

Mst. Rambasi Devi Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Oct-27-1999

Reported in : [2000(84)FLR344]; (2000)1UPLBEC137

Judge : V.M. Sahai, J.

Appeal No. : C.M.W.P. Nos. 10347 of 1993

Appellant : Mst. Rambasi Devi

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.K. Mishra and ;K.K. Mishra, Advs.

Judgement :

V.M. Sahai, J.

1. The dispute in this petition is about post retiral benefit of late Sheo Pujan Singh and family pension payable to the petitioner who is his wife. He was appointed on 6.5.1949 in non-regular work charge establishment. On 1.5.1965, he was appointed in regular work charge establishment. He became permanent cleaner w.e.f. 1.4.1975. He was served with a notice on 19.4.1989 that his date of birth being 1.9.1922, he should have retired much earlier but under mistake he has continued, therefore, he would retire on 20.4.1989. Sheo Pujan Singh did not

challenge the order. He died in July, 1990.

2. In paragraph 9 of the counter-affidavit, it is stated that the leave encashment, general provident fund and group insurance, etc., was paid but pension and gratuity could be paid only after it was determined by the competent authority. It further states that a letter was sent to the Chief Accounts Officer for determining pension but it was returned as Sheo Pujan Singh should have retired on 31.8.1982 but since he continued till 1989, it was necessary to get approval of excess service rendered by him by the State Government. The Accountant General, Allahabad also returned the papers to be sent again after the approval was obtained from the State Government. The counter-affidavit mentioned that the pension shall be paid after receipt of approval.

3. Whether Sheo Pujan Singh was born on 1.9.1935, as claimed by the petitioner or he was born on 1.9.1922 is not material, as admittedly he became permanent cleaner on 1.4.1975 and worked till 19.4.1989. His pension and gratuity was withheld and the family pension has not been paid because the department was required to get approval of excess service and for no other reason. The counter-affidavit mentions that letter to the Chief Accounts Officer and the Accountant General's Office, Allahabad were sent on 25.4.1990 and 6.6.1991 respectively. Letter was sent to Chief Engineer on 9.1.1991. But it avoids disclosing the date of reply from these authorities. What is worth mentioning is that even though the counter-affidavit was filed in February, 1996, It only mentioned that the request for approval of excess service to Chief Engineer was being made.

4. Therefore, even after retirement of Sheo Pujan Singh in 1989 and the letters of Chief Accountant and the Accountant General's Office and filing of this writ petition in 1993, the department was sending the papers in 1996. In other words, it was not sent till September, 1996. This is very unsatisfactory. Pension is earned for service rendered by the employee. It cannot be withheld except in accordance with law. In absence of any proceedings for withholding it, the payment at the earliest is basic requirement. Since Sheo Pujan Singh served till April 1989, the process cannot be reversed and the only alternative was to get the excess period approved. But the department has been delaying probably because no one is willing to shoulder the

responsibility. However, there appears no way out. The petitioner cannot be deprived of her family pension and the amount which Sheo Pujan Singh would have got on his retirement. It is more than 11 years when the employee retired. And more than 10 years have elapsed from the date of his death. He was a cleaner only. The non-payment of pensionary dues for such a long time for no fault of the petitioner who too may die without getting the benefit of her husband's service cannot be approved. Delay in pension amounts to denial of right of livelihood.

5. In the result this petitioner succeeds and is allowed. The respondent No. 2 is directed to fix provisional pension of late Sheo Pujan Singh at full amount treating him to be in service till 1989 and family pension of the petitioner within three months from the date a certified copy of this order is produced before respondent No. 2. The respondent No. 2 is directed to submit papers if it has not already been submitted to State Government for approving excess service within two months and the competent authority shall pass necessary orders approving service of late Sheo Pujan Singh within one month and fix the pension of late Sheo Pujan Singh and family pension of the petitioner.

6. There shall be no order as to costs.