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Panchi Devi Vs. State of Rajasthan and ors.

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Court : Supreme Court of India

Decided On : Dec-18-2008

Reported in : 2009(1)SCALE306; (2009)2SCC589; 2009(2)SLJ282(SC); 2009(1)LHSC658

Judge : S.B. Sinha and; Cyriac Joseph, JJ.

Acts : Rajasthan Public Works Department (B and R) including Garden, Irrigation, Water Works and Ayurvedic Department Work Charge Employees Service Rules, 1964 - Rule 22, 22(6), 22A and 22A(6); Constitution of India - Article 14

Appeal No. : Civil Appeal Nos. 7556-7557 of 2008 (Arising out of SLP (C) Nos. 21083-21084 of 2005)

Appellant : Panchi Devi

Respondent : State of Rajasthan and ors.

Advocate for Def. : Milind Kumar and ; Mukul Kumar, Advs. for Aruneshwar Gupta, Adv.

Advocate for Pet/Ap. : Nilofar Qureshi,; Kiran Kapoor and; Vipin Kumar, Advs.

Disposition : Appeal dismissed

Prior history : From the final Judgment and Order dated 15.12.1998 and 7.4.2005 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in Special

Appeal No. 295 of 1997 and D.B. Civil Review Petition No. 43 of 2004 in D.B. Civil Special Appeal No. 295 of 1997

Judgement :
ORDER

1. Leave granted.

2. Appellant's husband, who was working as work charge employee in the Public Works Department in the year 1958 and confirmed on the said post vide order dated 22.8.1972 with effect from 31.3.1970, died in the year 1978. Appellant after 14 years of her husband's death claimed family pension of her husband under Rule 22A of the Rajasthan Public Works Department (B&R;) including Garden, Irrigation, Water Works and Ayurvedic Department Work Charge Employees Service Rules, 1964 (for short 'the Rules) which came into force with effect from 17.09.1980. Since, no order was passed on her representation, she filed a writ petition bearing No. 6890 of 1992 before the High Court of Rajasthan, Jaipur Bench, Jaipur. A learned Single Judge of the High Court dismissed the said writ petition. Appellant thereafter filed a Special Appeal bearing No. 295 of 1997 before the Division Bench of the High Court. By reason of the impugned order dated 15.12.1998, the said Special Appeal has been dismissed, inter alia, on the premise that the appellant had approached the High Court after 14 years of her husband's death and since all the dues admissible to the appellant's husband were duly settled during his life time and the widow of the deceased (appellant herein) received all the dues including gratuity and, thus, the question of her entitlement to family pension does not arise.

3. Being aggrieved, the appellant filed a review petition No. 43 of 2004 along with an application for condonation of delay. The said review application has also been dismissed on the premise that the application for condonation of delay in filing the review petition has been dismissed.

4. Learned Counsel appearing on behalf of the appellant, however, would draw our attention to the fact that in the case of one Prabhati Devi, whose husband was also working as a work charge employee and did not opt for pension, a learned

Single Judge of the same High Court held that the benefit of the said rule can be claimed even by the widows whose husbands died prior to coming into force of the said Rules. Before the said learned Judge, a contention was raised that the Sub-rule (6) of Rule 22A having prescribed a date namely 01.09.1982, the same was prospective in nature. The said contention was repelled stating:

I am not impressed with the submission of learned Additional Advocate General that the widows of the work charged employees died after September1, 1982 were only entitled to opt for pension. I do not find any difference between two widows to work charged employees, one who died prior to September 1, 1982 and another who died after the said date. Interpretation of sub rule (6) of Rule 22A, that discriminates between the two widows cannot be accepted. Language of sub rule (6) is very clear and it mandates that with effect from September 1, 1982 the widows of deceased work charged employees who were permanent and eligible for CPF but died without opting for pension, could also exercise option for pension.

5. The special appeal filed by the State of Rajasthan against the order of the learned Single Judge was dismissed as withdrawn by the High Court on the plea that issue was settled by another Division Bench of the High Court in D.B. Civil Special Appeal No. 782 of 2002 titled State of Rajasthan v. Girraj, decided on 03rd January, 2003.

6. The Rajasthan High Court did not declare the said provision to be ultra vires. Prior to insertion of Rule 22A by way of amendment in the Rules, there was no provision for grant of pensionary benefits to the employees who retired as work charge employees. The amendment was made vide notification dated September 17, 1980. It was provided by Rule 22 that a work charge employee having been or on being declared permanent on completing 10 years service shall have the option to elect either to continue to contribute towards contributory provident fund or to opt for pensionary benefits. Sub-clause (iv) of the said rule provides that the option shall have to be exercised in writing within a period of six months from the date of amended rule came into force from 17.08.1980. Vide notification dated December 11, 1989 Sub-rule (6) was added in Rule 22 which was made effective from September 1, 1982, in terms whereof widows of the work charged employees

were also given the liberty to exercise such option.

7. The State, therefore, had indisputably made the said rules applicable with a prospective effect i.e. from 1.9.1982. If that be so, the question of grant of any benefit in favour of the appellant herein did not and could not arise as admittedly her husband died in the year 1978. The question of exercising the right of option, as provided for, under Rule 22A would arise only if the employees were eligible therefor on the date of coming into force thereof. It has not been given retrospective effect. As no retrospective effect to the rule has been given, the question of extending the benefit thereto to those who were not otherwise entitled thereto does not and cannot arise. A delegated legislation, as is well known, is ordinarily prospective in nature. A right or a liability which was created for the first time, cannot be given a retrospective effect. Furthermore, the intention of the State in giving a prospective effect to that rule is clear and explicit; the amendment in Rule 22A was also to be effective from 1.9.1982 itself. No relief can be granted to the appellant herein on the basis of the decision in Prabhati Devi (supra). The said decision did not lay down the correct law. Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant.

8. For the reasons aforementioned, we are of the opinion that apart from the question of delay, even on merit, the appellant has no case.

9. The Appeals are dismissed accordingly.

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