

(2012) 04 CAL CK 0064

Calcutta High Court

Case No: C.W.J.A.S.W.P. No. 17502 (W) of 2000

Smt. Gita Biswas

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: April 25, 2012**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (2012) 134 FLR 743**Hon'ble Judges:** J.K. Biswas, J**Bench:** Single Bench**Advocate:** Salil Kumar Ghosh and Ms. Aiswariya Gupta, for the Appellant; D.K. Kundu for the LIC, for the Respondent

Judgement

Jayanta K. Biswas, J.

The petitioner in this writ petition under Article 226 dated September 11, 2000 is questioning an order of Life Insurance Corporation of India (in short LIC) dated September 16, 1993 (WP p.40) inflicting the penalty of removal from service on her husband, Amalendu Biswas, and seeking a mandamus commanding LIC to pay her all benefits which would have become payable on Amalendu's superannuation in ordinary course on February 28, 1999.

Amalendu, working in LIC as a Higher Grade Assistant, was posted to Birpara Branch office of LIC's Jalpaiguri Division. He was granted leave of absence for the period from August 13, 1991 to October 4, 1991. On October 5, 1991 his brother Niharendu lodged a missing diary with Kotwali police station in Jalpaiguri that he went missing on October 4, 1991 at 10.30 hours. His mother wrote a letter dated December 4, 1991 informing the Manager of the branch that he had gone missing on October 4, 1991, and that a missing diary had been lodged with the police on October 5, 1991.

Amalendu's disciplinary authority issued a show-cause notice dated March 9, 1992 alleging that Amalendu was liable to be proceeded against for overstaying his leave for a continuous period of more than ninety days from October 5, 1991 without any intimation therefore in writing. It was mentioned that the delivery agent had returned undelivered a letter dated December 17, 1991 asking him to explain his unauthorised absence. No reference was made to the letter of Amalendu's mother dated December 4, 1991.

2. Under the circumstances, the disciplinary authority passed the order dated September 16, 1993 inflicting on Amalendu the penalty of removal from service with immediate effect on the grounds that he was overstaying his leave for a continuous period of more than ninety days from October 5, 1991 without any intimation therefor in writing.

3. LIC sanctioned family pension for the petitioner with effect from November 1, 1993, but did not pay. The petitioner instituted an OC Suit No. 227 of 1998 in the Court of the Civil Judge, Junior Division, Jalpaiguri. In the suit she prayed for a declaration that Amalendu, not heard for seven years, should be declared dead. LIC contested the suit. By a judgment dated March 19, 1999 the suit was decreed.

4. The Civil Court declared that Amalendu, not heard for seven years by those who would naturally have heard of him, if he had been alive, was dead. LIC accepted the decision. After the decree LIC wrote a letter dated August 6, 1999 that it would withdraw the family pension. The petitioner made an exhaustive representation dated September 21, 1999. LIC did not give any attention to it. Under the circumstances, this writ petition was filed.

5. Mr. Kundu appearing for LIC has hardly found anything to say in justification of the blind-folded steps taken by Amalendu's disciplinary authority for initiating the disciplinary proceedings against missing Amalendu and inflicting on him the penalty of removal from service with effect from September 16, 1993.

6. As already noted, Amalendu went missing on October 4, 1991. He had been granted leave of absence till that date. On expiration of the leave period he was to report for duty on October 5, 1991. By her letter dated December 4, 1991 his mother informed the Manager of the branch to which he was posted that he had gone missing on October 4, 1991. It is not disputed that the letter was received by the Manager of the branch.

7. It is evident that the disciplinary authority issued the show-cause notice dated March 9, 1992 mechanically. It was known to him that Amalendu had gone missing as back as October 4, 1991. Ignoring the stark reality that he was not there to explain his continuous absence from office from October 5, 1991, the disciplinary authority passed the order dated September 16, 1993 inflicting on him the penalty of removal from service with effect from September 16, 1993.

8. The order was ritualistic in nature. It was never made known to Amalendu, for it could not be made known to him. The technical removal ordered shutting eyes to reality caused a grave injustice to the petitioner who would have been entitled to her husband's service benefits that were to be processed and paid treating him as on appropriate leave or leaves until date of superannuation. I am, therefore, of the view that the disciplinary proceedings were unjustly initiated. The mechanically issued punishment order is liable to be set aside.

9. In ordinary course, Amalendu would have retired from services on February 28, 1991. The Civil Court gave decision on March 19, 1999 declaring him dead. This leads to the reasonable conclusion that LIC ought to have treated him as retired from services with effect from February 28, 1999 and died on March 19, 1999.

10. It would have been fair and reasonable on the part of LIC to treat the period from October 5, 1991 to February 28, 1999 as SR (c) ab (f) (Jayanta Kumar Biswas J.) spent on leave and for the purpose LIC ought to have sanctioned the available leaves on all counts; and if leaves were not sufficient to cover the whole period, then to treat the period concerned as a period spent on extraordinary leave without pay, but with continuity of service. In all fairness LIC ought to have granted the petitioner all benefits treating Amalendu as retired from services on February 28, 1999 and died on March 19, 1999.

11. LIC has filed an opposition and a supplementary opposition. Its case is that the petitioner is guilty of delay and laches. It has sought to justify its acts. On the facts, I am not minded to accept its pleas stated in the opposition.

12. In the supplementary opposition LIC has given details of the benefits to which Amalendu, had he retired in ordinary course on February 28, 1999, would have been entitled. The petitioner has not disputed the correctness of the amounts mentioned in the supplementary opposition. Hence I am of the view that LIC is liable to pay the petitioner the amounts mentioned in its supplementary opposition with interest. For these reasons, I dispose of the writ petition ordering as follows. The removal order dated September 16, 1993 is hereby set aside. Treating Amalendu as retired on reaching the age of superannuation on February 28, 1999 and died on March 19, 1999 LIC shall pay the petitioner all benefits with interest at the rate of 5% p.a. from February 28, 1999. Compliance within four weeks from the date this order is served. No costs. Certified xerox.