

Santosh Devi Vs. State of Raj. and ors.

Santosh Devi Vs. State of Raj. and ors.

SooperKanoon Citation : sooperkanoon.com/769138

Court : Rajasthan

Decided On : Apr-08-2008

Reported in : RLW2008(4)Raj3185

Judge : Gopal Krishan Vyas, J.

Appellant : Santosh Devi

Respondent : State of Raj. and ors.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. Heard learned Counsel for the parties.
2. By way of filing the present writ petition, the petitioner is seeking directions to the respondents to grant family pension and other service benefits applicable to her including commutation, exgratia, gratuity, insurance, etc., so also interest at the simple rate in delay in granting family pension..
3. According to the facts of the case, the husband of the petitioner was appointed as Beldar in the Irrigation Department on 10.11.1968 and thereafter his services were regularized and he was given permanent status vide order dated 1.6.1982. The husband of the petitioner died while working under respondent No. 3 and his

son was provided appointment on the post of Beldar on compassionate ground. The petitioner has filed representations for granting family pension and other benefits but family pension was not granted to her and ultimately, petitioner served a legal notice upon the respondents, which is placed on record as Annexure-A/5.

4. Learned Counsel for the petitioner has argued that the petitioner's husband was regular employee of the State and he was given permanent status by the Irrigation Department, therefore, in view of the judgment of this Court in case of *Sujan Singh v. State of Raj. and Ors.* reported in WLR 1991 (S) Raj. 340, the petitioner is entitled for family pension.

5. Further, the petitioner has invited my attention towards the judgment rendered by learned Single Judge of this Court in case of *Norti Devi v. State of Raj. and Anr.* reported in 1992 (1) WLC (Raj.) 89, in case of *Smt. Gulab Bat v. Secretary, Govt. of Raj., Department of Irrigation* reported in 2004 (3) CDR 2367 (Raj.) and another judgment in case of *Smt. Kiran Devi v. State of Raj. and Ors.* reported in 2004 (3) CDR 2503 (Raj.) : (RLW 2004(3) Raj. 2038) and prayed that for the service rendered by the petitioner's husband, she is very much entitled for family pension but it has not been granted to her by the respondents. For denial of pension on the ground of delay in claiming pension, the counsel for the petitioner has invited the attention of this Court towards judgment of Division Bench of this Court reported in 2000 (3) WLC 102 Therefore, the directions may be issued to the respondents for granting family pension and other benefits.

6. Per contra in reply filed by the respondents, it is stated that for the first time, the petitioner made an option on 8.6.2005 for taking family pension instead of C.P.F. The matter of the petitioner is being processed and if she is found entitled as per law for grant of pension, it will be made available. The respondents also-submitted that the petitioner has applied for family pension after 22 years of the death of her husband and it is clear from perusal of Annexure-R/1, which shows that the petitioner opted for pension in place of C.P.F. only on 8.6.2005 and now the matter is being processed as per law. While filing additional affidavit, it is submitted by the respondents that during course of arguments on 8.12.2005, this Hon'ble Court directed the respondents to consider and decide the entitlement of the petitioner

with regard to the payment of family pension within a period of one month and in compliance of the aforesaid directions, the Joint Director, Pensioners Welfare Department, Ajmer vide its letter dated 31.12.2005 proceeded to decide the case of the petitioner. The Pensioners Welfare Department, Ajmer found that the petitioner was not entitled to get family pension because the husband of the petitioner was work-charge employee in the year 1982 and there was no provision for grant of pension for work-charge employee and same was returned to the Office of the Assistant Engineer, Water Resources Sub Division Mandal with the remarks that for grant of family pension a government sanction is required. Further it is submitted that on 9.1.2006, the matter was referred to the higher authority but case was returned from the Addl. Chief Engineer, Water Resources Zone Udaipur with the same remarks that the work-charge employees in the year of 1982 were not entitled to family pension. Thereafter, the respondents gone through the provisions of rule governing the field and as per Rule 22(1) of the Rajasthan Work Charge Service Rules, 1964, it is revealed that the work charge employees were to be given option for family pension and the aforesaid Rule 22-A of the Work Charge Rules was brought into effect on 1.9.1982 whereas the husband of the petitioner who was working as Beldar on work charge basis died on 12.2.1982. Therefore, the husband of the petitioner died before the Rule 22(A) of the Work Charge Rules were brought into effect. Therefore, the petitioner is not entitled to get family pension.

7. While narrating above grounds, it is contended by the respondents that the petitioner's claim is totally unfounded. Therefore, it is prayed that this writ petition deserves to be dismissed.

8. I have considered the rival submissions made by both the learned Counsel for the petitioners.

First of all, it is required to be observed that the respondents are flouting the directions issued by this Court in various writ petitions. More specifically, in the year 1991 in case of *Sujan Singh v. State* (supra), this Court held that after granting permanent status to the work charge employee, all the benefits available under the Rajasthan Civil Service Rules will be applicable. The operative portion of

the aforesaid judgment rendered in case of Sujan Singh (supra) reads as follows:

(3) In the result, the writ petition is accepted, the petitioner shall be treated as a permanent status holder i.e. A regular employee and the word permanent and regular should be equated for all purpose and the petitioner shall be given all benefits of a regular employee from the date on which he has completed 10 years' service and he shall be entitled for all type of allowances inclusive of house rent allowance and all Rajasthan Service Rules and CCA. Rules will be applicable to the petitioner.

9. Similarly, in this case, the petitioner's husband was declared permanent on 1.6.1982 vide Annexure-1. According to the respondents, the petitioners husband died on 12.2.1982 and after his death, he was made permanent vide order dated 1.6.1982 w.e.f. 9.11.1978. Meaning thereby after 9.11.1978, the provisions of Rajasthan Service Rules, 1951 were to be made applicable upon the petitioner because he was declared permanent and as per the judgment rendered in case of Sujan Singh (supra), petitioner became entitled for pensionary benefits. Therefore, the respondents are under obligation to grant family pension to the petitioner because according to the provisions of Rajasthan Service Rules, the family pension was available when the petitioner husband died.

10. In the other judgment as cited by learned Counsel for the petitioner in case of Norati Devi (supra), it has been held by learned Single Judge that after completion of ten years of service, the respondents are under obligation to grant family pension in the event of death of work-charge employee. In para 5 of the aforesaid judgment, the learned Single Judge of this Court has held as follows:

In these circumstances, it is directed that the respondent shall start pay the family pension to the petitioner forth with and the arrears shall be paid to the petitioner within a period of two months from the date the certified copy of order is served upon the respondents after deducting the Government deduction from the amount of provident fund paid to the petitioner. Since arrears are to be paid to the petitioner and no interest is being awarded thereon in favour of the petitioner, I deem it proper not to give any direction with regard to charging interest on the amount of the contribution made by the Government in the provident fund amount

paid to the petitioner's husband.

11. Similarly in case of Gulabo Bai (supra), it has been held by this Court that after the husband of the petitioner completed ten years of service, then his dependents are entitled for family pension. The learned Single Judge has held that if deceased completed 10 years of service and even if he was not given permanent status, then also the pension is right of employee.

12. In these circumstances, this writ petition is allowed. The respondents are directed to grant family pension to the petitioner forthwith and arrears shall be paid to the petitioner within a period of two months from the date of filing certified copy of this order. The respondents are further directed that if any CPF amount has been paid earlier to the petitioner - wife of deceased government servant, then the same may be deducted from the arrears with simple interest of 6%. All other benefits shall be paid to the petitioner within a period of three months from the date of receipt of certified copy of this order. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com