
(2006) 02 JH CK 0006

Jharkhand High Court

Case No: L.P.A. No. 627 of 2005

Sadhni Saha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Feb. 13, 2006

Acts Referred:

- Bihar Non-Government Elementary School (Taking Over of Control) Act, 1976 - Section 1(3)

Citation: (2006) 2 JCR 1

Hon'ble Judges: N. Dhinakar, C.J; M.Y. Eqbal, J

Bench: Division Bench

Advocate: D.D. Saha and M. Tandon, for the Appellant; M.S. Akhtar, SC-II and S. Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the parties.

2. This letter patent appeal is directed against the order dated 30.8.2005 passed in WPS No. 3239/05 whereby- the learned single Judge dismissed the writ petition holding that the appellant is not entitled to family pension. For better appreciation, the impugned order dated 30.8.2005 passed by learned Single Judge is" quoted herein below :

This writ application has been preferred by the petitioner for a direction upon the respondents to pay her family pension. From the pleadings made by the petitioner, it appears that her husband Biplad Waran Saha was appointed as a Teacher in Lagdum Middle School, Pakuria Circle on 13th of September, 1971 from where he was transferred to one Primary School, Madgam Circle, Pakuria. He died in harness on 22nd of March, 1974. After about 30 years, the petitioner moved before this

Court for payment of family pension. Though, no explanation for delay has been given, learned counsel submits that in the matter of family pension delay should not be a ground to dismiss the case.

It appears that the School in which the husband of petitioner was employed was a non-Government elementary school, which was later on taken over by the State Government from retrospective date with effect from 1.1.1971. At the time of death, the husband of the petitioner being the employee of a private non-Government School, no claim was made after his death, but later on when the School was taken over by the State Government from retrospective date, the petitioner has moved before this Court.

Learned counsel for the respondents referred to an order dated 5th March, 2001 passed by the Patna High Court in L.P.A. No. 439 of 2000, State of Bihar v. Arya Devi, and analogous, cases. In those cases, the Court while noticed that the Schools were taken over under the 1976 Act held that such teachers and employees of private elementary schools, who retired or died prior to 31st March, 1976, they are not entitled to the benefit of take over and thus they are not entitled for pension or family pension. The case of the petitioner being squarely covered by the aforesaid Division Bench decision in the case of Arya Devi, no relief can be granted.

The writ petition is, accordingly, dismissed.

3. Mr. Manoj Tandon, learned counsel appearing for the appellant strenuously argued that learned Single Judge failed to take into consideration all the relevant provisions of Bihar Non-Government Elementary Schools (Taking over of Control) Act 1976. According to the learned counsel, since the Act came into force with effect from 1.1.1971, petitioner's husband retired in 1974 became entitled to family pension. Learned counsel put heavy reliance on subsection (3) of Section 1 of the said Act and submitted that teachers of Non-Government Schools run by Zila Parishad, Zila Board or Municipal Board shall be deemed to have been taken over with effect from 1.1.1971. Learned counsel submitted that since petitioner's husband was a teacher in the school run by Zila Parishad she became entitled to family pension after the death of her husband in the year 1974. The submission of the learned counsel is baseless and without any leg to stand.

4. From perusal of the writ petition filed by the petitioner, it appears that the only averments made therein is the petitioner's husband was appointed as Assistant Teacher on 13.9.1971 and joined at Lagdum Middle School, Circle Pakuria and thereafter, transferred to Primary School Magdam Circle, Pakuria. In support of that, a copy of letter-dated 17.9.1971 has been annexed as Annexure-1 to the writ application. From perusal of Annexure-1, it transpires that it is a letter written by husband of the petitioner claiming that he was appointed in 1971. Not a single chit of paper has been produced in support of the fact that petitioner's husband was ever appointed as Teacher in the said school. There is also no averment in the writ

petition that the school where petitioner's husband was allegedly appointed was run by Zila Parishad, Municipal Board or any of the Government Body referred in sub-section (3) of Section 1 of the aforementioned Act. The only averment made in the writ petition was that petitioner's husband was appointed on 13.9.1971 and died on 22.3.1974. It was after 30 years, petitioner has come out with a case that her husband was a teacher in the school, which was run by Zila Parishad. In our opinion, therefore, the learned Single Judge has rightly dismissed the writ petition holding that petitioner is not entitled to family pension.

5. We do not find any merit in this appeal, which is, accordingly, dismissed.