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**Court :** Rajasthan

**Decided On :** Apr-05-1991

**Reported in :** 1992(3)WLC721; 1991(1)WLN108

**Judge :** A.K. Mathur, J.

**Appeal No. :** S.B. Civil Writ Petition Nos. 1616 and 1617/1990

**Appellant :** Devki and anr.

**Respondent :** Rajasthan State Electricity Board

**Advocate for Pet/Ap. :** Mr. Mridul

**Disposition :** Petition allowed

**Judgement :**

**A.K. Mathur, J.**

1. Both these writ petitions involve identical questions of law, therefore, they are disposed of by this common order.

2. In Smt. Devki V. The Rajasthan State Electricity Board, Jaipur (S.B.Civil Writ Petition No. 1616/1990), the petitioner has prayed that she maybe paid the family pension which is payable to her as a result of death of her husband while on duty on 21.10.1974 after having put in 27 years of continuous service. She has also

prayed for interest at the rate of 18% per annum.

3. The petitioner's husband Shri Babu Lal started his career on being appointed as work-charged labour Gr.H in the Electrical Department of erstwhile State of Jaisalmer. He continued to serve in that department till the erstwhile State of Jaisalmer came to be integrated with the pre-organisation State of Rajasthan on and from 7.4.1949. The services of late Shri Babu Lal were absorbed in the erstwhile Electrical and Mechanical Department of State of Rajasthan. Late Shri Babu Lal continued to serve in this Department till the Rajasthan State Electricity Board (referred to hereinafter as 'the Board') was constituted and his services were transferred on deputation in the first instance to the Board in terms of the order dated 12.2.1958. It is alleged by the petitioner that she does not know by herself as to what transpired between her husband and the respondent Board during his life time. But it is submitted that the case of the petitioner is identical to that of one Shri Dhalu Ram decided by this Court on 16.11.1988 being writ petition No. 147/89, which was reported in WLR 1991 (S) Raj. 75. It is submitted that the options were invited way back in the year 1959 and the petitioner's husband opted for pension. Thereafter, by the notice dated 25.10.1972 the employees of the former Electrical and Mechanical Department were told by the Government that the Government has decided that all employees of the Electrical and Mechanical Department who are in continuous service prior to 1.7.1957 may be given a chance to exercise their option for serving in the Board in pursuance of the aforesaid Government Order dated 12.2.1958 on the terms and conditions specified in that notice. It was stated that the employees who opt to serve the Board and are covered under the pension scheme shall have the option to accept any of the three alternatives detailed therein, namely, (i) to receive proportionate pension/gratuity according to the rules for service rendered under the Government, (ii) to accept in lieu of pension or any other form of retiring benefits or gratuity that may be admissible, Government contribution to the provident fund maintained by the Board of an amount equal to 8% of his monthly pay drawn from time, to time during service under the Government with simple interest at the rate applicable from time to time and also special contribution if admissible to employees governed by the Jodhpur Contributory Provident Fund Rules, and (iii) to continue to be governed by the pension scheme as applicable to him under the

Rajasthan Service Rules as existing on the date of publication of this notice. But before the petitioner's husband could give any reply to the notice, he expired on 31.10.1974. Therefore, the petitioner submitted that if her husband was to exercise option pursuant to the notice, he would have certainly opted for pension as this was what all the colleagues of the petitioner's husband did. It is unfortunate for her that the person who filled in the form of option in this behalf by mistake put a tick mark on Sub-para (ii) of para 5(a) instead of Sub-para (iii) as should have been done. But nothing turned on this option and the Board also realised that some anomaly has occurred and, therefore, a clarification was sought by the Executive Engineer (General) vide letter dated 9.6.1976 from the Deputy Director (Personnel) of the Board as the options were not invited in the correct perspective. Thereafter, the pension case of the petitioner's late husband was prepared and sent by the Assistant Engineer, Jaisalmer to the Officer on Special Duty, R.S.E.B. by letter dated 12.3.1975. But by letter dated 31.12.1975 the Establishment Officer, R.S.E.B. informed that the petitioner's husband has given option for contributory provident fund and, therefore, she is not eligible for pensionary benefits. After a protracted correspondence the Officer on Special Duty vide his letter dated 6.3.1978 has informed the petitioner that since the petitioner's husband had opted for contributory provident fund, therefore, she cannot be allowed the pensionary benefits. When the petitioner's request was not acceded to and ultimately the payment of provident fund to the tune of Rs. 11,745/- was made vide order dated 5.12.1984 which has been placed on record as Annex.8. The amount of this provident fund was paid to her after 10 years of the death of petitioner's husband. She accepted the same as he had no option. But thereafter when the decision in Dhalu Ram's case was given the petitioner has filed the present writ petition.

4. A reply has been filed by the respondent and the respondent has taken the position that the petitioner's husband opted for contributory provident fund in pursuance of the order dated 25.10.1972 which was accepted by the Government on 8.4.1974. It is further alleged that before the Government order dated 8.4.1974 could be received by the concerned officer for taking necessary action and deductions toward contributory provident fund could be made from the salary of the petitioner's late husband Shri Babu Lal, he expired as such no occasion arose-

to deduct his contribution towards the contributory provident fund. It is alleged that the option given by the petitioner's husband now cannot be changed as the same is finally accepted. It is alleged that notification dated 7.6.1980 is not applicable so far as the petitioner wife is concerned.

5. In the case of Smt. Aani Devi, the late husband of the petitioner Shri Mangi Lal started his career on being appointed as work-charged labour Gr.II in the Electrical Department of the erstwhile State, of Jaisalmer. He continued to serve in that department till the erstwhile State of Jaisalmer came to be intergrated with the pre-Organisation State of Rajasthan on and from 7.4.1949. The services of late Shri Mangi Lal were absorbed in the erstwhile Electrical and Mechanical Department of the State Government. The petitioner's husband continued in this position till the Rajasthan State Electricity Board was constituted and the services of the petitioner's husband were placed at the disposal of the R.S.E.B. on deputation in the first instance, in terms of the order dated 12.2.1958. In 1959 the options were asked for from the employees of the Electrical and Mechanical Department who were in continuous service prior to 1.7.1957 to exercise their option. Three options were given as mentioned above while narrating the facts of Smt. Devki's case. It is alleged that the petitioner's husband opted for pension as she could find some papers left behind by her husband, i.e. letter dated 7.7.1980 which has been placed on the record as Annex.2. She further asserts that she is not in a position to say anything definite. It is further alleged that no deductions whatsoever were made from the salary of the petitioner's husband towards the contributory provident fund. Therefore, a clarification was sought by the Executive Engineer (General) vide letter dated 9.6.1976 from the deputy director (Personnel) of the Board as it was realised that some anomoly has occurred and the options were not invited in the correct perspective. Thereafter again on 20.5.1980 options were invited from the employees who did not exercise option properly and no recovery was made towards their subscription to contributory provident fund. The petitioner made request for pension as her husband has retired on 31.5.1988 and died on 4.12.1988. Therefore, it was prayed that she may be given family pension. It is alleged that the Assistant Accounts Officer, R.S.E.B. Jaipur vide his letter dated 29.8.1988 requested the Officer on special Duty, R.S.E.B., Jaipur to prepare the pension papers in respect of the petitioner's husband. But the Officer on Special

Duty vide his letter dated 18.10.1989 has informed that the Board's pension scheme is applicable to the employees who were on roll/in service on or after 28.10.1988 and since the petitioner's husband retired on 31.5.1988 and expired on 4.12.1988, hence he is not entitled to get Board's pensionary benefits.

6. A reply has been filed by the respondent and the respondent Board has taken the position that the decision given in S.B. Civil Writ Petition No. 242/83 and 243/83 decided by Hon'ble Lodha, J., as he then was, vide order dated 24.4.1985 and the decision given in Dhula Ram's case (D.B. Civil Writ Petition No. 118 of 1986 decided on 16.11.1989) which was reported in WLR 1991- (S) Raj. 75 is not applicable in the present case. It was also submitted by the respondent that the petitioner's husband had not given any option in terms of the notice dated 25.10.1972 and it was clearly mentioned in the notice dated 25.10.1972 that if any Government employee does not exercise his clear option for reversion to the service of the Government before expiry of the prescribed time, it will be presumed that he has exercised his option in favour of his continuance in Board's service accepting the grades and the service conditions framed by the Board under its regulations and the Rajasthan State Electricity Board's Contributory Provident Fund Scheme. Therefore, it is submitted that in view of the fact that the petitioner's husband did not give any option therefore it is presumed that he opted for Board's contributory provident fund scheme in terms of para 1 of the notice issued on 25.10.1972. It is also admitted that no deductions were made from the salary of the petitioner's husband towards contributory provident fund scheme, but R.S.E.B. is ready to pay the contributory provident fund to the wife of late Shri Mangi Lal.

7. Mr. Mridul, learned counsel for the petitioner submitted that both these cases are squarely covered by the decision given in the case of Dhula Ram (supra).

8. This has been seriously disputed by the learned counsel appearing for the Board. In order to find out whether both these cases are squarely covered by the decision of the Division bench given in the case of Dhula Ram (supra.) it is necessary to examine the facts of that case as well as the ratio laid down therein. In the case of Dhula Ram also, all the petitioners were the employees of Electrical Department of the erstwhile State of Jaisalmer and on formation of Rajasthan they

were absorbed in Government service and thereafter in the service of the Board. All these employees served in the Board till they were superannuated. No deductions were ever made from their salaries on account of contributory provident fund and likewise the Board also did not make any reciprocal corresponding contribution towards the contributory provident fund. The Board treated all the petitioners as C.P.F. holders. Consequently, on retirement all of them except Shyam Sunder were paid gratuity as per the C.P.F. Rules and the amount was received by them. It is the admitted position that no deductions were made from the salaries of these persons towards C.P.F. and likewise no reciprocal contribution was made by the Board. By notice dated 25.10.1972 the options were asked for from the employees who were in service prior to 1.7.1957 to elect whether such employees desired to be absorbed in the Board. The option was available to each employees as mentioned in the writ petition of Dhula Ram. In pursuance of this they by mistake, tick marked on Sub-para (ii) of para 5 (a) and they opted for C.P.F. But inspite of the fact that they gave option for C.P.F. no deductions were made from the salary of these persons towards C.P.F. nor any reciprocal contribution was made by the R.S.E.B. Then again on 20.5.1980 the R.S.E.B. invited options and this was done by the petitioners. The plea of the R.S.E.B. was that the petitioners never opted for pensionary benefits and each one of them paid C.P.F. and they accepted it. Therefore, they are estopped from claiming the pensionary benefits. The Division Bench relying upon the earlier decision given in the case of Omkar Lal V. Rajasthan State Electricity Board, Jaipur in 1987(1) W.L.N. 742 approved the observations of the learned Single Judge and observed as under:

Coupled with these circumstances, is a very strong circumstance further to strong than the petitioner's case, in as much as even though the petitioner, according to the respondent Board had not opted for pension no deductions were either made from his salary towards provident fund nor the Board even contribute its share towards the provident fund which it must have contributed regularly from month to month and this circumstance must have led the petitioners to believe that he was entitled to pension. The mistake of the Board in not deducting monthly amount of provident fund subscription and not making its contribution towards it cannot be used by the Board for its own benefit and the benefit must naturally go to the

employee.

9. The learned Single Judge also relied upon the decision given in the case of Smt. Dhai and Ors. v. The R.S.E.B. Jaipur (S.B. Civil Writ Petition No. 242/83. A Division Bench of this Court in the case of Dhalu Ram v. R.S.E.B. Jaipur affirmed the decision given in the case of Omkar Lal Which in turn relied upon the case of Smt. Dhai and Ors. v. R.S.E.B. observed as under:

We are in entire agreement with the reasoning of the learned Single Judge. In our opinion, even if in the cases of Mangi Lal, Dhalu Ram and Fakir Mohd. or in the case of Shyam Sunder, it is held that none of them had filed any option in pursuance of the notice dated 28.10.72, the conclusion is irresistible that each one of the petitioners was led to believe by the R. S. E. B. that he was entitled to pensionary benefits. Non deduction from the salaries of the petitioners contribution towards P.F. coupled with the fact that during their entire service tenure, no reciprocal contribution was made by the R.S.E.B. leads us to the irresistible conclusion that petitioners were led to believe that they were entitled to pensionary benefits and were not covered by the C.P.F. scheme.

10. Therefore, it appears that the main case turned on the fact that no deductions were made towards C.P.F. from the salary of the petitioners nor any reciprocal contribution was even made by the R.S.E.B. Therefore, this fact led to the Division Bench to hold that the petitioners shall be deemed to have opted for pension.

11. Applying the same ratio to the facts of the present cases it transpires that in both these cases late husbands of the petitioners did not pay any contribution from their salaries towards C.P.F. nor any reciprocal contribution was made by the R.S.E.B. Therefore, both these cases are squarely covered by the decision of the Dhalu Ram's case.

12. In the result, I allow both the writ petitions and hold that the petitioner's husbands were entitled to pension and gratuity as per Rules and both these widows are entitled to family pension. The Rajasthan State Electricity Board is directed to determine the pension and gratuity of the late husbands of the petitioners and pay the petitioners all arrears of pension as well as gratuity after

adjusting the amount of C.P.F. already paid to the petitioners. This should be done within a period of three months from today. The petitioners are also entitled to all the arrears minus the amount received by them of the C.P.F. with interest at the rate of 12% per annum. The petitioners are also entitled to future benefits on account of revision of pension if any, in accordance with law.

13. No orders as to costs.

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