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Court : Jharkhand

Decided On : Jun-20-2006

Reported in : [2007(1)JCR231(Jhr)]

Judge : Permod Kohli, J.

Appellant : Pushpa Devi @ Pushpa Bara

Respondent : The State of Jharkhand and ors.

Judgement :

Permod Kohli, J.

1. Petitioner claims to be widow of late Bhukhla Oraon, who was serving as a Class IV employee and was posted in Civil Court, Gumla. Bukhla Oraon died in harness on 17th of June, 1999, petitioner claiming herself to be the widow and the sole legal heir, filed an application on 11th of July, 1999, before the District & Sessions Judge, Gumla seeking compassionate appointment. She also claimed pensionary/retiral benefits of the deceased employee. The District & Sessions Judge, Gumla sanctioned provisional pension in favour of the petitioner and paid the arrears from 18.06.1999 to November, 2001 and final pension was fixed at Rs. 1814/- per month from December, 2001 to August, 2003 which came to be revised to Rs. 1938/- per month from September, 2003 to October, 2003. On account of non-consideration of her claim for compassionate appointment, petitioner filed W.P. (S) No. 5062 of 2003 before this Court. This writ petition came to be

disposed of vide order dated 14th of October, 2003 with a direction to the District and Sessions Judge, Gumla to look into the matter and dispose of the application, if any made for compassionate appointment. A further direction was issued to pass appropriate order for release of death-cum-retiral benefits as expeditiously as possible preferably within a period of two months. As a consequence of aforesaid directions issued by the High Court, the District & Sessions Judge, Gumla has passed the order dated 20th of January, 2004 impugned herein. Vide the impugned order not only the claim of the petitioner for compassionate appointment has been rejected, she has also been deprived of all the retiral benefits, which had been earlier granted to her as a widow of Late Bhukhla Oraon, the deceased-employee. Learned District & Sessions Judge while passing the impugned order relied upon statements of mother and brother of the deceased-employee and an Enquiry Report of Judge in-charge, Civil Court, Gumla, who was deputed to hold an enquiry in respect to the marital status of the petitioner Pushpa Devi Bara. As is evident from the impugned order, the Enquiry Judge in his Report dated 30th of July, 2003 has reported that petitioner was not legally married wife of Bhukhla Oraon, the deceased-employee. It is further reported that she was residing with the deceased-employee in illegal way with another male person. It also appears that the Enquiry Judge also recorded the statements of the mother and brother of the deceased-employee. Even the mother of the deceased-employee, namely, Bandhini Devi made an application seeking compassionate appointment in favour of her son Lalit Oraon, brother of the deceased-employee. This application also stands rejected vide the impugned order.

2. I have heard the learned Counsel appearing for the parties and perused the impugned order as also the material on record.

3. The impugned order is based upon the Enquiry Report said to be conducted by the In-charge, Civil Court, Gumla who recorded the statements of the witnesses i.e. mother and brother of the deceased-employee. The Report of the Enquiry Officer is the basis for passing the impugned order. Petitioner has challenged the impugned order amongst others on the ground of violation of principles of natural justice. It is contended that the Enquiry conducted and relied upon by the District & Sessions Judge, Gumla was held at the back of the petitioner in her absence and

without associating her. Neither the impugned order nor the counter affidavit filed, reveal that petitioner was associated with the Enquiry. The specific averments of violation of principles of natural justice made in the writ petition by the petitioner in Paras. 26, 27 and 29 have not been controverted in the reply. It can be thus safely concluded that there has been gross violation of the principles of natural justice. The findings recorded in the impugned order are based upon the enquiry report of the Judge, in-charge, Civil Court, Gumla, who conducted the enquiry in absence of the petitioner without associating her or even putting her to notice. The entire evidence was recorded at the back of the petitioner without providing her any opportunity to cross-examine the witnesses recorded during the enquiry or to lead her own evidence or even to make her own statement. It is a settled law that, if any order is passed prejudicially affecting civil or any other right of a person without providing adequate opportunity of being heard, such an order is not sustainable in law, being in contravention to the doctrine of audi alteram partem. For what has been stated above, I (sic) Judge, Gumla with a further direction to hold a fresh enquiry himself or through any other Judicial Officer. Petitioner as also the respondents nos. 4 and 5, mother and brother of the deceased-employee shall be associated with such an enquiry and all of them will be provided opportunity not only to lead evidence but also to cross-examine each other's witnesses. Parties will also be at liberty to produce any document or material during the course of enquiry. On conclusion of the enquiry, copy of the Enquiry Report shall be provided to all the litigating parties and after seeking their reply a fresh order may be passed within one month from the receipt of reply to the enquiry report.