Savitri Bala Devi Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Jan-19-2004

Reported in : [2004(1)JCR567(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : Service Law; Constitution of India - Article 226

Appeal No. : C.W.J.C. No. 268 of 1995(R)

Appellant : Savitri Bala Devi

Respondent : State of Bihar and ors.

Advocate for Def. : Pradeep Modi and; Sarvendra Kumar, Advs.

Advocate for Pet/Ap. : C.S. Prasad, Adv.

Disposition : Application allowed

Judgement :

M.Y. Eqbal, J.

1. Heard the parties.

2. The petitioner who is the widow of Late Parmeshwar Ram has approached this Court for a direction upon the respondents for payment of Group Insurance

amount on the death of her husband who died in harness on 26.7.1986. The petitioner's husband was working as Headmaster in High School, Dattu in the district of Giridih. He died on 26.7.1986 and after his death, the petitioner was paid Rs. 24,000/- towards Group Insurance.

3. Mr. C.S. Prasad learned appearing for the petitioner submitted that under the new scheme of 1985 the Group Insurance amount was increased from Rs. 24.000/-to Rs. 96,000/- in terms of circular dated 13.7.1985. Since the petitioner's husband died on 26.7.1986 she is entitled to get Rs. 96,000/- instead of Rs. 24,000/-

4. Mr. Pradeep Modi, learned counsel Government Pleader No. 1 on the other hand submitted that in 1984 the petitioner's husband became blind and, therefore, payment of salary was stopped since October, 1984. Moreover the amount of contribution which was fixed under the new circular of 1985 was never paid or deducted from the salary of deceased husband of the petitioner. In that view of the matter the petitioner is not entitled to get the benefit of the new scheme of 1985. Learned counsel also disputed the actual date of death of the deceased employee as in the counter affidavit it is stated that the petitioner husband died on 26.7.1985.

5. Admittedly the petitioner was in the service of the respondent before 1985, it is also admitted fact that deceased was not attending his duty because he lost both eyesight in 1984. Consequently payment of salary was also stopped from October 1984. From office order dated 22.12.1987 (Annexure 1) the petitioner was paid a sum of Rs. 24,000/- in terms of the earlier scheme/circular of 1982. In the said office order the date of death of the deceased was mentioned as 26.7.1986. In course of argument learned counsel appearing for the petitioner produced before me another office order dated 22.12.1987 whereby the absence of the petitioner's husband from 18.10.1984 to 26.7.1986 was adjusted against leave with pay/leave with half pay and leave without pay. These two documents are sufficient to hold that petitioner's husband died on 26.7.1986 and till then he continued in service.

6. Now the question arises whether in view of the aforesaid finding the petitioner is entitled to the Group Insurance benefit of Rs. 96,000/- under the new scheme of 1985. A copy of the new scheme has been annexed as Annexure 2 to the writ

application. This scheme inter alia provided that such employee who wants to continue under the old scheme then the contribution deposited by him shall carry interest at the rate of 6% per annum. It further provided that such employee who wanted to opt for new scheme of 1985 he shall give option to that effect by 26.7.1985. The Scheme further provided that such employees who did not give information regarding his option then it shall be deemed that such employee shall opt for new scheme of 1985 and the contribution amount fixed for the scheme shall be deducted from his salary. Admittedly, the petitioner's husband was not paid salary since October, 1984 and he did not opt to continue under the old scheme of 1982. It can therefore be safely held that the petitioner's husband shall be deemed to have been governed by the new scheme.

7. Now the next question that arises for consideration is whether merely because of increased amount of contribution i.e. Rs. 80/- was not deducted from the salary of the deceased, the petitioner can be debarred from the benefit of the new scheme. As noticed above the salary of the petitioner was stopped from October 1984 and the period of his absence from 1984 to 1986 was regularized only after his death and the salary for the said period was released in favour of the petitioner. In such circumstances none-payment of contribution by the deceased cannot and shall not debar the petitioner from getting the benefit under the new scheme. A similar question arose before the Supreme Court in the case of State of M.P. v. Joginder Nath Monga, 1996 Lab page 616. In that case also the old scheme of 1974 was replaced by Madhya Pradesh Employees Group Insurance Scheme 1985 and the benefit was increased from 30,000 to 80,000. The petitioner of that case died before attaining the age of superannuation but she could not pay the increased amount of contribution. Holding that even in such cases the employee would be entitled to get the benefit under the new scheme it was observed.

'The High Court has held that under para 3(d) of the Notification dated March 27, 1985, it was not necessary to exercise an option to become member of the 1985 Scheme and that employees who were members of the 1974 Scheme were to become members of the 1985 Scheme compulsorily. The said view of the High Court is based on the wordings of para 3 (d) wherein it is clearly indicated that all the employees who are members of the present Family Benefit Fund Scheme shall be members of the 1985 Scheme compulsorily. It was however, provided that the present members of Family Benefit Fund Scheme, who had completed 50 years of age may opt to remain in the 1974 Scheme of Family Benefit Fund and for that purpose they were required to give their options within the prescribed time limit. It is not the case of the appellants that Dr. (Smt) Satyawati Monga had submitted her option to remain in the 1974 Scheme and that she did not want to be governed by the 1985 Scheme. The mere fact that she had not started contributing at the enhanced rate of Rs. 80/- as per the 1985 Scheme by itself cannot mean that she had exercised an option to remain in the 1974 Scheme and not to be governed by the 1985 Scheme.'

8. Learned Government Pleader lastly submitted that the Group Insurance amount under the old scheme was paid in 1987 and the petitioner after receiving the amount move this Court after 8 years. On this ground alone the writ is liable to be dismissed as belated one. In my opinion the retiral benefit and the benefits under the Group Insurance are legitimate claim of the employees or their heirs and successors. Such claim cannot be defeated by lapse of time. At best such claims if demanded at a belated stage may be not carry interest.

9. For the aforesaid reason this writ application is allowed and the respondents are directed to release the balance amount of Group Insurance benefit i.e. Rs. 72,000/- within a period of two months from the date or receipt of copy of this order. Let it be clarified that this amount shall not carry any interest in the facts and circumstances of the case.