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Court : Jharkhand

Decided On : Aug-21-2017

Appellant : Shanti Devi

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 550 OF2017 Shanti Devi, wife of Late Bhagwat Tiwari Petitioner VERSUS1 The State of Jharkhand 2. The Deputy Commissioner, Garhwa 3. The Accountant General, Jharkhand ... Respondents. CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For the Petitioner : Mr. Sanjay Kumar Tiwari, Advocate. For the State: : J.C to AAG. For the A/C General: Mr. Amit Kumar Verma, Advocate 02/21.08.2017 Heard learned counsel for the parties.

2. Widow of deceased employee has knocked door of this Court for a direction upon the respondents to extend benefits of 1st and 2nd Assured Career Progression respectively to her husband in the pay scale of Rs.2,610 - 4,000 and 2,750 - 4,400 with effect from 09.08.1999 and payment of its consequential benefits i.e. arrears of difference of salary, arrears of gratuity and earned leave including revision of pension with arrears thereof. Petitioner has further prayed to hold and declare action of the respondents as illegal in depriving husband of the petitioner in extending benefits of ACP by way of Resolution dated 03.09.2016 of the District Screening Committee, contained in Memo No. 12, dated 28.10.2016.

3. It has been stated that petitioner's husband was appointed as a peon on 25.08.1964 in the office of Sub-Divisional Officer, Garhwa. Pursuant to the memo no. 1254, dated 08.07.1973, issued by S.D.O., Garhwa, petitioner's husband was posted in the office of District Manager, BSFC, Palamau at Daltonganj on 08.07.1973. It is alleged that vide Notification No. 5207, Dated 14.08.2002, State of Jharkhand has implemented, effected and notified A.C.P. Scheme to its employees which provides basic criteria for sanctiion of financial progression under the said Scheme to the concerned employees who have been working in the same scale or pay including revised scale for the prescribed period of 12/24 years. It is case of the petitioner that her husband completed more than 24 years of service on the cut-off date for grant of A.C.P. Benefits i.e. 09.08.1999 and as such, he was entitled for extending the said benefits. 2 It is further case of the petitioner that similarly situated person Kuldip Ram had preferred W.P.(S) No. 5792/2003 which was allowed vide order dated 28.11.2007 holding that he was entitled to get pension and other benefits admissible to a government servant and the pension is payable according to provision of Jharkhand/ Bihar Pension Rules. In view of said decision, pension of husband of the petitioner was also fixed with effect from 01.07.2000 authorising him for getting the same. Pension of the husband of the petitioner was fixed at the lowest rate without giving appropriate scale of 1st and 2nd ACP. After death of petitioner's husband on 26.12.2011, his wife (petitioner) and son represented before the authorities for extending monetary benefits of 1st and 2nd ACP with effect from 09.08.1999 as he had retired after completing more than 35 years of service. Petitioner has further prayed for revision of pension by extending the benefits of 1st and 2nd ACP. In the meeting of Screening Committee held on 03.09.2016 under the Chairmanship of Deputy Commissioner, Garhwa, the benefits of ACP to husband of the petitioner has been kept in abeyance erroneously and illegally, which is violative of equality clause as similarly situated Kuldip Ram has been extended the said benefits.

4. Mr. Sanjay Kumar Tiwari, learned counsel appearing on behalf of the petitioner submits that when similarly situated Kuldip Ram has been given benefits of ACP, husband of the petitioner cannot be denied of the same. Learned counsel further submits that action of the respondents is against the service jurisprudence as similarly situated persons should be treated similarly. Learned counsel further

draws attention of this Court towards Annexure-3 to the writ petition and further submits that in the Judgment passed by this Court in the case of Kuldip Ram in W.P.(S) No. 5792 of 2003, it has been clearly held that petitioner in the said case, whose services rendered in BSFC was not being counted towards his services rendered to the State Government for payment of pension and other benefits, was entitled to get pension and other benefits admissible to a government servant and pension is payable according to provision of Jharkhand Pension Rules. Learned counsel further submits that petitioner's deceased husband had never opted for the services of 3 Bihar State Food and Civil Supply Corporation, Daltonganj rather he was sent pursuant to the order of S.D.O. Garhwa vide memo no. 1254, Dated 08.07.1973. The relieving order also did not mention any such condition that services of husband of the petitioner shall be transferred which is a non-pensionable establishment. Learned counsel further submits that similar service jurisprudence evolved by the Court from time to time postulates that all similarly situated persons should be treated similarly as has been held by the Hon'ble Supreme Court in the case of State of Karnataka and others Vs. C. Lalitha reported in (2006) 2 SCC747[Para-29].

5. Per contra, counter affidavit has been filed on behalf of respondent no. 3 - Accountant General, Jharkhand. Learned counsel appearing on their behalf submits that the office of the Accountant General is not concerned with the arrears etc. and the same has to be decided by the employer department. The office of respondent no. 3 acts upon the sanction from the concerned department.

6. Counter affidavit has not been filed on behalf of the respondents - State. However, J.C. to learned AAG appearing on behalf of the State submits that petitioner is not entitled for the relief sought for in the instant writ petition. He repeats the contention raised by the respondents in denying claim of the petitioner.

7. Be that as it may. I have heard counsel for the parties, perused records and have gone through Judgment passed in the case of Kuldip Ram. I find that submission of counsel for the petitioner is fully justified and case of petitioner's husband is fully covered by the Judgment rendered in the case of Kuldip Ram and as such, in view of settled proposition of law that all similarly situated persons

should be treated similarly, the petitioner deserves similar benefits. In this regard, it is pertinent to quote Para-29 of the Judgment in the case of State of Karnataka Vs. C. Lalitha.

29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well settled that the question of seniority 4 should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in meantime she had also been promoted as Assistant Commissioner which was a Category I post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.

8. In view of aforesaid facts and circumstances, this writ petition is allowed. Respondents are directed to revise/ sanction petitioner's pension according to the provisions of the Pension Rules applicable to the Government servant and to send the same to the office of the Accountant General for issuance of fresh pension payment order within a period of two months from the date of receipt/ production of a copy of this order. The Accountant General, on receipt of aforesaid, shall issue pension payment order within a period of one months thereafter. The arrears of pension etc. must be paid to the petitioner within a period of four weeks from the date of receipt of pension payment order from the office of Accountant General. It is made clear that if aforesaid arrears payable to the petitioner is not paid within the said period, the petitioner shall be entitled to get interest @10% per annum till final payment. Needless to say that the respondents shall take a decision to extend benefits of 1st and 2nd Assured Career Progression respectively to petitioner's husband in the pay scale of Rs.2,610 - 4,000 and 2,750 - 4,400 with effect from 09.08.1999 and payment of its consequential benefits i.e. arrears of difference of salary, arrears of gratuity and earned leave including revision of pension with arrears within the same period. Resultantly, the writ petition stands allowed. No order as to costs. (Dr. S.N. Pathak, J.) RC/

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