Most. Jharla Devi Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-25-1998

Judge : Aftab Alam and D.S. Dhaliwal, JJ.

Appeal No. : Civil Writ Jurisdiction No. 7271 of 1988

Appellant : Most. Jharla Devi

Respondent : The State of Bihar and ors.

Disposition : Application Allowed

Judgement :

Aftab Alam and D.S. Dhauwal, JJ.

1. The petitioner is the widow of a Government employee who died, while in service, on 1.12.1985. According to the petitioner she was entitled to receive as Group Insurance a sum of Rs. 96,000/- as provided under resolution No. 4145 dated 13.7.1985 amending the Group Insurance Scheme

w. e. f. July 1, 1985 (hereinafter referred to as the 1985 Scheme). The respondent authorities, however, maintained that she should be paid Rs. 24,000/- only as Group Insurance under resolution No. 3412 dated 29.3.1982 (hereinafter referred to as the 1982 Scheme) which was in existence till July 1, 1985 before being amended by the 1985 Scheme.

2. At the time of admission of this case the Court directed for payment of the admitted amount of Rs. 24,000/- to the petitioner without prejudice to her claim for the higher amount. A bank draft for Rs. 24,000/- drawn in the name of the petitioner was accordingly handed over to her Counsel in Court on 3.2.1989. The claim of the petitioner thus subsists in respect of the balance amount of Rs. 72,000/-.

3. The State Government introduced a Scheme of Compulsory Group Insurance for its employees for the first time in the year 1979. The Scheme originally introduced provided that every employee would make a contribution of Rs. 10/- from his monthly salary and in case of his death while in service a lump sum amount of Rs. 12,000/- would be paid to his nominee. The 1982 Scheme enhanced the employee's contribution from Rs. 10/- to Rs. 20/- each month and the lump sum payment, to the person nominated by him, from Rs. 12,000/- to Rs. 24,000/- in case of his death while in service.

4. The 1985 Scheme further enhanced the monthly contribution from the employees to Rs. 80/- and provided for payment of Rs. 96,000/- (instead of Rs. 24,000/-) in a lump sum, in case of the employee's death, to the person nominated by him. The 1985 Scheme came into effect from July 1, 1985 (Clause 8).

5. Clauses 9 of the resolution dated 13.7.1985 gave an option to the employees to continue to be governed by the 1982 Scheme. Those employees who wished to remain under the 1982 Scheme were required to give a notice in writing in this regard to the Head of their office/Controlling Officer by 26.7.1985. Clauses 9 further stipulated that in case no such notice was received it would be deemed that the employee wished to be governed by the amended 1985 Scheme and deductions from his salary at the enhanced rate of Rs. 80/-would commence from the month of July 1985. It would be useful to reproduce here Clauses 9 of the resolution which is as follows:

Clause 9: 'WAISE KARAMCHAR1/PDADHIKARI KO, JO BIT WIBHAG KE SANKALP SANKHAYA-3412 DINANK 29 MARCH, 1982 KE PRABDHAN KE ANUKUL RAHNA CHAHTE HAY, UNKE JAMA RASH1 PER WARSHIK CHAKRABRIDHI SUDH KE DAR PURWAT 6% RAHEGI YADI KOI

KARAMCHARI/PADADHIKARI SANKALP SANKHAYA-3412 WE., DINANK 26 MARCH, 1982 KE SANKALP KE ANUSHAR HI MASHIK KATAUTI KARATE RAHNA CHAHE, TO WE ISH ABSHAYA KI LIKHIT SUCHNA APNE KARYALAYA PRADHAN/NIYANTRAN PADADHIKARI KO DINANK 26-7-1985 TAK DE SAKTE HAL USH TITHI TAK AISHI SUCHNA NAHI PR APT HONE PER YAH SWAT AH SAMJHA JAYEGA KE WAY ISH NAI PARIYOJNA MEIN SAMMALIT HONA CHAHTE HAI AOR 1SHMEIN NIH1T RASHI UNKEY JULY 1985 MAH KE WETAN SEH KATAOTI KAR LI JAYEGI'

(Emphasis added)

6. Coming now to the facts of this case it is an admitted position that the petitioner's husband, namely Chandrama Singh was a Government employee' working as the Head Master in L.P. School, Rampur/Telari, P.O. Kirhindi in the district of Rohtas. He absented from duty, presumably due to his illness, from 6.5.1985 and died on 1.12.1985 before resuming his duty. It may be noted here that the 1985 Scheme, coming into effect from 1.7.1985, was notified on 13.7.1985, that is to say, during the period the petitioner's husband was not on duty.

7. According to the counter affidavit filed on behalf of respondent No. 4 the deceased employee was not paid his salary for the period of his absence during his life time as he did not apply for grant of leave. It is, however, admitted that after his death he was sanctioned leave for the period in question following which his widow, the petitioner, was paid his salary for that period. It is also admitted that while making payment of his salary deductions @ Rs. 80/- per month were made from July, 1985 to November, 1985. It is nowhere stated that the petitioner's husband had given a notice in writing by 26.7.1985 exercising his option to be governed by the 1982 Scheme and in fact such a situation is hardly conceivable in the facts and circumstances of this case.

8. The factual position that emerges thus is that after coming into force of the 1985 Scheme the husband of the petitioner did not file any notice in writing asking to be governed by the 1982 Scheme; that he was sanctioned leave for the period of his absence, i.e. from 6.5.1985 till the date of his death on 1.12.1985. The

Government also paid his salary for that period and while making payment of his salary made deductions @ Rs. 80/- per month from his salary for the months of July, 1985 onwards. Under those circumstances we fail to understand how can the petitioner be denied the application of the provisions of the 1985 Scheme.

9. At this stage we may note certain statements made in the counter-affidavit filed on behalf, of respondent No. 4. In paragraph 12 of the counter-affidavit it is stated as follows:

12. That with regard to the statements made in paragraph 15 of the writ application, it is stated that the then District Superintendent of Education, Rohtas had wrongly issued the letter dated 15.1.1987. When it came to his knowledge that the husband of the petitioner had already died on 1.12.1985, there was no valid reason for his direction for deduction of Rs. 80/- from his salary on account of Group Insurance (new Scheme) much after his death. The husband of the petitioner had paid only Rs. 20/-per month upto June 1985 under the Group Insurance (old Scheme) before his death. Therefore, the then D.S.E had cancelled his earlier order which will be evident from Annexure-8 annexed to the writ implication. Thus the Group Insurance amount claimed by the petitioner under new Scheme was not payable to her.

10. Again in, paragraph 17 it is stated as follows:

17. ...Merely because by mistake of the office staff deduction of Rs. 80/- was made from the arrears of salary of the husband of the petitioner long after his death cannot justify the claim of the petitioner for payment of the Group Insurance amount under the new scheme. During the life time of the husband of the petitioner not a single deduction of Rs. 80/- has been made from his salary, hence the petitioner is not entitled for the same.

11. The stand taken by the respondents appear to us to be patently misconceived. There was no mistake in the deductions (c) Rs. 80/- from the monthly salary of the petitioner's husband for the months of July to November, 1985 as in the absence of a notice in writing given by him he would be deemed to have been covered by the 1985 Scheme as provided by Clauses 9 of the resolution. The office had,

therefore, rightly made deductions @ Rs. 80/- from his monthly salary from July, 1985 and on his death his nominee being the petitioner was entitled to receive a lump sum of Rs. 96,000/- as provided under the 1985 Scheme. We feel absolutely no difficulty in coming to this conclusion.

12. We, accordingly, quash the impugned letter No. 3124, dated 12.8.1988 contained in Annexure-11. The respondent authorities are directed to make payment of the balance amount of Rs. 72,000/- along with interest @ 10% to the petitioner. The interest would be payable from 12.8.1988 the date on which the State authorities declined to make payment to the petitioner at the lawful rate till the date the balance amount is paid. The balance amount along with interest must be paid within two months from today.

13. In the result, this application is allowed. No order as to costs.