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SooperKanoon Citation : sooperkanoon.com/123962

Court : Patna

Decided On : Dec-15-2005

Judge : Navin Sinha, J.

Acts : Bihar Reorganisation Act, 2002 - Sections 53; Bihar Pension Rules, 1950 - Rule 186

Appeal No. : CWJC No. 13456 of 2004

Appellant : Mithilesh Kumar Singh @ Molan Singh

Respondent : State of Bihar and ors.

Disposition : Application allowed

Prior history : Navin Sinha, J. 1. Heard learned counsel for the petitioner, learned counsel for the State of Bihar and learned counsel appearing on behalf of the State of Jharkhand. 2. The petitioner is the elder son of the deceased late Rai Narayan Singh who superannuated from the post of constable on 13.8.1989 from the District of Hazaribagh. He was subsequently deceased on 5.9.1998. The mother of the petitioner also stated to Rave pre-deceased his father on 7.8.1997. 3. The controversy in the present case

Judgement :

Navin Sinha, J.

1. Heard learned counsel for the petitioner, learned counsel for the State of Bihar and learned counsel appearing on behalf of the State of Jharkhand.
2. The petitioner is the elder son of the deceased late Rai Narayan Singh who superannuated from the post of constable on 13.8.1989 from the District of Hazaribagh. He was subsequently deceased on 5.9.1998. The mother of the petitioner also stated to have pre-deceased his father on 7.8.1997.
3. The controversy in the present case would relate to a claim for G.P. Fund dues of the late father of the petitioner. The additional claim would be for revised pension with effect from 1.1.1996 under the 5th Pay Revision Committee Report. The last claim would be for family pension to the younger brother of the petitioner on the plea that he would be under 25 years of age.
4. A counter-affidavit has been filed on behalf of the State of Jharkhand. A specific statement has been made in paragraph 10 of the same that the G.P. Fund dues of the late father of the petitioner would have been paid to him before his retirement. Learned counsel for the petitioner expresses his ignorance for the same/There would be no rejoinder on behalf of the petitioner to the aforesaid statement made in the counter-affidavit.
5. In view of the statement made in the aforesaid paragraph of the counter-affidavit this Court is not persuaded to proceed on this aspect of the matter any further. However, should the petitioner request in writing for details of such payments made to his deceased father, it shall be the responsibility of the respondents, State of Jharkhand, to make available the necessary information to the petitioner within a period of four weeks from the date that he would make such request. If the same be not made available to the petitioner it would be open for the petitioner to bring the matter to the attention of this Court by filing an appropriate application when the same shall be listed under the heading 'For Orders'.
6. In the event that there be any legitimate arrears on account of G.P. Fund payable to the deceased father of the petitioner, the State of Jharkhand shall ensure that necessary authority slip for the same be issued to him within the period of eight weeks from the date of request made by the petitioner as above.

7. The next issue would be the claim for revised pension under the 5th Pay Revision Committee Report with effect from 1.1.1996 till 4.9.1998, when the father of the petitioner was deceased.

8. Learned counsel for the State of Jharkhand has rightly drawn the attention of this Court of Section 53 of the Bihar Reorganisation Act, 2002 read with Schedule VIII, 1 and 2.

53. Pension.-The liability of the existing State of Bihar in respect of pensions and other retirement benefits shall pass to, or be apportioned between the successor States of Bihar and Jharkhand in accordance with the provisions contained in the Eight Schedule of this Act.

The Eight Schedule.-Apportionment of Liability in Respect of Pensions and other Retirement Benefits :

1. Subject to the adjustments mentioned in paragraph 3, each of the successor State shall in respect of pension and other retirement benefits sanctioned before the appointed date, pay from their respective treasures.

2. Subject to the said adjustment, the liability in respect of pensions and other retirement benefits of officers serving in connection with the affairs of the existing State of Bihar who retire or proceeded on leave preparatory to retirement before the appointed day, but whose claims for pensions and other retirement benefits are outstanding immediately before the day, shall be the liability of the State of Bihar.

9. The liability for pension or any revised pension to the father of the petitioner from 1.1.1996 to 5.9.1998 would be that of the State of Bihar. This Court is satisfied from a plain reading of the statutory provision that the father of the petitioner having retired from the State of Bihar before the appointed day, the liability would rest with the State of Bihar.

10. Insofar as the claim for family pension to the brother of the petitioner be concerned, this Court would find that there would be provision for payment of family pension to the brother of the petitioner under Rule 186(ii) of the Bihar

Pension Rules. However, the said Rule would contemplate payment of family pension to the minor son until he attains the age of 18 years and not 25 years as pleaded by the petitioner. This Court finds that brother of the petitioner on whose behalf the claim is sought to be made has not raised any grievance and would not have come to this Court with any pleadings in this regard.

11. Notwithstanding the same, this Court also notices that according to the petitioner based on certain proceedings before the Anchda Adhikari at Annexure-6, the age of the brother of the petitioner is claimed to be 17 years as on 5.5.1999 while the respondents in the counter-affidavit would plead that in accordance with the details furnished by deceased Raj Narayan Singh in his service record the date of birth of the brother of the petitioner would be in 1980. Clearly in any event of the matter the younger brother of the petitioner would be beyond 18 years of age today. Hence the question of any 'family pension to him simply does not arise.

12. This writ application is, accordingly, disposed-off with the liberty to the petitioner to file a representation before the State of Bihar with regard to the claim for revised pension payable to his deceased father for the period as aforesaid. This Court would require the respondent, State of Bihar, to consider the representation, pass appropriate orders thereupon and pay the legitimate dues, if any, within a period of 12 weeks from the date of receipt of the such representation alongwith the copy of the order of this Court.

13. In the result this application is allowed only to the extent indicated above with the observations and directions as contained hereinabove.