

Kumud Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Oct-07-2002

Judge : S.K. Katriar, J.

Acts : Bihar Pension Rules, 1950 - Rule 45A; Bihar Public Works Department Code - Rules 58 and 59; Service Law

Appeal No. : C.W.J.C. No. 8650 of 2001

Appellant : Kumud Devi

Respondent : The State of Bihar and ors.

Disposition : Petition dismissed

Prior history : S.K. Katriar, J. 1. Heard learned Counsel for the parties. This writ petition has been preferred with the prayer to direct the respondent authorities to grant the post-retirement benefits and family pension admissible to the petitioner's late husband and his heirs. 2. According to the writ petition, the petitioner is the widow of late Bhola Singh who was a Class IV employee of the Bihar Government and died in harness. He had joined the Public Health and Engineering Department, Government of

Judgement :

S.K. Katriar, J.

1. Heard learned Counsel for the parties. This writ petition has been preferred with the prayer to direct the respondent authorities to grant the post-retirement benefits and family pension admissible to the petitioner's late husband and his heirs.

2. According to the writ petition, the petitioner is the widow of late Bhola Singh who was a Class IV employee of the Bihar Government and died in harness. He had joined the Public Health and Engineering Department, Government of Bihar, on muster roll in 1981. By office order No. 127, dated 16-3-1988 (Annexure 8), he was appointed on the work charge establishment of the said department, the relevant portion of which is set out hereinbelow for the facility of quick reference:--

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le;≤ ij Lohd`r thou;kiku Hkkk ,oa vU; Hkkk ns; gksxkA-----"

While working in such capacity, Bhola Singh died in harness on 20-10-1998. According to the petitioner, she has so far been paid only the proceeds of the provident fund, has not been paid group insurance nor the family pension, it is, therefore, submitted on behalf of the petitioner that appropriate direction may be given to the respondent authorities to sanction and release these benefits to the petitioner as the widow of late Bhola Singh. He relies on the circular of the Finance Department, Government of Bihar, dated 23-10-1997, as well as the following reported judgments:

(i) The judgment of a learned Single Judge of this Court, reported in 1998 (3) PLJR 908 (Shambhu Sharan Singh v. State of Bihar)

(ii) The order dated 1 -12-1998 passed by a learned Single Judge in CWJC No. 9846 of 1997 (Rabia Khatoon v. State of Bihar)

(iii) The judgment of the Supreme Court, reported in Bihar Law Judgments, page 191 Pravabati Devi v. Union of India,)

(iv) (1996) 9 SCC 29 (State of Manipur v. Thingujam Brojen Meetei)

3. Learned SC III for the State Government submits that the petitioner was on work-charge establishment, had not completed ten years of continuous service and, therefore, the petitioner is not entitled to family pension in view of the nature of employment of her late husband and the total length of service he had put in as an employee of the State Government. He further submits that regular employees get salary from the Revenue of the State, whereas work-charged employees get it from the funds allotted to the Scheme. In order to be entitled to pension/family pension, employee must be holder of a civil post. A work-charged employee like the petitioner is not the holder of a civil post. He submits that the provident fund has already been paid to the petitioner, and the proceeds of the group insurance is being processed.

4. I have perused the pleadings of the parties and considered the rival submissions. The primary question which arises for determination in this writ petition is whether or not, in view of the nature of appointment of the petitioner's late husband, she is entitled to family pension. It appears from a plain reading of the nature of appointment that Bhola Singh was appointed against the vacant post of Pump Khalasi/Chowkidar in the work charge establishment of on ad-hoc basis by way of adjustment on salary of Rs. 350 per month in the pay-scale of Rs. 350-5-400-425. Rules 58 and 59 of the Bihar Public Works Department Code read as follows:

'(58) Members of temporary establishment have no claim to pension. They may, however, be allowed leave and leave salary as admissible under the Bihar Service Code Rules. If they are engaged for a special work, their engagement lasts only for the period during which the work lasts. If dismissed otherwise than for serious misconduct, before the completion of the work, they will be entitled to a month's pay in lieu of notice, but otherwise, with or without, notice, but otherwise, with or without notice, their engagement terminates when the work ends. If they desire to resign their appointments, they will be required to give a month's notice of their

intention to do so or forfeit a month's pay in lieu of such notice. These instructions should be explained to the men employed and a written declaration in the form prescribed in Appendix VI obtained from them that the terms have been clearly understood by them.'

'(59) Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or of sub-works of a specific project, or upon the subordinate supervision of departmental labour, stores and machinery in connection with such work or sub-work. When employees borne on the temporary establishment are employed on work of this nature, their pay should, for the time being, be charged direct to works.'

The State Government F.D. Memo No. 1344, dated 4-2-1979 [P. 137 of Vol. 1 (Annexure A) of PWD Code], is also relevant in the present content and the relevant portion of which is set out hereinbelow for the facility of quick reference:

'Subject--Revised conditions of service of work-charged establishment. The existing distinction between work charged establishment, temporary and permanent establishment and daily labour as given in the PWD Code and PWD Accounts Code will be maintained but the conditions of service of work-charge establishment will henceforth be identical with those of temporary Government servants...'

It is provided by Government Circular dated 23-10-1987 (Page 171 of Vol 1 of PWD Code) that those persons employed by the State Government in work charged establishment who have rendered satisfactory and continuous service for five years upto 21-10-1984 shall be absorbed in the regular establishment

after consultation with the Finance Department. Paragraph-6 of the said circular provides that no appointment shall be made in future on work charge establishment.

5. It is thus manifest from the aforesaid provisions that the employees of a temporary establishment are not entitled to pension. Late Bhola Singh was

appointed on work charge establishment on a purely ad hoc basis was thus in still inferior position than an employee of a temporary establishment. Furthermore, the aforesaid Government circular dated 23-10-1987 provides that the benefits of regularization in service to the employees working on work charge establishment shall be given to those who have completed five years continuous and satisfactory service upto 21-10-1984. Late Bhola Singh had not completed five years of continuous service upto 20-10-1984. In fact, his employment in work charge establishment commenced on 16-3-1988. Furthermore, as stated above, satisfactory service rendered by such employees was a condition precedent for regularising the service of such employees. In the present case, apart from the position that the department concerned had not taken any such decision in consultation with the Finance Department, let alone any decision that Bhola Singh had rendered satisfactory service to the State Government. In fact, it appears from paragraph-4 of the counter affidavit of respondent Nos. 1 to 6 that he was absent without information for a total period 464 days. It was open to the State Government to treat the same as wilful absence which would have caused break in service. The same was, however, treated as extraordinary leave without pay. He had thus completed a total length of nine years and five months in work charge establishment. So much for the satisfactory service rendered by Bhola Singh. Furthermore, Clause 6 of the circular provides that no appointment shall under any circumstances be made in future in a work-charge establishment. The appointment of Bhola Singh was thus in the teeth of this provision. I am thus in no doubt that late Bhola Singh did not qualify for regularisation of his service in terms of the circular dated 23-10-1987.

6. There is one more aspect of the matter. Paragraph 4 of the said circular dated 23-10-1987 has been disapproved of by this Court by its judgment dated 15-4-1997, passed by CWJC No. 10686 of 1995 (Rap Singh v. The State of Bihar,) and a different method of regularisation has been suggested in that judgment. As stated above, Rule 4 provides that all the employees of a work-charge establishment who have completed five years of continuous and satisfactory work upto 21-10-1984 shall be regularised in service.

7. Learned SC III has rightly relied on Rule 45-A of the Bihar Pension Rules which provides that claim for pension shall not be admitted when a Government servant is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged. Learned Standing Counsel is right in placing reliance on the judgment reported in (1996) 5 SCC 308 (State of Haryana v. Rani Devi,) wherein the Supreme Court, while interpreting the expression 'employee' occurring in the Punjab Civil Services Rules, held that the same for purposes of appointment on compassionate ground did not include the casual or purely ad hoc employees or apprentices. He has rightly relied on the judgment of the Supreme Court in the State of Manipur v. Thingujam Borjen Meetei, (supra) wherein it has been held that the bar regarding applicability of the scheme under discussion therein to work charged employees would, therefore, continue to be applicable and the dependents of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme. I must State that the Supreme Court in those cases was interpreting the Rules of other States but the same shows the trend and the manner in which such ad hoc or temporary employees or employees of work-charged establishment are generally taken. The judgments in spirit support the contention of

the learned Standing Counsel.

8. There is yet another aspect of the matter. The appointment letter of Bhola Singh States that he was appointed by way of adjustment on ad hoc basis on the work-charged establishment against the post of Pump Khalasi/Chowkidar. Such appointment by adjustment has been held to be unknown to law by a Division Bench of this Court, reported in 1995(2) PLJR 309 (Lalan KumarSingh v. State of Bihar,) the relevant portion of paragraph 23 of the said judgment is set out hereinbelow for the facility of quick reference:

'(23) Further, the petitioners, in our considered opinion, did not derive any legal right to continue in service inasmuch as their appointments were absolutely ad hoc in nature. We are also amazed that a novel method was adopted in appointing the petitioners.

In terms of Bihar Service Code the Civil Surgeon is the appointing authority with regard to the vacancies arising within the district wherein he is posted. All such appointments, therefore, are to be made in the cadre mentioned at the district level. No appointee could have, therefore, been sent to another district immediately after appointment for the purpose of adjustment/by way of transfer is unknown in law. An appointment by way of transfer is permissible when the same is made on an equivalent post. An appointment by way of adjustment, in our opinion, is also unknown in law. The purported adjustments appear to have been made without ascertaining as to whether there existed any vacancy in the concerned district or not.'

As stated above, Clause 6 of the aforesaid circular dated 23-10-1987 provides that no appointment shall under any circumstance be made in future in a work-charge establishment. The appointment of Bhola Singh was thus illegal from the very inception,

9. I must consider the submissions advanced on behalf of the petitioner. Learned Counsel for the petitioner has above all relied on the aforesaid circular dated 23-10-1987, and accordingly claims that late Bhola Singh was entitled to regularisation of service, I have already discussed hereinabove that the same is inapplicable to the factual matrix of the present case. The aforesaid judgments of this Court in Shambhu Sharan Singh v. Sfafe of Bihar, (supra) and Rabia Khatoon v. Sfafe of Bihar, (supra) are inapplicable to the facts and circumstances of the present case for the same reason. The judgment of the Supreme Court in the case of State of Manipur v. Thingujam Brojen Meetei, (supra) has been discussed above and, in fact, in its spirit and substance supports the respondent's contention. The judgment of the Supreme Court in Pravabati Devi v. Union of India, (supra) dealt with the specific provisions of the Railway Pension Rules and is, therefore, inapplicable to the facts and circumstances of the present case.

10. In the result, this writ petition is dismissed. The petitioner is not entitled to family pension. The respondent authorities should release the other lawful and admitted dues payable to the petitioner without further loss of time.