

Munari Devi Vs. Bihar State Electricity Board and ors.

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Court : Jharkhand

Decided On : Sep-17-2007

Reported in : [2007(4)JCR471(Jhr)]

Judge : M. Karpaga Vinayagam, C.J.,; Narendra Nath Tiwari and; D.K. Sinha, JJ.

Appellant : Munari Devi

Respondent : Bihar State Electricity Board and ors.

Disposition : Petition allowed

Judgement :

M. Karpaga Vinayagam, C.J.

1. Smt. Munari Devi, the petitioner has filed this writ petition for giving direction to the respondents to pay the death-cum-retiral benefits to the petitioner as her husband died in harness on 30.7.1998 and also praying for the quashing of the order dated 19.4.2001 issued by the Joint Secretary, Bihar State Electricity Board communicating that the last pay drawn by the husband of the petitioner as been calculated at Rs. 2,975/-as his basic pay although the husband of the petitioner was drawing salary on the basis of Rs. 3050/ as his basic pay.

2. The petitioner's husband, Shri Chandrika Mistry who was an employee of Electricity Board died in harness on 30.7.1998. He was working in the post of Head Clerk in Patratu Thermal Power Station, Patratu at the time of his death. The

basic pay of the husband of the petitioner at the time of death was Rs. 3050/-. The respondents, without any proceeding and without adopting any procedure of law, reduced the last pay drawn from Rs. 3050/- to Rs. 2975/- and paid the death-cum-retiral dues after deducting the entire amount from the same considering that excess payment was made on the basis of Rs. 3050/- as basic pay instead of Rs. 2975/-.

3. According to the counsel for the petitioner, the action of the respondents is wholly illegal as they cannot recover the amount from the death-cum-retiral dues without any proceeding and without adopting any procedure of law and that too from the legal representative of the deceased employee.

4. For deciding the question as to whether the employer could recover the excess payment alleged to have been made to the employee from his legal representative; after the death of the employee, from the retiral benefits, without following the prescribed procedure and without any material to show that excess payment was obtained by the employee due to misrepresentation made by him, several cases have been referred to this Full Bench. This is one of those cases.

5. However, we need not go into the said question in this case as we feel this case is covered by the decision . of the Supreme Court in N.D.P. Namboodripad v. Union of India : AIR 2007 SC1782 , in which it is held that since the employee has already died, the recovery cannot be made from the legal representative of the deceased employee. The relevant observation in the above decision, i.e. : AIR 2007 SC1782 is as follows:

We direct that the pension due be recalculated and settled accordingly. If any excess payment has been made to the appellant, it shall not, however, be recovered from the legal representatives of the deceased appellant....

In view of the ratio decided by the Supreme Court as referred to above, we are of the view that the impugned action of the respondents in issuing the order dated 19.4.2001, communicating to the petitioner, wife of the deceased employee, that the last pay drawn by the husband of the petitioner has been calculated at Rs. 2975/- instead of the basic pay that was drawn by the husband of the petitioner at

the time of his retirement which was Rs. 3050/, is not justified.

6. Consequently, the order dated 19.4.2001 is quashed. The petitioner, who is the widow of the deceased employee is entitled to get the entire death-cum-retiral benefits on the basis of the said basic pay of Rs. 3050/-, which was last drawn by the husband of the petitioner.

This writ petition is, thus, allowed.

Narendra Nath Tiwari and D.K. Sinha, JJ.

7. I agree

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