

**State of Bihar and ors. Vs. Arya Devi and ors.**

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**Court :** Patna

**Decided On :** Mar-05-2001

**Judge :** N. Pandey and S.K. Singh, JJ.

**Appeal No. :** L.P.A. Nos. 439 and 1009 of 2000

**Appellant :** State of Bihar and ors.

**Respondent :** Arya Devi and ors.

**Disposition :** Appeal Allowed

**Judgement :**

1. Both the Letters Patent Appeals have been preferred by the State of Bihar and they have been heard together in detail at the stage of admission itself. They involve a common question of law as to whether in case of teachers of elementary schools taken over by the State Government under the Bihar Non-Govern-'ment Elementary Schools (Taking Over of Control) Act, 1976 (hereinafter referred to as 'the Act') who ceased to be in service of such schools, on account of death or retirement, prior to 31-3-1976, the widow or other family members are entitled to family pension under the 1964 Notification which provides Family Pension in case of death of Government employees.

2. The relevant facts, in short, are that husband of the writ petitioner in both the cases was a teacher in an elementary school taken over by the State Government under the Act, Admittedly, they ceased to be employees of the schools concerned

prior to 1-4-1976. Although the Act was enacted in 1976 but certain categories of elementary schools, by virtue of Section 3(1) of the Act were deemed to have been taken over the State Government with effect from 1st day of January, 1971. For other categories of schools the date of take over was to be determined by the authority concerned and required to be notified in the official gazette.

3. It is not in dispute that the schools in question were taken over with effect from 1-1-1971. It is also not in dispute that prior to take over of these schools under the provisions of the Act, the employees of such non-government elementary schools were getting the benefit of only Provident Fund, Insurance Pension under a scheme known as Triple Benefit Scheme introduced vide Education Department Notification No. 3431, Dated 4th September, 1964 which made the scheme effective from 1st April, 1964. Government framed Bihar Non-Government Schools employee Provident Fund Insurance-Pension (Triple Benefit Scheme) Rules to govern the grant of benefits under the 1964 scheme to employees retiring from schools on or after 1st April, 1964. The Triple Benefits under this scheme did not include family pension.

4. The claim of writ petitioners for entitlement to Family Pension is based upon Family Pension Scheme for State Government employees which was introduced by the State Government long back and was liberalised from time to time such as in 1964 vide Finance Department Memo No. Pen-103/64/9505-F.I. dated 3rd September, 1964. Section III to Appendix 5 of Bihar Pension Rules contains the details of various notifications concerning Family Pension rights of the State Government employees.

5. The contention of the writ petitioners is that since the schools were taken over by the State Government with effect from 1-1-1971 hence, the employees of such schools became Government servant from that date and, therefore, became entitled to all the benefits including the benefit of Family Pension as was available to State Government employees, on and from 1-1-1971 itself. On the other hand, the contention of the State of Bihar and its officials is that after the take-over of the schools by the State the benefit of Family Pension was introduced for the employees of such schools, by the State of Bihar for the first time on 7th June,

1976 vide Government Letter No. 1802, dated 7-6-1976 with effect from 1-4-1976 and, therefore, those teachers who retired or died on or before 31st March, 1976 were to be governed by the Rules of Triple Benefit Scheme. Those who retired after 31st March, 1976 would be entitled to the benefit of Family Pension Scheme. According to State, since the husband of the writ petitioner in both the cases retired/died prior to 1-4-1976 hence, they were entitled only to the benefits under the Triple Benefits Scheme of 1964 and not to the benefit of Family Pension which was made applicable to employees of taken over elementary schools only with effect from 1-4-1976.

6. Before deciding the present controversy, it is relevant to take note of precedents as cited and relied upon by parties. In the case of Smt. Sharda Devi v. State of Bihar and Ors. 1996 (2) PLJR 470, a learned Single Judge merely noticed the fact that from 1-4-1964 benefit of Family Pension was liberalised and made applicable to all State Government employees if he had completed a minimum period of one year service and since the elementary school in question was taken over with effect from 1-1-1971 thus, making its employees the employees of State Government hence such eligible employees would also be entitled for Family Pension as per Bihar Pension Rules.

7. Thereafter, the same question arose for decision before a Division Bench of this Court in the case of Sona Devi v. State of Bihar and Ors. 1998(1) PLJR 668. In that case, an attack was made upon the validity of State Government's decision by which it had fixed 1-4-1976 as the relevant date whereafter the benefit of Family Pension would be available to the teachers of the elementary schools taken over by the State with effect from 1-1-1971, on the ground that State could not have fixed such an arbitrary cut-off-date. Such a challenge was negated by the Division Bench by placing reliance upon two judgments of the Supreme Court reported in 1994(1) PLJR 33 (State of West Bengal and Ors. v. Ratan Bihari Dey and Ors.) and : [1995]1SCR8 (State of Rajasthan v. Seva Nivritya Karmachari Hitkari Samiti.) The Division Bench in paragraph 6 of the said judgment found a rational basis for the selection of the date of applicability of Bihar Pension Rules with regard to teachers, like the husbands of the petitioner in both these writ applications, who were earlier entitled only to the Triple Benefit Scheme. It was

specifically held that benefit of Family Pension Scheme was not available to such teachers earlier and, therefore, some date had to be prescribed for bringing into effect the benefit of Family Pension. Challenge on ground of arbitrariness was also repelled by the Division Bench in paragraph 7 of the said judgment in following words:

We are of the view that in view of the principles laid down in the judgments of the Supreme Court, this Writ Petition must be dismissed and it must be held . that the employees retiring prior to April 1, 1976 and those retiring thereafter were governed by different set of rules. It cannot be said that between those governed by the same set of rules and being similarly situated, distinction was sought to be drawn by creating two different classes. At the time when the husband of the petitioner died, the benefit of Family Pension was not available to retiring employees such as him. Since the rules themselves were made applicable with effect from a date much after his death, the petitioner cannot be granted the benefit under such rules entitling her to claim Family Pension. In prescribing the date of applicability, the State has not acted in an unreasonable or discriminatory manner.

8. While on the judgment of this Court in the case of Sona Devi (supra), it is relevant to notice and point out that from paragraphs 8 and 9 of the said judgment, it is obvious that the Division Bench in that case did not apply its mind to the so-called 1964 Rules governing Family Pension. The parties did not point out that the notification of 1964 governing Family Pension merely liberalised the scheme of Family Pension only for employees of the State Government and it was not at all a Rule of Pension or Family Pension applicable to employees of Non-Government elementary schools.

9. The same controversy was again considered by a learned Single Judge in the case of Lalita Deviv. State of Bihar, 1999 (3) PLJR 236. In this judgment, the decision of the Division Bench in the case of Sona Devi (supra) was partly explained on the basis of paragraphs 8 and 9 wherein the Division Bench clarified that it had not expressed opinion on the claim for Family Pension under 1964 Rules. Thereafter, learned Single Judge held in paragraph 9, that the learned

Counsel for the State had failed to bring to the notice of the Court any Rule framed under the Act with respect to grant of benefit of Family Pension from 1-4-1976 except the instruction contained in the Education Department letter No. 1069 dated 23-6-1977 and proceeded to hold that till a rule is framed under the provisions of the Act, instruction dated 23-6-1977 cannot be invoked to deprive the petitioner of that case Family Pension under the Family Pension Scheme introduced by Finance Department memo dated 3rd September, 1964. The learned Single Judge further expressed an apprehension in paragraph 10 of the judgment that even if a rule is framed to the detriment of a beneficiary under the Family Pension Scheme of 1964, such a rule may not survive on account of discrimination between teachers of schools taken over under the Act and the other State Government employees. The letter dated 23-6-1977 was held to be lacking in reasonableness in fixing a cut-off date on the ground that by fixing such a date the instruction of 1977 denied the benefit of Family Pension already available to the teachers under the scheme of 1964 and thereby it acted to their detriment. Accordingly, the learned Single Judge reiterated the views in the case of Sharda Devi (supra) and allowed the claim for Family Pension in facts similar to those in the present cases.

10. From the facts discussed above, in substance the submission of the learned Counsel for the appellant-State of Bihar is that the judgments under appeal are against law and the judgments in the case of Sharda Deviv, State of Bihar (supra), and in the case of Lalita Deviv. State of Bihar (supra) which have been followed by the judgments under appeal must be held to be incorrect because in the aforesaid judgments the Court failed to appreciate that benefit of Family Pension was not available to teachers of Non-Government elementary schools prior to take over of such schools by the Act enacted in the year 1976. In this regard, it would, therefore, be appropriate to consider the provision of Section 4(2) of the Act. Section 4 of the Act provides the consequences of taking over, Sub-section (2) of Section 4 provides as follows:

Every Officer, teacher or other employee holding any office or Post in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of the State Government with such

designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over the said schools and shall continue to do so unless and until such tenure remuneration, terms and conditions of service are duly altered by the State Government.

11. Elucidating such argument, it was submitted on behalf of appellants that had the Court taken note of this provision it would have been clear that the teachers or employees of these schools even after take-over and after they had become teachers/ employees of the State Government were to hold office on the same terms and conditions of service as held before the taking over of the schools unless and until the terms and conditions of service were duly altered by the State Government. The words 'duly altered' have not been defined in the Act to mean duly altered by statutory rules and hence, according to learned Counsel for the appellant, in absence of any statutory rule to the contrary, such alteration could be done even by executive instructions. If it is held that the instructions of 1976 did not alter the terms and conditions of service as provided in Section 4(2) of the Act then the effect would be to deprive the benefit of Bihar Pension Rules and of Family Pension contained therein even for employees and teachers who retired or died on or after 1-4-1976.

12. On the other hand, on behalf of respondent writ petitioner in both the cases, reliance was placed upon the judgments in the cases of *Sharda Deviv. State of Bihar and Ors. (supra)* and in the case of *Lalita Deviv. State of Bihar (supra)*.

13. Having considered all the relevant facts, the earlier judgments and the provisions of the Act and after taking into account the submissions of rival parties, this Court finds sufficient force in the submissions advanced on behalf of the appellants in these appeals and is, therefore, left with no option but to differ with the views expressed by the learned Single Judge in the case of *Sharda Devi v. State of Bihar (supra)* and *Lalita Devi v. State of Bihar, (supra)*, and hold that those judgments do not lay down the correct law. There is no material on record or any law to hold that the teachers of Non-Government elementary schools were entitled to the benefits of Family Pension under the liberalised scheme of 1964 as

contained in Bihar Pension Rules which is applicable only to employees of State Government. After take-over of the schools under the provisions of the Act, such teachers, by virtue of Section 4(2) of the Act continued to be governed by their earlier service conditions and, therefore, could not have claimed to have become employees of State Government in respect of other service conditions until their conditions of service were altered by the State Government in view of instruction of 1976 providing for application of Bihar Pension Rules only to those teachers who retired on or after 1-4-1976 and also providing that those teachers who retired or died earlier shall be entitled to the benefits of Triple Benefit Scheme. No doubt, the judgment of the Division Bench in the case of Sona Devi v. State of Bihar (supra), in the facts of that case did not consider the 1964 Notification relating to Family Pension and thus, left the matter open but its findings on the question of arbitrariness or otherwise of instruction dated 7th June, 1976 and validity of the cut-off date were binding on the learned Single Judge. We also find no material to take a different view on the aforesaid aspect of the matter than what has been taken by the Division Bench in the case of Sona Devi v. State of Bihar (supra).

14. In the case of Lalita Devi v. State of Bihar, (supra), it was erroneously presumed that besides the Triple Benefit, pensionary benefits including Family Pension benefit as provided in the Bihar Pension Rules were available to the teachers of elementary schools taken over by the State of Bihar under the provisions of the Act. This led to further error in holding that by fixing 1-4-1976 as the cut-off date for application of Pensionary benefits, the State had changed the conditions of service to the detriment of teachers of schools concerned. On the basis of aforesaid discussions, it has to be held that such teachers and employees of elementary schools taken over under the Act who retired or died prior to 31st March, 1976 shall be entitled only to the benefit under the Triple Benefit Scheme and only those who retired after 31st March, 1976 shall be governed by the Bihar Pension Rules including provisions for Family Pension. The instruction or decision of the State Government dated 7th June, 1976, though not a statutory rule is valid and the cut-off date fixed thereunder suffers from no arbitrariness. In view of aforesaid findings and discussions, we are left with no option, but to overrule the judgments of learned Single Judge in the case of Smt. Sharda Devi v. State of Bihar and Ors, (supra) and also in the case of Lalita Devi v. State of Bihar (supra).

15. As a result, both the appeals are allowed and the writ petitions are accordingly dismissed. However, in the facts and circumstances of the case without costs.

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