

Baso Devi Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-05-2002

Reported in : 2003(3)WLN460

Judge : Shiv Kumar Sharma, J.

Appeal No. : S.B. Civil Writ Petition No. 1898 of 1993

Appellant : Baso Devi

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Shiv Kumar Sharma, J.

1. The petitioner has approached this Court with the prayer that the respondents be directed to pay the petitioner the pension/family pension from which date she became entitled. The validity of Sub-Rule (6) of the Rule 22-A of the Rajasthan Workcharged Employees Services Rules, 1964 (for short 1964 Rules) has also been called in question.

2. Contextual facts depict that the husband of the petitioner late Mitthan Lal was initially appointed as Helper Grade-I on, muster roll basis in the year 1960. Thereafter vide order dated 18.3.1963 he was taken on work charged basis as

Helper Grade-I. While he was working on Well No. 8 at Mallah under Assistant Engineer City Division Bharatpur, he suffered electric shock and fell in the well and died on 27.4.1970. The petitioner served a notice for demand of justice through her counsel on 16.1.1992 on the respondents. The Executive Engineer PHED, City Division Bharatpur vide letter dated 21.3.1992 informed the petitioner that an amount of Rs. 120/- relating to Contributory Provident Fund had already been paid to the mother of the deceased Smt. Chameli Devi, the petitioner was not entitled for any family pension as per the provisions of Rule 22-A of the 1964 Rules. Feeling aggrieved by the aforesaid letter, the petitioner instituted the instant writ petition.

3. Sub-Rule (6) appended to Rule 22-A of the 1964 Rules provides that the option for obtaining Contributory Provident Fund and pension can be given by the family members of the deceased employees but the said provision was made applicable only with effect from 1.9.1982. It was also provided that the matters which had already been decided will not be considered again. Because of the aforesaid provision, the petitioner was ineligible from receiving the pension since her husband died in the year 1970 and the Contributory provident Fund had already been paid to the mother of the deceased.

4. The contention of the petitioner in the instant writ petition is that after marriage the wife automatically became the nominee in place of any other nominee. Therefore even if the amount of Contributory Provident Fund was paid to the mother in law of the petitioner, the petitioner was still the legal nominee of the deceased. The purpose of giving pension is to provide financial assistance to the family of the deceased in order to absolve them from the financial crises. The petitioner further averred that by putting rider under Sub-Rule (6) of Rule 22-A of 1964 Rules is totally unjustified, illegal and arbitrary, has got no reasonable nexus. By putting the rider of dated 1.9.1982 the dependents of the deceased had been divided in two different classes one where the Government employees died before 1.9.1982 and the second where the employees died after 1.9.1982 and this date has no nexus whatsoever with the object sought to be achieved. Therefore it deserves to be struck down.

5. The respondents submitted reply to the writ petition raising preliminary objection that the writ petition is liable to be dismissed on the ground of delay and laches. It has also been averred that the writ petition suffers from non-joinder of parties. It has also been pleaded that the provisions contained in Rule 22-A (6) of 1964 Rules are reasonable and as the mother of the deceased Mitthan Lal had already received the Contributory Provident Fund, the petitioner is not entitled to any relief.

6. I have pondered over the rival submissions and scanned the material on record.

7. Undeniably the husband of the petitioner at the time of his death was holding the post of Helper Grade-I in the Work Charged Cadre. The State Government by memorandum dated 31.1.1977 conveyed the decision of the Government of Rajasthan that the Work-charged employees who were absorbed/appointed on regular post on conversion of workcharged post into regular post under the Govt. from time to time be allowed to exercise the option to elect either to continue the contribution towards Provident Fund or to opt for pensionary benefits. By order dated 23.7.1977 the Govt. passed another order adding para 9 to the memorandum dated 31.1.1977 as under:

Government of Rajasthan Finance (Gr.) Department

Memo

No. F. 1 (26) FD (Gr. 2)/74 dated Jaipur, the 10.3.1977.

Sub: Counting the Work-charged service for pension on absorption/appointment of work-charged Employees on regular post under the Government.

The Governor are pleased to order that after existing para 8 the following para may be added in the Finance Department Order of even number dated 31.1.1977 namely:

The work-charged employees who were absorbed on regular posts but died before exercising option for pension under these orders shall be deemed to have opted for pension unless the members of family of such deceased specifically make a request that they may be paid Contributory Provident Fund benefit due to

deceased. The Head of Office should before preparation of pension papers invariably ascertain from the members of the family of the deceased entitled to receive the retirement benefits whether he/she would like to receive Contributory Provident Fund benefit or not.

8. The aforequoted notification deals with the work-charged employees who were absorbed on regular posts but died prior to the date of notification i.e. 31.1.1977, which directs that such employees shall be deemed to have exercised their option for pension under these orders unless the members of family make a request for payment of C.P.F. It is not the case of the department that the petitioner requested them to pay the C.P.F. In my opinion the petitioner is entitled to exercise the right to get the family pension and arrears accrued. The contention of the respondent about the delay and laches in filing the writ petition cannot be accepted. The Division Bench of this Court in *Rukma v. State of Rajasthan*, 2000 (3) WLC (Raj.) 102 indicated that the cause of action for pension being recurring, no question of delay or laches.

9. In *D.S. Nakara v. Union of India*, : (1983)ILLJ104SC , the Constitution Bench of the Hon'ble Supreme Court held that criterion of date of enforcement of the revised scheme entitling benefits of the revision to those retiring after specified date while depriving the benefits to those retiring prior to that date was violative of Article 14.

10. After having closely scrutinised the material on record I do not find any justifiable criterion to draw the line between those who retired earlier and those retired after 1.9.1982. Both such set of employees were equally placed in the PHED of the State of Rajasthan. All the employees who got retired prior to 1.9.1982 had served the PHED for a very long period and they had earned their legitimate expectation. It is not something that they seek as a begging bowl. In my considered opinion the employees for the purpose of receiving pension form a class and there is no criterion on which classification of employees retiring prior to 1.9.1982 and retiring subsequent to that date can provide a rational principle correlated to the object under lying payment of pension. The eligibility criteria devised by Rules 22A of 1964 Rules being thoroughly arbitrary violates Article 14 and is struck down with the specification that 1964 Rules shall be applicable to all

retired workcharged employees of PHED irrespective of their date of retirement. In other words the employees who got retired prior to 1.9.1982 shall also be entitled to pensionary benefits.

11. Consequently, the writ petition stands allowed and the respondents are directed to pay the entire arrears of family pension to the petitioner within three months from the date of receipt of the judgment and continue to pay the same in future. The amount already paid by the respondents as Contributory Provident Fund shall be adjusted towards her account and the balance if any shall be paid to the petitioner within two months from the date of receipt of the intimation from the department. The parties shall bear their own costs.

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