



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1383 OF 2019

Union of India, through the General Manager, Central Railway, Mumbai and another
.Vs. Smt. Jankabai Wd/o Kundlik Surse

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.A. Chaudhari, Advocate for petitioners.
Shri N.R. Kanugo, Advocate for respondent.

CORAM : ANIL S. KILOR, AND
SMT.M.S. JAWALKAR JJ.

DATED : 15/03/2024

1. This writ petition takes exception to the order passed by the Central Administrative Tribunal allowing the O.A. and thereby, quashing and setting aside the order dated 03.07.2014, declining to consider the application for grant of family pension on the ground that, the respondents are not able to reconstruct the service record of deceased employee.

2. The learned Tribunal thereby directed the applicant/respondent to secure Succession Certificate from the competent Civil Court and on submission of such Succession Certificate, the petitioners to calculate the family pension of the respondent in accordance with law.

3. Thereupon, the respondent obtained the Succession Certificate and it was submitted to the petitioners.

4. As far as the legality of the impugned order is concerned, Shri Chaudhari, learned counsel for the petitioners submits that, the record is not traceable and therefore, it is difficult to calculate the pension. Moreover, the respondent has claimed family pension after the lapse of period of 30 years from the date of death of the deceased employee.

5. It is pertinent to note that, the petitioners are not denying the fact that, the husband of the respondent was in service of the petitioners.

6. As far as the delay is concerned, since the matter pertains to family pension, there is a continuous cause of action and therefore, such objection cannot be entertained.

7. As regards the record, the learned Tribunal has taken into consideration the Office Memorandum dated 16.12.1985, which relates to the matters like the present one, where the record is not traceable or no document is available to show the last drawn salary.

8. The petitioners are trying to take advantage of Clause-3 of the O.M., which says that, it does not apply to the railway employees. However, the Tribunal rejected the said argument on the ground that, the O.M. was forwarded by the Railway Board to all concerned.

9. The Tribunal has further observed that, the said O.M. dated 16.12.1985 was adopted by the railway vide letter dated 25.02.1986.

10. On perusal of the said O.M., it can be said that, it can be used as a guiding factor to calculate the amount of pension in the matters like the present one, where the record is not traceable and if no document is filed by the widow showing last drawn salary.

11. In that view of the matter, we have no hesitation to hold that, the learned Tribunal is right in allowing the O.A. vide impugned order dated 04.06.2018 filed by the respondent and therefore, we do not want to interfere with the same.

Accordingly, the writ petition is **dismissed**.

(SMT. M.S. JAWALKAR, J)

(ANIL S. KILOR, J)