. 2725 of 2012

Smt. Dayawati

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Citation : (2012) 05 DEL CK 0312

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : S.M. Hooda, for the Appellant; Himanshu Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—This a petition by the petitioner seeking quashing of order dated 12th June, 2008 declining family pension to the petitioner and for a direction to the respondents to restore the ordinary family pension w.e.f. July, 2008 and also to pay arrears along with interest thereon. By order dated 12th June, 2008, the respondents had held that in view of the decision passed by this Court in WP (C) 5815/2001, titled as "Dayawati v. Union of India & Ors." which decision has been upheld by the Supreme Court by decision dated 30th January, 2001 in Rakesh Kumar (supra) holding that under Rule 49 of CCS (Pension) Rules, 1972, a member of BSF who resigns from his post after completing more than 10 years of service but less than 20 years, would not be eligible to get pensionary benefits, and consequently, the writ petition filed by the petitioner had been dismissed by Learned Single Judge of this Court.

2. The order dated 12th June, 2008 further disclosed that the Supreme Court in another decision dated 4th January, 2006 had held that the persons who had retired in 1996 and who were sanctioned pension but who could not be re-inducted i.e. they had become overage or physically or medically unfit or for any other reason they were unable to return GPF, pension drawn or other dues shall not be recovered from them. Consequently, the respondents passed the order

dated 12th June, 2008 holding that the petitioner shall not be entitled for pension anymore and the amount of pension already paid will not be recovered from her.

3. The petitioner has sought pension on the ground that at the time of restoration of ordinary family pension all the points were considered and adjudicated, and consequently, the decision of the respondents cannot be reopened and the petitioner is not entitled for ordinary family pension.

4. Learned counsel for the respondents has pointed out the decision in LPA No. 75/2002, titled as "Dayawati v. Union of India & Ors.", dated 29th February, 2008 dismissing the Latest Patent Appeal of the petitioner and upholding the decision of the Learned Single Judge declining the ordinary family pension to the petitioner have become final and cannot be re-agitated in present petition. While dismissing the LPA, the Division Bench of this Court in para 4 had held as under:

4. The appellant herein is the widow of the deceased Shri Ram Avtar Singh, who had only 13 years of service to his credit. Her husband was not entitled to pensionary benefit on completion of 13 years of service. Resignation of the husband of the appellant was accepted by the respondent-BSF effective from 1st September, 1996 by which date he did not complete 20 years of service. However, under a misconception of law, the respondent -BSF gave pension to the husband of the appellant and after his death to his wife, who is the present appellant. In view of the aforesaid law now laid down by the Supreme Court, they have stopped making payment of further pension, but it is categorically stated before us by the counsel for the respondents that whatever amount has since been paid to the widow or to her husband by way of pension under misconception of law, would not be recovered by the respondents. Therefore, in our considered opinion, this appeal has no merit and is dismissed.

5. Learned counsel for the petitioner is unable to show any cogent reason as to why the fact regarding dismissal of LPA has not been disclosed by the petitioner in the writ petition. This amounts to concealment of material fact by the petitioner.

6. Learned counsel for the respondents, on instructions, states that pertaining to all the widows including the petitioner whose pension has been cancelled as their husbands had not completed 20 years of service, their matter is under active reconsideration by the Ministry of Home Affairs. In the facts and circumstances and for the aforesaid reasons, there are no grounds to interfere with the order of the respondents declining the ordinary family pension to the petitioner by order dated 12th June, 2008. The writ petition is therefore, dismissed. However, dismissal of the writ petition will not prejudice the rights of the petitioner for its consideration of grant of ordinary family pension by the respondents which is stated to be under consideration.