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Court : Jharkhand

Decided On : Sep-17-2007

Reported in : [2007(4)JCR472(Jhr)]

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

Appellant : Most. Sumitra Devi

Respondent : State of Jharkhand Through Chief Engineer R.C. Deptt. and ors.

Disposition : Petition allowed

Judgement :

M. Karpaga Vinayagam, C.J.

1. Sumitra Devi, wife of the deceased employee of respondent, has filed this writ petition seeking for the quashing of the letter dated 6.12.2002 issued by the Office of the Accountant General (A&E;) II, Bihar Patna 5th respondent directing the Road Construction Department, Road Division, Sahebganj for absorption of the excess payment made to the husband of the petitioner as he had not passed the accounts examination for the time bound promotion and further directing the respondents to fix the family pension of the husband of the petitioner according to the last pay drawn by him.

2. The facts of this case are:

(i) The petitioner's husband was appointed as an officiating correspondence clerk in Bhagalpur Division with effect from 5.1.1976.

(ii) Petitioner's husband was relieved from this post on 18.1.1977 and joined PWD (Public Works Department) Dumka Division in the forenoon of 19.1.1977.

(iii) Thereafter the petitioner's husband was given posting in the office of the Executive Engineer, Public Works Department, Sahebganj and he was relieved on 17.7.1979 and thereafter he joined the said office on 24.7.1979.

(iv) The first time bound promotion to the petitioner's husband was granted with effect from 5.1.1986. His scale of pay was fixed as 1380/-. His pay scale was revised on 1.1.1996 and was fixed at Rs. 5200/-. He died in harness on 14.8.1999. So at the time of death, his scale of pay was Rs. 5200/-.

(v) The petitioner, being a widow, expected that family pension would be given to her to meet the daily needs. She came to know that office of the Accountant General sent a letter on 6.12.2000 to the other respondents intimating that petitioner's husband (Anarsi Ravidas) had not passed the Accounts Examination, hence his time bound promotion was illegal and therefore from 5.1.1986 to 14.8.1999 excess salary was paid on the basis of time bound promotion, which he was not entitled to get.

(vi) Consequently, alleged excess payment made to the husband of the petitioner was adjusted in the pension payment. Challenging the same this writ petition has been filed.

3. The main contention of the counsel for the petitioner is that without conducting any departmental proceeding under Rule 43(b) of the Bihar Pension Rules to find out as to whether any misconduct has been committed by the employee and without conducting any inquiry to find out that any mistake was committed by the official of the office, the alleged excess payment cannot be adjusted out of the pension amount 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 after his retirement from the retiral benefits without following the prescribed procedure and without any material to show that excess payment was made to the employee due to his misrepresentation and that too from the legal representative after' the death of the employee, several cases have been referred before this Bench. This is one of those cases. However, the issue involved in this case is no longer res Integra. This case is covered by the decision of the Supreme Court in N.D.P. Nam-boodripad v. Union of India : AIR 2007 SC1782 , in which it is held that the recovery of the alleged excess payment 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....

5. 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 to adjust the alleged excess payment in the pension amount is not justified and therefore, consequently we hold that the impugned letter dated 6.12.2000 is liable to be quashed. Petitioner is entitled to draw her family pension amount on the basis of the last pay drawn by her husband at the time of his death.

6. The impugned letter dated 6.12.2000 is quashed. This writ petition is, thus, allowed.

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

7. I agree.