

Vidhya Devi (Smt.) Vs. State and ors.

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Court : Rajasthan

Decided On : May-30-2008

Reported in : RLW2008(4)Raj3308

Judge : Gopal Krishan Vyas, J.

Appellant : Vidhya Devi (Smt.)

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. In this writ petition, the petitioner being widow of late Rekha Ram, employee of the respondent Department, who died while in service on 2.6.1984 has preferred this writ petition for directions to the respondents to grant family pension in accordance with law. Further, it is prayed that entire arrear of the pension along with 18% interest may be granted to the petitioner.

2. Brief facts of the case are that the husband of the petitioner late Rekha Ram entered into the service in the erstwhile Rajasthan Nahar Pariyojna on 20.12.1968 on the post of Beldar and he was posted under the respondent Assistant Engineer in the Rajasthan Nahar Pariyojana at Rawatsar.

3. The husband of the petitioner late Rekha Ram was granted semi permanent status in accordance with Rule 3(3) of the Work charged Rules, 1964 w.e.f. 20.12.1970 and his pay was fixed in the pay-scale of Rs. 240-290 w.e.f. 1.9.1976 and further his pay was fixed to Rs. 415/- per month in the revised pay scale Rules 1983 w.e.f. 20.1.1982.

4. The petitioner's husband died while in service on 2.6.1984 and till his death although the petitioner's husband was entitled to be declared permanent after completion of ten years of service in accordance with the Rules of 1964 but due to inaction on the part of the respondents, the petitioner's husband was not granted permanent status, so also, regular status as provided under the Rules of 1964.

5. After death of late Rekha Ram instead of granting pensionary benefits to the petitioner, she was paid Rs. 4109/- as amount of gratuity and Rs. 7906.75 as amount of C.P.F. and this order was made for payment on 4.6.1985.

6. In this case, the petitioner has made a prayer that she is illiterate lady and according to the rules, the husband of the petitioner late Rekha Ram rendered more than 15 years of service With the respondent department and as per Rules of 1964, he was required to be declared permanent after completion of ten years of service, so also as per rules, the petitioner was to be allowed family pension because for work-charged employees pension was made applicable but due to inaction on the part of the respondents no family pension was allowed to the petitioner after death of her husband, who was employee and was working with the respondent Department for a period of 15 years.

7. Learned Counsel for the petitioner has invited my attention towards Rule 22-A of the Rules of 1964, which was added for granting option for pensionary benefits vide notification dated 17.9.1980 in which as per the counsel for the petitioner it was the duty of the respondents to provide option to the work charged employees for grant of pensionary benefits but it was not granted to late Shri Rekha Ram though he was working in the respondent Department under the work charged cadre.

8. Learned Counsel for the petitioner as invited my attention towards certain judgment of this Court, which are as follows:

1. (Kiran Devi v. State of Rajasthan and Ors.)

2. 2004 (3) CDR 2367 (Gaulabi Bai v. Secretary, Govt. of Rajasthan, Department of Irrigation and Ors.)

3. 1992 (1) WLC 89 (Naurti Devi v. State of Raj. and Ors.)

4. SB Civil Writ Petition No. 1814/1998 decided on 25.10.2007 (Sugan Kanwar v. State of Raj.)

5. SB Civil Writ Petition No. 1484/2006 decided on 8.3.2007 (Mahendra Kaur v. State of Raj. and Ors.)

6. 1991 WLR 340 (Sajjan Singh v. State of Raj. and Ors.)

9. While citing the above judgments, it is submitted by learned Counsel for the petitioner that due to inaction of the respondents, the husband of the petitioner late Rekha Ram was not given permanent status and after completion of ten years though he has completed 15 years of service and was semi permanent in the year 1970. Further, it is submitted that option was to be given to the petitioner's husband in accordance with Rule 22-A but unfortunately no option was given to late Rekha Ram and after his death the petitioner has been denied pensionary benefits, which is totally inaction on the part of the respondents.

10. Per contra, the State Government while filing reply has made strange assertion in the reply that at the relevant time when the petitioner's husband died there was no provision for pension for the work charge employees, therefore, it is wrong to say that the respondent department has neither granted family pension nor any reasons were assigned for not granting the same. As per the respondents, this writ petition has been filed after delay of 22 years so also, there was no provision for pension in the year 1984 for the work charged employees, therefore, there is no question of granting family pension at this stage hence the petitioner was rightly given the amount of C.P.F. and gratuity in which there is no illegality, as such this

writ petition may be dismissed on the ground that the petitioner has claimed the family pension after 22 years before this Court and further on the ground that there was no provision for pension in the year 1984 when the petitioner's husband died. Therefore, this writ petition may be dismissed.

11. After considering the arguments advanced by both the parties and perusing the judgment cited by learned Counsel for the petitioner, it is obvious from the facts that the petitioner's husband was work charged employee and under Rule 3 (3) of the Rules of 1964 was made semi permanent in the year 1970 and this fact is not disputed by the respondents. Further, it is also not disputed that Rekha Ram died while in service in the year 1984 and he had completed 15 years of service. In this case, a patently false reply has been filed by the respondents because Rule 22-A of the Rules of 1964 was added by the State Government vide notification dated 17.9.1980 by which it was specifically provided that option was to be given for grant of pension to those employees who had completed ten years of service and were either made permanent or going to be made permanent. Meaning thereby, the entitlement of pension was in existence in the year 1984 because vide notification dated 17.9.80, the pension was made applicable for the work-charged employees. Therefore, totally false reply has been filed by the respondents that there was no provision for grant of pension for work-charged employees. Rule 22-A of the Rules of 1964, which was added in the Rules vide notification dated 17.9.1980 reads as follows:

fu;e 22& ,- isa'ku ,oa Hkfo'; fuf/k gsrq fodYi &110 o'kksZ dh Isok iw.kZ djus ij fu;e 3 ds vUrZxr ,d dk;Z izHkkfjr deZpkjh ftls LFkbbZ ?kksf'kr fd;k x;k gS ;k fd;k tk jgk gS] dks ;g fody gksxk fd ;k rks va'knk;h Hkfo'; fuf/k esa vfHknk; djuk tkjh j[ks ;k issa'ku ykHkks gsrq fodYi nsos A

2 mifu;e 1 ds vUrZxr va'knk;h Hkfo'; fuf/k ds LFkku ij isa'kuh; ykHk dk fodYi iz;ksx fd;s tkus ij] fuEufyf[kr izfdz;k dk ikyuk fd;k tk;sxx&

(i) deZpkjh }kjk va'knku dh xbZ /kujkf'k e; ml ij C;kt ds tks fodYi dh rkjh[k ds fnu dk;Z izHkkfjr deZpkjh ds ys[ks es iM+h (stand) gks] dks lkekU; Hkfo'; fuf/k ys[kk esa tek vkdfyr (Credit) fd;k tkosxk]

(ii) jkT; ljdkj }kjk nh xbZ va'knku dh /kujkf'k e; ml ij C;kt ds] tks mijksDr rkjh[k ds fnu mlds ys[ks es iM+h? (Standing) gks] dks lkekU; jktLo (General Revenue) es LFkkukUrj.k fd;k tkosxk A

(iii) bl vknku iznku ls ,slh rkjh[k ds iwoZ mldh ,d dk;Z izHkkfjr deZpkjh ds :i esa dh xbZ Isok dks isa'ku gsrq x.kuk djokus dk vf/kdkj gksxk] ekuks og Isok ,d isa'ku ;ksX; laLFkku dh xbZ gks%

ijUrq ;g gS fd isa'ku ;ksX; Isok dks ykHk] dsoy ,slh vof/k ;k vof/k;ksa ds IEcU/k esa vftZr gksus tc mlus ,d dk;Z izHkkfjr deZpkjh ds :i esa Isok dh gS vkSj ftl nkSjku mlus va'knk;h Hkfo'; fuf/k esa vfHknk; fn;k gS A

(iv) ,sls ekeyks esa ;g fodYi bl fu;e ds ykxw gksus dh rkjh[k ls N% ekg dh vof/k esa iwoZ es LFkkbZ ?kksf'kr fd;s tkus dh rkjh[k ls N% ekg dh vof/k esa ifjf'k'V&, esa fn;s izi= esa fyf[kr :i ls iz;ksx fd;k tk;sxk A

(v) ,d ckj fu'ikfnr fd;k x;k fodYi vfUre gksxk A

(vi) ,sls O;fDr tks fofgr vof/k esa fodYi fu'ikfnr ugh djrs gS] muds fy, ;g le> tkosxk fd os va'knk;h Hkfo'; fuf/k ds ykHk tkjh j[kuk pkgrs gS A fodYi fu;kstd dks izsf'kr fd;k tkosxk ftl ij l{ke izkf/kdkjh dks tks mls izklr djsxk }kjk izfrgLrk{kj fd;k tkosxk A deZpkjh }kjk fu'ikfnr fd;k x;k fodYi mldh Isok iqLrd es fpidk;k tkosxk vkSj mldh ,d IR; izfrfyi mld futh i=koyh esa Hkh j[kh tkosxh A

3 mi fu;e 1 ds izkfo/kkuks ds v;/;/khu (Subjectto) dk;Z izHkkfjr deZpkjh ds isa'kuh; ykHk mls] ljdkjh deZpkjh dks isa'ku Lohd`r djus IEcU/kh ljdkj }kjk le;? ij tkjh fu;eks ds vuqlkj vuqKs; gksxs A

(4) ,d ,sls dk;Z izHkkfjr deZpkjh ds ekeys es ftls va'knk;h Hkfo'; fuf/k fu;eks] tks muds }kjk is'kuh; ykHkks gsrq fodYi nsus ds iwoZ ykxw Fks] ds vuqlkj vfHknk; (Contribute) djuk Fkk] ijUrq dfri; dkj.kks ls dk;Z izHkkfjr deZpkjh fu;e ykxw gksus ds i'pkr mlds dqN vof/k;ksa ds nkSjku vfHknk; (Contribution) ugh fn;k x;k] rks Hkh mls ml vof/k@vof/k;ks dk vfHknk; (Contribution) nsus dh vuqefr nh tkosxh ftls fd os e;/orhZ (Interventing) vof/k@vof/k;ka Hkh is'ku gsrq 'kqekj gks lds A

5 bl fu;e ds mi fu;eksa 1 ls 4 esa varfoZ'V dqN Hkh gksus ds ckotwn ,slk dk;Z izHkkfjr deZpkjh ftlus jkT; ljdkj }kjk le; le; ij tkjh fu;eks ds vuqlkj isa'kuh; ykHkks gsrq igys ls gh fodYi ns fn;k Fkk] mls bu fu;eks ds vUrZxr is'kuh; ykHkks ds fy, fodYi fn;k ekuk tkosxk A

6 va'knk;h Hkfo'; fuf/k dh izlqfo/kkvks ds ik= fdlh deZpkjh dh e`R;q ;fn isa'ku fu;eks ds lkFk lkFk uohu ikfjokfjd isa'ku izlqfo/kkvks dks pquus dk fodYi fu/kkZfjr rkjh[k ds iwoZ fd;s fcuk gh gks tkrh gS rks iz'kklfud vf/kdkjh Lofosd ls va'knk;h Hkfo'; fuf/k dh izlqfo/kkvks ds ctk; isa'ku fu;eksa ds lkFk lkFk uohu ikfjokfjd isa'ku fu;eksa dks izlqfo/kkvks mu ekeyks es ns ldsxk] tgka vfHkn'kZkrk }kjk fuf/k ekU; :i ls uke funsZf'kr fd;s x;s uke funsZf'kr }kjk muds vHkko eas va'knk;h Hkfo'; fuf/k fu;eksa es ;Fkk ifjHkkf'kr ifjokj ds leLr lnL;ks }kjk fofufnZ'V :i ls ,slk vuqjks/k fd;k x;k gks A ;fn rRi'pkr~ dfFkr leLr lnL; mDr vuqjks/k djus ij lger ugh gksrs gks rks va'knk;h Hkfo'; fuf/k dh jkf'k mUgs bldh ckcr fu;eks ds mica/kks ds vuqlkj lnRr dh tkosxh A mi;qZDr la'kks/ku 1-9-82 ls izHkkoh gksxk A rFkkfir iwoZ es vU;Fkk :i ls fofufpr ekeyks ij fQj ls fopkj ugh fd;k tk;sxk A

12. In this view of the matter, it is abundantly clear that there was provision for grant of pension but though the petitioner's husband completed 15 years of service was not given permanent status after completion of 10 years of service and later on he died while in service, therefore, in my opinion there is total inaction on the part of the respondents because first of all they did not pass an order for declaring the petitioner's husband permanent after completion of ten years of service under Rule 3 (3) of the Rules of 1964 and although there was provision for pension and options were to be given to the work charged employee even if they were not made permanent but this benefit was not given to the petitioner. Moreover, a false reply has been filed before this Court that there was no rule for grant of pension even without perusing Rule 22-A of the Rules of 1964, which is highly objectionable.

13. From perusal of the judgments cited above by learned Counsel for the petitioner, it is clear that this Hon'ble Court has specifically held that deceased employee who had completed 10 years of service but was not given permanent status under Work- charged Rules, 1964 due to inaction on the part of the

respondents is totally unwarranted and right of pension cannot be denied on the ground that order of permanent status was not passed even after completion of 10 years of service. Therefore, in my opinion, the denial of pension to the petitioner on the ground of delay and while saying that there was no provisions for pension at the relevant time, respondent department is misleading this Court and denial of pension to the petitioner is totally illegal and unconstitutional. The husband of the petitioner was very much entitled to be declared permanent after completion of ten years of service under the Rules of 1964, so also for pension.

14. This Court in case of Smt. Sujan Kanwar v. State of Raj. (supra) has held that after completion of ten years of service, the work charged employee becomes entitled for pension and after his death family pension is required to be allowed.

15. In this case on the ground of delay, this writ petition cannot be thrown because pension is continuous cause of action and moreover, it is required to be said that it was duty of the respondents to grant pensionary benefits while treating the petitioner's husband as permanent employee because he rendered 15 years of service on the date of his death, therefore, for inaction on the part of the respondents, the petitioner cannot be blamed for any delay because she is an illiterate lady and it is expected from the respondent department to act in accordance with the Rules. But, in this case, not only pension has been denied on illegal ground but respondents have mislead this Court while saying that there was no provisions of grant of pension under the Rules of 1964. Further, the claim of pension is continuous cause of action and delay cannot be a ground for rejection of the writ petition.

16. From above discussions, it is held that the petitioner being widow of late Rekha Ram is entitled for family pension and denial of family pension to the petitioner is illegal and has no foundation of law. Accordingly, the respondents are directed to allow family pension to the petitioner while treating her husband late Rekha Ram as permanent employee of the respondent Department and in view of judgment of Sajjan Singh Yadav's case (supra), petitioner shall be granted all retiral benefits as available under the Rajasthan Service Rules, 1951 within a period of three months from the date of receipt of certified copy of this order. The

respondents are further directed to pay 6% simple interest to the petitioner from the date of entitlement, so also, CPF amount already paid to the petitioner may be adjusted from the arrears and remaining arrears may be paid to the petitioner within the above stipulated period.

The writ petition is allowed with no order as to costs.

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