

(2018) 11 CAT CK 0053

In the Central Administrative Tribunal

Case No : Original Application No. 1850 Of 2018

Sumitra Devi

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 33(c)(2)
Code Of Civil Procedure, 1908 — Section 151

Citation : (2018) 11 CAT CK 0053

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Single Bench

Advocate : R.A. Sharma, Mona Sinha, Ruchira Gupta

Final Decision : Dismissed

Judgement

1. The present OA is filed by the applicant seeking the following reliefs:

"(a) quash and set aside order dt. 19.1.2018(Ann. A-1) AND Direct the respondent to pay 'Family Pension' to the applicant from the date of demise of her husband, i.e., from 13.10.2014 onwards, as per family pension rules of the respondent, along with interest @10% p.a.

(b) pass any other order of direction as deemed fit and proper in favour of the applicant in the interest of justice.

(c) allow cost in favour of the applicant."

2. Briefly, the facts of the case are that the applicant had joined the services of the respondents in 1983. His services were terminated on 15.04.1993 following an ex-parte inquiry which was challenged by the husband of the applicant before the Labour Court in which an award was given on 09.09.2009 as follows:

"The management is directed to reinstate the workman in the same post within 30 days after publication of this award. The workman is entitled for continuity of service with respect to the seniority, gratuity and pension only.

No back wages is awarded."

The award was not implemented.

3. The respondents filed Writ Petition No. 4467/2010 in the Hon'ble Delhi High Court against the award which was dismissed vide order dated 09.07.2010. The respondents then filed LPA No. 728/2010 against this order which was allowed vide order dated 26.07.2011 and the matter was remitted to the learned Single Judge of Hon'ble Delhi High Court to dispose the Writ Petition on merits. Thereafter, from the side of the applicant, two Civil Miscellaneous Application Nos. 12419-12420/2011 were filed, one under Section 17-B of the ID Act, 1947 for grant of benefits and the other under Section 151 of the CPC for early disposal of the said Writ Petition. The Learned Single Judge of Hon'ble High Court of Delhi vide order dated 24.08.2011 has kept the CM applications pending with the observations that they shall be taken up for consideration only when the Writ Petition is revived by the respondents. The order passed in the CM Applications is as follows:

"These applications shall remain pending and the same shall be taken up by this Court for consideration only when the present petition is revived again on the petitioner taking necessary steps for the same."

4. The respondents did not take steps to revive the Writ Petition despite the applicants sending them legal notice. Meanwhile, the applicant expired on 13.10.2014. Thereafter, the applicant herein along with other legal heirs filed an application on 05.06.2015 under Section 33-C(2) of ID Act, 1947 inter alia seeking the implementation of earlier order dated 09.09.2009. Vide order dated 11.08.2017 in LCA No. 564/16, following award was given:

"13. It has already been observed in Issue No. 1 that the management is bound to give a sum of Rs. 14,72,785/- to LR's of deceased workman. That amount is to be paid after deduction of income tax. The management is directed to give a sum of Rs. 14,72,785/- (Rupees Fourteen Lakhs Seventy Two Thousands Seven Hundred Eighty Five Only) minus income tax to LR's of deceased workman within one month from today, failing which it shall be liable to pay interest on it @9% per annum from today till its realization. Parties to bear their own costs. Petition under Section 33-C(2) of the Act is accordingly disposed off."

5. The respondents assailed the aforesaid order dated 11.08.2017 before the Hon'ble High Court of Delhi and a stay was granted on the operation of the impugned order by the Hon'ble High Court vide order dated 08.01.2018.

6. The applicants also filed Writ Petition No. 4367/2018 before the Hon'ble High Court with a prayer that the applicants may be paid family pension as per the relevant rules. The said Writ Petition was disposed of on 27.04.2018 as follows:

"...Upon hearing, I find no ground to permit petitioner to directly approach this Court. Since the jurisdiction to entertain subject matter of this petition is of the Central Administrative Tribunal (CAT), therefore, petitioner is relegated to

approach CAT, New Delhi within two weeks to avail of the remedies, as available in the law.

With aforesaid liberty, this petition and applications are disposed of."

7. The respondents in their counter affidavit have contended that this OA is premature as issue is regarding the tenure of service of the applicant which is sub-judice before Hon'ble High Court of Delhi in Writ Petition (C) No. 4467/2010 titled as DTC vs. Mohinder Singh. The respondents have further submitted that the award of the Labour Court dated 11.08.2017 on the claim of the legal heirs in LCA number 564/2016 has been stayed by the Hon'ble High Court of Delhi vide order dated 08.01.2018.

8. Heard learned counsel for the applicant and the respondents.

9. It is a matter of record that the Labour Court order was challenged in which the learned Single Judge of the Hon'ble High Court of Delhi dismissed the Writ Petition No. 4467/2010. This was challenged in LPA No. 728/2010 which was disposed of on 26.07.2011 with the following orders:

"Being dissatisfied with the order dated 9th July, 2010 passed by the learned singly Judge in W.P.(C) No. 4467/2010 whereby the learned singly Judge has dismissed the writ petition and affirmed the award dated 9th September, 2009 passed by the Labour Court, Karkardooma Court, Delhi solely on the ground that the Corporation has not reinstated the workman within thirty days as directed in the award. In our considered opinion, the learned single Judge should have adverted to the lis on merits and not dismissed the writ petition on the said ground. Resultantly, the appeal is allowed and the order dated 9th July, 2010 passed by the learned single Judge is set aside and the matter is remitted to the file of the learned single Judge to dispose of the writ petition on merits. Learned counsel for the respondent-workman is at liberty to move before the learned singly Judge for early disposal of the writ petition. There shall be no order as to costs."

10. The matter was remitted back to the learned Single Judge of the Hon'ble High Court who passed the order as following on 24.08.2011:

"These applications shall remain pending and the same shall be taken up by this Court for consideration only when the present petition is revived again on the petitioner taking necessary steps for the same."

11. It is amply clear from a reading of the above mentioned orders of the Hon'ble High Court of Delhi that the matter pertaining to the benefits to be given to the applicant is pending before the High Court. Specifically, the Hon'ble High Court of Delhi in the Writ Petition No. 120/2018 filed by the respondents against the order dated 11.08.2017 of the Labour Court, has stayed the order of the Labour Court on the grounds that the Writ Petition No. 4467/2010 is still pending before the Court. The order reads as under:

"It is submitted by learned counsel for the petitioner that Division Bench in LPA No. 728/2010 has remanded back the matter i.e. WP(C) No. 4467/2010 to the learned Single Judge for disposal on merits. Meanwhile, the respondents i.e. LRs of the workman have approached the Labour Court under Section 33(c)(2) of the ID Act. It is further submitted by learned counsel for the petitioner that the Labour Court has without jurisdiction awarded compensation to the LRs of the workman though the Writ Petition No. 4467/2010 is still pending before the Court. In the circumstances, there shall be a stay of the impugned award dated 11.08.2017 till the next date of hearing."

12. The issue of family pension which has been raised through the present OA is inextricably linked with other issues of adjudication in the matter which is pending before the Hon'ble High Court. That being the case, there is no scope now for this Tribunal to pass any orders on the issue. Thus, without going into the merits of the case and without prejudice to the legal rights of the applicant as may arise in future, the OA is dismissed.