

Bibu Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Mar-01-2000

Reported in : ILR2000KAR2405; 2000(5)KarLJ447

Judge : P. Vishwanatha Shetty, J.

Acts : [Constitution of India](#) - Articles 14, 39 and 226

Appeal No. : Writ Petition No. 655 of 2000

Appellant : Bibu

Respondent : State of Karnataka and Others

Advocate for Def. : Sri V. Prakash, A.G.A.

Advocate for Pet/Ap. : Sri Praveen Kumar Raikote, Adv.

Judgement :

ORDER

P. Vishwanatha Shetty, J.

1. Though this petition is posted for preliminary hearing, with the consent of the learned Counsel appearing for the parties, this petition is taken up for final hearing and disposed of by this order.

2. The petitioner in this petition is the widow of one Hayath Khan. In this petition, she has prayed for a direction to include the name of her husband late Hayath Khan as a permanent employee in the establishment of the Public Works Department and also for a further direction to the respondents to pay the family pension that may be due to the petitioner on account of the death of the said Hayath Khan. It is the case of the petitioner, that the husband of the petitioner, the said Hayath Khan was in service as jeep driver in the establishment of the Public Works Department from 13th July, 1966 to 3rd January, 1980 on which date he expired.

3. The case of the petitioner that, the husband of the petitioner was in continuous service from 13th July, 1966 to 3rd January, 1980 as a driver is admitted by the respondents. However, it is the case of the respondents that the husband of the petitioner was taken only on work charge basis and therefore, the husband of the petitioner cannot be treated as a permanent employee of the Public Works Department. Therefore, it is their case that the petitioner is not entitled to seek for payment of family pension on account of the death of the said Hayath Khan.

4. In the light of the rival contentions advanced by the parties, the only question that would arise for consideration in this petition is whether a direction is required to be given to the respondents to treat the husband of the petitioner as a permanent employee in the Public Works Department of the State. As noticed by me earlier, it is not in dispute that the husband of the petitioner was working as a driver from 13th July, 1966 till the date of his death on 3rd January, 1980. The letter dated 8th January 1990, a copy of which has been produced as Annexure-A written by the 6th respondent to the 5th respondent shows that the husband of the petitioner had worked in the Public Works Department for a period more than ten years and as such the petitioner is entitled for the benefit of family pension. Pursuant to the letter-Annexure-A, the 5th respondent also wrote a letter dated 31st August, 1990, a copy of which has been produced as Annexure-B to the 4th respondent recommending for payment of family pension to the petitioner on the ground that the husband of the petitioner had worked in the Public Works Department for a period of more than ten years. Subsequently, the letter dated 14th September, 1990, a copy of which has been produced as Annexure-C also

shows that the 4th respondent recommended the case of the petitioner to the 3rd respondent to pay the family pension to the petitioner as recommended by respondents-5 and 6. Further, the letter dated 16th May, 1991, a copy of which has been produced as Annexure-D also shows that the 2nd respondent recommended to the 1st respondent-State Government to include the name of the husband of the petitioner as a permanent employee in the Public Works Department and pay the family pension to the petitioner. The letters-Annexure-A to D referred to above clearly show that the respondents-2 to 6 have recommended for payment of family pension to the petitioner and the 2nd respondent had specifically recommended to the 1st respondent to include the name of the husband of the petitioner in the list of permanent employees in the Public Works Department. The undisputed facts clearly show that the husband of the petitioner was in continuous service for a period of about fourteen years on work charge basis in the Public Works Department. Annexure-A further discloses that by oversight the name of the husband of the petitioner could not be included for regularisation as a permanent employee in the department. Therefore, I am of the view that merely because the husband of the petitioner expired in the year 1980 before his service came to be regularised as a permanent employee in the department, cannot be a ground to deny her, the right to claim family pension which she would have been entitled to claim, if the service of the husband of the petitioner was to be regularised or treated as a permanent employee in the Public Works Department. As noticed by me earlier, the undisputed facts disclose that the husband of the petitioner was in continuous service for a period of fourteen years as a driver. May be that the work was extracted from him as a work charge employee. But the fact remains he had put in service of more than fourteen years. If the husband of the petitioner would have been alive, he himself would have been entitled to seek for an order of regularisation of his service in the light of the law laid down by the Supreme Court in the case of *Dharwad District P.W.D. Literate Daily Wages Employees' Association and Others v State of Karnataka and Others* .

5. Further, this Court in the case of *Premakala Shetty v Common Cadre Authority*, has also taken the view that those who have put in more than ten years of service are also entitled for regularisation. Therefore, the principle is that a daily rated

employee who has put in ten years of service is entitled for regularisation. That being the legal position, merely because the husband of the petitioner expired before an order is made on that behalf, in my view as observed by me earlier, should not be a ground to deny the family pension to the petitioner. If that is permitted, in my view, it would be the negation of the very principle or State policy behind providing family pension. Every action or decision has to be appreciated keeping in mind the reasonableness of the action or the decision. If, it is so understood, I have no hesitation to come to the conclusion that the petitioner is entitled for the relief. Therefore, the respondents must be directed to include the name of the husband of the petitioner, aforesaid Hayath Khan as a permanent employee in the Public Works Department of the State and pay the family pension that may be due to the petitioner as per the rules. In the light of the discussion made above, I make the following order;

- (i) The respondents are directed to include the name of late Hayath Khan as a permanent employee of the Public Works Department;
- (ii) The respondents are directed to pay the family pension due to the petitioner on account of the death of her husband late Hayath Khan with interest at twelve per cent per annum from the due date till the date of payment;
- (iii) The respondents are given three months' time from today, to comply with the direction given above.

6. In terms stated above, this petition is allowed and disposed of.

7. Sri V. Prakash, learned Additional Government Advocate is given four weeks' time to file his memo of appearance.