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SLP(C)No. 10539 OF 2003
ITEM No.204

Court No.11

SECTION XVI
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.10539/2003

(From the judgement and order dated 20/01/2003 in FMA 2740/02
of The HIGH COURT OF CALCUTTA)

ASHALATA PACHHAL

Petitioner (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

(With prayer for interim relief)
With Office Report
(For Final Disposal)

Date : 30/01/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s) Mr. S.B. Sanyal, Sr. Adv.
Mr. Sanjoy Kr. Ghosh, Adv.
Mr. Deba Prasad Mukherjee, Adv.

For Respondent (s) Mr. T.C. Sharma, Adv.
Ms. Neelam Sharma, Adv.

Mr. Hemant Sharma, Adv.
Ms. Jay Shri Anand, Adv.
Ms. Sushma Suri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The appeal is dismissed in terms of the signed order.

(Sarojbala)
PA to Addl.Registrar

(Promila Nagpal)
Court Master
(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.638 OF 2004
(Arising out of SLP(C)No. 10539/2003)

Ashalata Pachhal

Appellant(s)

Vs.
Union of India & Ors.

Respondent(s)

O R D E R

Leave granted.

It appears that the appellant was granted freedom fighters' pension in pursuance of an order of the learned Single Judge dated June 22, 1993 which was challenged by the State by way of filing an appeal in the High Court. By order dated 20.11.1993, the prayer for stay was declined. It was, however, provided the appeal be heard expeditiously on 15.12.1993 and directed that formal paper book be prepared accordingly by the respondents herein. However, the matter thereafter only came up for hearing on 9.7.2002 on which date in the absence of the appellant, appeal was allowed ex-parte and the order dated June 22, 1993 was set aside. An application moved for recalling the ex-parte order, was dismissed. Hence, this appeal.

: 2 :

The learned counsel for the appellant submits that the appellant is an old widow aged about 80 years. The pension of freedom fighter was granted in pursuance of the order passed by the learned Single Judge of the High Court. In appeal the Division Bench refused to stay the implementation of the order of the learned Single Judge, she was thus being paid the pension.

As directed by order dated November 20, 1993 no paper book was, ever made available to the appellant nor the appellant knows whether it was ever prepared and thereafter about a gap of 9 years, the matter appeared in the cause list and the same was taken up and decided in absence of the appellant. It is, further, submitted that the amount of family pension which was paid to the appellant with effect from 22.6.1993 onwards, is sought to be recovered in pursuance of the order of the Division Bench dated 9.7.2002.

Considering all the facts and circumstances of the case, in our view, it would have been more appropriate to have decided the matter after hearing the appellant and not in her absence. An opportunity ought to have been provided at least when an application was moved for recalling the order and all the facts and circumstances were brought to the notice of the Court.

: 3 :

Considering all the facts and the circumstances, we allow the appeal and set aside the order passed by the High Court dated 9.7.2002 as well as the order dated January 20, 2003. The appeal is restored to its original number and the same may be decided on merits after hearing the parties.

Let the hearing of the appeal be expedited in the High Court.

No costs.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

NEW DELHI
JANUARY 30, 2004