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Court : Patna

Decided On : Aug-18-2000

Judge : Radha Mohan Prasad, J.

Appeal No. : Civil Writ Jurisdiction Case Nos. 8508 and 9951 of 1998

Appellant : Shakuntala Devi and anr.

Respondent : State of Bihar and ors.

Judgement :

Radha Mohan Prasad, J.

1. In both writ petitions, grievance of the petitioners is with respect to non-payment of Contributory Provident Fund, hereinafter called as CPF, and also with respect to non-grant of pension and gratuity benefits to them.

2. In the first case, petitioner No. 1 joined the service on 10.2.1960 and retired from the post of Mukhaya Sevika, Family and Child Welfare Project under the Bihar State Social Welfare Advisory Board, hereinafter called as 'State Board1, on 31.6.1998 and petitioner No. 2 was appointed as Accountant in Welfare Extension Project and is presently working in the said capacity at Jehanabad and is to retire from service on 31.5.2002. In the second case, the sole petitioner joined the service and later on promotion to the post of Accountant finally retired on 30th November, 1991 from the Family and Child Welfare Project, Udwanthnagar,

Bhojpur under the State Board. As the petitioners have been kept denied of the aforementioned benefits they have filed the present writ petitions raising the abovementioned grievance.

3. An Intervention petition bearing I.A. No. 1649 of 2000 has been filed on behalf of one Leela Verma, wife of Sri M.P. Verma in the second writ petition seeking same relief as claimed by the petitioner of. the second writ petition besides some more relief, such as, payment of arrears amount of 4th Pay Revision with effect from 1.4.1981, arrear amount of 5th Pay revision with effect from 1.4.1986, benefit of two time-bound promotions and interest on the said arrear. As there is no opposition by the other side, prayer for intervention in the above-mentioned I.A. is allowed.

4. Bihar State Social Welfare Advisory Board was set up in Bihar, Patna in 1954 with a view to ensuring proper co-ordination between the social welfare Organizations in Bihar and also for a wider coverage and extensive study of the working of such institutions and supervision of their programmes and activities. The State Board started 35 Welfare Extension Projects in different backward Blocks in Bihar and required posts were sanctioned for smooth functioning of the Projects. The Central Social Welfare Board, hereinafter called as 'Central Board', framed Rules for all State Social Welfare Advisory Boards and according to it the employees were to be governed by the respective State Government Rules up to the extent of appointment and other administrative matters. The Government of Bihar introduced the scheme for CPF for staff of the State Board vide its letter No. 9874 dated 10.12.1970 (Annexure-2 to the writ petition). The State Board, however, implemented the said scheme for Headquarters' employees and not with respect to the said project employees. In the year 1979, Government of India through the Central Social Welfare Board decided to extend the facility of pension and gratuity scheme to the Board's employees if the State Government concerned agrees to bear 50% share of the cost involved for the said purpose. As the facility of pension/gratuity scheme is not available to the employees of the other Boards and Corporations in Bihar, the State Government did not agree to the said proposal of the Board to extends the facility to the employees of the State Board.

5. The stand of the State in the counter-affidavit is that it is not true that the pay scales and the Recruitment Rules for the Board's employees adopted by the Central Board are similar to the State Government employees. According to the State Respondent, the State Government in the Welfare Department are under no obligation to extend all the facilities presently being availed by the State Government employees to the Board employees also. However, as regards the facility of Contributory Provident Fund to the Project employees like the petitioners, it is stated in the counter-affidavit filed on behalf of the State Officials that the same have already been sanctioned by the State Government and that the Board authorities are responsible for not extending the said facility to the Project employees. It is alleged that the Respondent-State Board has not handed over charge of 17 converted projects to the State Government till date. The State Government only released grant for payment of salary to the employees of unconverted 18 Extension Projects and 17-Family and Child Welfare Projects. It is, thus, submitted that it was the duty of the Respondent-State Social Welfare Project to extend the C.P.F. facility to its project employees.

On the question of payment of arrear salary to the petitioners, it is stated that the Board-authorities are wholly responsible for the existing state of affairs as even after repeated reminders and meeting with the authorities of the Respondent-Social Welfare Board, they have failed to submit the required information and relevant documents necessary for the release of grants by the Finance Department of the State Government. According to the said Respondents, the State Government had already released a sum of Rs. 2 crore in 1995-96 for payment of salary to the Project Employees in compliance of the order of this Court, but the required utilization certificate about the same has not yet been received and the misuse of the above grant of Rs. 2 crore by the Respondent is suspected. It is stated that the Respondent-Social Welfare Board did not furnish the required statement of fact as requested vide Department's letter No. 2087 dated 16.10.1998 and its subsequent reminder vide Department letter No. 210 dated 3.2.1999, letter No. 1638 dated 15.3.1999 and letter No. 2959 dated 7.6.1999 till 1st June, 1999 and, therefore, the delay in furnishing the required statement of fact led to delay in submitting adequate statement of facts.

6. A counter-affidavit has also been filed on behalf of State Board officials (Respondents 6 & 7). In the said counter-affidavit, it is stated that the State Board has no financial liability with respect to the employees of Family and Child Welfare Project and it is upon the State Government to take decision to extend the benefit of C.P.F., pension and gratuity, etc. to the employees of Family and Child Welfare Project. However, it is stated that the Central Social Welfare Board/State Board also agreed to extend the benefit of pension/gratuity to the employees working under the Welfare Extension Project who have completed 10 years of service subject to the condition that the State Government agrees to meet the share with effect from 1.4.1988. The benefit of pension and gratuity has not been extended to the employees of the State Board Headquarters and Project employees, as the State Government has not agreed to meet their share. It is further stated that the Central Board and the State Board made several correspondences and requested the State Government, as would be evident from Annexures-7, 7/1 and 8 to the writ petition, to extend the benefit of pension and gratuity to the State Board's Headquarters and Project employees. The State Board in its meeting dated 28.3.1998 also resolved to request to the State Government and the Central Board to extend the benefit of pension and gratuity but the State Government vide letter dated 15.1.1999 refused to extend the said benefit saying that it is not their liability.

With respect to the benefit of C.P.F.. it is stated that the same has been extended to the employees of the State Board Headquarters only and it has not been extended to the employees of the Project, as according to the said Respondents, the State Government has not yet sanctioned the C.P.F., schemes for the Project employees.

7. In reply affidavit filed on behalf of the petitioner by way of rejoinder to the counter-affidavit of the State, it is reiterated that the service condition of the Project employees are similar to that of the employees of the State Government in view of Annexures-1 & 1/A, and as such, the facility of pension/gratuity/G.P.F. applicable to the State Government employees should have been extended to the Project employees of the Board, but this has been denied even after lapse of 46 years since the inception of the Board. With respect to the plea of the State that the said

benefit has not been extended to the employees of other Boards and Corporations, it is stated that the facility of pension/gratuity/G.P.F. are available to the employees of the Bihar State Electricity Board, Bihar State Education Board and Patna Municipal Corporation. According to the petitioner, State Government has not come with clean hands in shifting its responsibility on the Board for non-payment of arrears of salary and non-implementation of C.P.F., as the State Government completely lacked its responsibility to see that the demand of salary made by the Board be immediately allotted. It is stated that the Central Government as well as Central Board took a firm decision to implement the pensionary benefit to the Project employees and accordingly, the other State Governments have extended the facilities of pensionary benefits, gratuity and G.P.F. to the Project Employees except Bihar Government. It is submitted on behalf of the petitioner that it is true that the Central Board vide letter dated 17.4.1997, contained in Annexure-X/5 agreed to provide pensionary benefits to the Project employees of the State Board subject to the condition that they have completed 10 years of continuous service and that the State Government agreeing to meet their share with effect from 1.4.1988, and that the State Government has so far not agreed, but in view of Annexures-1 & 1/A to the writ petition, which provides for the staffing pattern and lays down service conditions of the employees under Family and Child Welfare Project, the State Government is not legally and constitutionally justified to deny the benefit to the Project employees which are available to the Government servant holding corresponding Government post. It is submitted that in any view of the matter, the Respondents were not legally justified in not extending the benefit of C.P.F. in the case of project employees even though the said benefit has been extended to the employees working in the Headquarters. The denial of the said benefit to the Project employees is arbitrary and violative of Article 14 of the Constitution of India.

8. Learned Counsel appearing for the Board submitted that in a Single Bench decision of this Court in the case of Kaushal Kishore Prasad v. Union of India and Ors. 1991 (2) P.L.J.R. 369, it has been held that the State Board is an independent legal entity and is its own master and has full authority to take decision with regard to its own affairs including appointment of its employees and laying down its terms and conditions subject to the approval of the Central Social

Welfare Board. It is submitted that the State Government in the present case has unnecessarily tried to interfere in the matter relating to appointment by seeking information in that regard to test the validity of the appointment which is not permissible in view of the principle laid down in the said decision of this Court. According to the learned Counsel for the Respondent-Board, once the budgetary estimates and expenditure of the State Board are approved by the Central Board the State Government is duty-bound to reimburse 50% of such expenditure to the State Board and the State Government have absolutely no authority to interfere with the decision of the State Board with regard to fixation of pay scales, etc. of the employees of the State Board. It is submitted that the State Government has not released its contribution, as such, the State Board has not been able to discharge their responsibility in making payment of the dues as is even admissible by virtue of the decision of the State Government, such as, contributory provident fund and arrears of pay in the revised scale to some of the employees. There cannot be any dispute to the said proposition of law argued by the learned Counsel for the Board in view of the Bench decision of this Court in the case of Kaushal Kishore Prasad v. Union of India (supra) but, this Court is unable to accept the Board's submission that before release of the fund the State Government will have no authority at all to find out as to whether the requisition for release of fund sent by the Board is justified or not, more so when there is no provision in the budget in that regard. It is not the case of the Respondents that the State has not released fund as per the budgetary provision.

9. After the matter was heard on two occasions, this Court required the presence of the Secretary, Welfare Department, who appeared before this Court and accepted that the Project employees are also entitled for the benefit of Contributory Provident Fund, but the fund could not be released on account of the fact that necessary information asked for by the Government from the State Board were not supplied, Learned Counsel for the Board submitted that the said information have already been supplied. Accordingly, the Secretary agreed that after examining the said in for nation and getting necessary sanction of the Finance Department, necessary fund shall be made available with respect to the benefit of Contributory Provident Fund at the earliest. However, as regards, extension of benefit of pension and gratuity, it is submitted that the State

Government has not been able to accord necessary approval in view of the financial problems. Learned Counsel for the State submitted that in view of the letter contained in Annexure-3, it is only where the State Government agrees for extending the benefit of pension and gratuity to the employees of the State Board that the said benefit would become available to the employees of the State Board, and that the State Government shall have to release necessary fund in that regard. So long the State Government is not in a position to agree with the proposal of the Central Board for extending the benefit of pension and gratuity to the employees of the State Board, petitioners cannot claim the said benefit as a matter of right and is thus, not entitled for the relief prayed for in that regard.

10. This Court finds substance in the said submission of the learned Counsel for the State. Annexure-3 in categorical terms provides that the decision of the Board to provide pensionary benefits to the employees of the State Board is subject to the State Government agreeing to the extension of such benefits and also to share 50% expenditure in accordance with the agreed pattern of expenditure. As such, writ petitioners, in my opinion, are not entitled for any relief with respect to extending the benefit of pension and gratuity. However, having regard to the fact that the other State Governments have already extended the said benefit to the employees of the State Welfare Board, it is desirable that the State Government being Welfare State should reconsider the matter.

11. With respect to release of fund for payment of contributory Provident Fund, this Court in the facts and circumstances aforementioned directs the State Government to complete necessary screening about the genuineness of the claim for release of fund positively within a period of one month from the date of receipt/production of a copy of this judgment and release necessary fund in that regard after getting necessary sanction of the Finance Department within two weeks thereafter. The Secretary, Finance Department who is Respondent No. 5 in the present case, is directed to extend the full co-operation in making available the required fund within the stipulated time. The State Board and its official (Respondent Nos. 6 & 7) are directed to pay the said admissible dues of the petitioners positively within one week of the release of the fund by the State Government.

12. With respect to other claims of the Intervenor-petitioner, this Court directs that the petitioner shall raise the said claim before the authority concerned, who shall examine the same and dispose it of the a reasoned order and shall also pay the remaining admitted dues, if any, within four weeks of the receipt of the claim.

13. In the result, writ application is partly allowed. However, in the facts and circumstances, there shall be no order as to costs.

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