

Sumeda Devi and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-13-2004

Judge : Aftab Alam, J.

Acts : Patna Municipal Corporation (Officers and Servants) Pension Rules, 1986 - Rules 35, 36 and 37

Appeal No. : C.W.J.C. No. 10812 of 2001

Appellant : Sumeda Devi and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : Chandrashekhar, Sr. Adv. and Dharmendra Kumar Paswan, Adv.

Advocate for Pet/Ap. : Manu Shankar Mishra, Adv.

Disposition : Petition allowed

Prior history : Aftab Alam, J. 1. Whether the grant of compassionate appointment to the widow of a deceased employee of the Patna Municipal Corporation would dis-entitled the minor son of the deceased employee from getting family pension as provided under the statutory rules? That is the short question that arises for consideration in this case. 2. Petitioner No. 1 is the widowed wife and petitioner No. 2 is the son of the Jagdish Prasad Yadav who worked as Sanitary Inspector in Patna Municipal Corporatio

Judgement :

Aftab Alam, J.

1. Whether the grant of compassionate appointment to the widow of a deceased employee of the Patna Municipal Corporation would dis-entitled the minor son of the deceased employee from getting family pension as provided under the statutory rules? That is the short question that arises for consideration in this case.

2. Petitioner No. 1 is the widowed wife and petitioner No. 2 is the son of the Jagdish Prasad Yadav who worked as Sanitary Inspector in Patna Municipal Corporation, He died after rendering 31 years of service on 8.5.1992, while he was still in service, following the death of Jagdish Prasad Yadav, the Corporation gave appointment to his wife, petitioner No. 1 on compassionate grounds. Petitioner No. 2 who was a minor at the time of death of his father claims family pension under the provisions of the Patna Municipal Corporation (Officers and Servants) Pension Rules, 1986. On behalf of the Corporation, it is contended that having given employment to the widowed wife of the deceased employee, the Corporation had no more liability to the deceased or his heirs.

3. Rule 35 of the Pensions Rules provides for payment of family pension for a period of ten years to the 'family' of a Corporation employee who died while in service or after retirement after having put in atleast twenty years of Service. The proviso to the rule stipulates that the period of payment of family pension shall not exceed five years from the date on which the employee retired or would have retired in case of his death while in service. Rule 36 provides that Rs. 250/- would be the maximum monthly amount payable as family pension in case of an employee of the Corporation whose pay was Rs. 1,200/- and above. Rule 37 defines family and it is as follows :

'37. Family for purpose of the scheme will include the following relation of the employees :--

(a) unemployed wife in case of a male employee.

(b) unemployed husband in case of female employee.

(c) minor son and unmarried minor daughter.

Note.--Marriage or remarriage after retirement will not be recognised for purpose of this scheme. The pension will be

(a) in the case of widow/widower upto the date of death or remarriage whichever is earlier.

(b) in the case of minor son until the age of 18 years.

(c) in case of unmarried daughter until she attains the age of 21 years or marriage whichever is earlier.

Note.--(i) Pension granted under this scheme will not be payable to more than one member of employee's family at the same time.

(ii) In the event of remarriage or death of widow/widower the pension will be granted to that minor children through their natural employee's family at the same time.

4. The submission is not acceptable. There is no question of any 'undue enrichment' and I fail to see any application of the note referred to by the learned counsel. Rules that are statutory and binding in nature provide for payment of family pension on certain conditions. As long as those conditions are fulfilled, the Corporation would be obliged to make the payment and the question of enrichment just or unjust does not arise. There is nothing to indicate in the rules that the wife of the deceased employee being in employment would not only exclude herself but also the minor son of the deceased employee. Also there is nothing to suggest that the grant of compassionate appointment under a scheme of the State Government, adopted, by the Corporation would exclude the application of the pension rules. The note referred to by Mr. Chandrashekar has no application because the family pension in this case would be payable only to the minor son, petitioner No. 2 and to no one else in the family.

5. For the reasons discussed above, the claim of petitioner No. 2 is upheld and the Corporation is directed to make payment to him of the amount of family pension @ Rs. 250/- per month from the date of death of Jagdish Prasad Yadav till 4.5.2001 when he (petitioner No. 2) became an adult. The payment must be made within six weeks from the date of receipt/production of a copy of this order in the office of the Executive Officer, Patna Municipal Corporation.

6. In the result, this writ petition is allowed but with no order as to costs.

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