
(2006) 02 JH CK 0012

Jharkhand High Court

Case No: L.P.A. No. 685 of 2005

Indu Kuer @ Indu Kunwar

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Feb. 15, 2006

Citation: (2006) 2 JCR 208

Hon'ble Judges: S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench: Division Bench

Advocate: Anand Kumar Pandey, for the Appellant; M.S. Akhtar, S.C. II, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The petition at Flag-L (LA. No. 2932 of 2005) has been filed on behalf of the appellant for condoling the delay of 7 (seven) days in preferring the appeal.

2. Having heard the counsel for the parties and being satisfied with the grounds shown therein, the delay of 7 (seven) days in preferring the appeal is condoned.

I.A. No. 2932 of 2005 stands disposed of.

L.P.A. No. 685 of 2005

3. The writ petition preferred by the appellant for family pension having been rejected, this appeal has been preferred by her.

4. It appears that the husband of the appellant, Late Damodar Tiwari, was in the services of the State. He was appointed as Teacher vide Memo No. 264 dated 27th February, 1962 in Lower Primary School, Kodag, Latehar. He was transferred from one school to another. He was deputed in Teachers' Training School, Rehla, where he remained upto 25th May, 1965. He was later on transferred to Lower Primary School, Badakala vide Memo No. 30 dated 11th January, 1968 and died in harness on

17th July, 1972. After his death, in pursuance of Letter No. 3406 dated 4th June, 1973 issued by the Special Officer-cum-Deputy Secretary, Education Department, Government of Bihar, his pay was fixed in the scale of Rs. 230-340, but she having not been paid the death- cum-retiral benefits, such as Family Pension. Gratuity etc., had to move before this Court.

5. According to the counsel for the appellant, there was no delay, as the appellant was pursuing the matter before the authorities. The Service Book of her husband was verified by the Block Education Extension Officer, Patan, District Palamau in July, 1997, who certified for payment of Pension vide Annexure-1. The matter remained pending thereafter.

6. It is a settled law that the Pension and Family Pension gives rise to cause of action in every month. Thereby, relief for grant of Pension/Family Pension cannot be denied on the ground of delay.

7. This apart, as payment of Pension, Gratuity and other retiral benefits will never affect any third party and a person is entitled on the basis of beneficial legislation. Generally it is not denied on the ground of delay.

8. For the reasons aforesaid, we set aside the order passed by the learned Single Judge and allow the writ petition, W.P. (S) No. 4566 of 2005. The case is remitted with direction to the respondents to consider the case of the widow of Late Damodar Tiwari for payment of Family Pension and other retiral benefits and they will pay the admitted dues along with 5% interest within three months from the date of receipt/production of a copy of this order. On failure to pay the admitted dues within the aforesaid period, the respondents will be liable to pay additional interest @ 12% on the dues from January, 2005 i.e. the year the writ petition was preferred.

9. It will be open to the appellant to file a afresh representation along with a copy of this order before the District Superintendent of Education, Daltonganj (Medninagar), Palamau; the District Provident Fund Officer, Daltonganj, (Medninagar), Palamau; and the Accountant General, Jharkhand. However, if any adverse decision is taken by one or other authorities, they will communicat the ground(s) to the appellant.

10. The Letters Patent Appeal is allowed.