

(2004) 09 PAT CK 0173

Patna High Court

Case No: C.W.J.C. No. 5922 of 2004

Most. Sheo Kumari Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Sept. 30, 2004

Acts Referred:

- Bihar Pension Rules, 1950 - Rule 108, 45(a)

Citation: (2004) 4 PLJR 509

Hon'ble Judges: Radha Mohan Prasad, J

Bench: Single Bench

Advocate: Ranjeet Tiwary, for the Appellant; A.K. Chaudhari for the State and Mr. Chakradhari Saran Singh for the Accountant General, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Radha Mohan Prasad, J.

This matter has come up on filing of affidavit pursuant to the liberty granted vide order dated 14.5.2004 for revival/initiating action as it is alleged that the order relating to the claim of the petitioner for payment of pension, gratuity and leave encashment has not been complied. In the writ petition, the petitioner, who claims to be the widow of late Ram Pravesh Ram has come to this Court with a prayer to direct for payment of G.P.F. amount, leave encashment, gratuity, remaining amount of Group Insurance Scheme and family pension with penal interest.

2. The deceased Government servant was appointed on the post of Orderly Peon on 17.2.1979 by Deputy Director, Adult Education, Patna. Later, he was temporarily promoted on the post of Clerk-cum-Typist on 30.7.1984 vide letter no. R/A 6/79 Ad Education 1836 dated 30.7.1984. Petitioner's husband was killed by the extremist on 8.9.2003. However, thereafter, the petitioner received a sum of Rs. 49,750/- under the head Group Insurance Scheme, but, she has not been paid even single farthing under the head gratuity, leave encashment, G.P.F. and family pension. Later, a sum

of Rs. 1,38,508/- has been paid towards G.P.F. with upto date statutory interest on 19.6.2004.

3. It is contended by the learned counsel for the petitioner that the grievance of the petitioner with regard to pension, gratuity and leave encashment has not been redressed in compliance of the order of this Court.

4. A counter affidavit has been filed on behalf of Joint Secretary, Finance and separate counter affidavit has been filed on behalf of Director, Mass Education (Respondent no. 4). In the said counter affidavit of Respondent no. 4 the facts aforementioned has not been disputed. It is, however, stated that husband of the petitioner was appointed as Typist-cum-Clerk on ad hoc basis and was internally adjusted in non-formal education programme vide letter no. 348 dated 12.10.1993. It is further stated that service of the husband of the petitioner was terminated vide letter no. 511 dated 26.9.2001 due to closure of the scheme. As such, it is contended that as per Rule 45(a) of the Bihar Pension Rules it is clear that pensionary benefit to the husband of the petitioner was not admissible as the petitioner's husband was working in the Scheme and due to closure of the Scheme his service was terminated. It is further contended that in view of the order of the Finance Department, contained in memo no. 1398 dated 31.3.2004 in which it is categorically mentioned that since the petitioner was not in service on the date of superannuation, pensionary benefit like pension, gratuity and leave encashment is not admissible.

5. A supplementary affidavit has been filed on behalf of petitioner. In paragraph 5 of the supplementary affidavit it is stated that it is an exemplary case of flagrant discrimination by the respondent-authority as they have made payment of the entire retiral benefits to the employees mentioned in the said paragraphs, who are similar to the petitioner's husband.

6. Mr. Chaudhary, learned G.P. VIII on instruction from the Director, who is present in Court has not denied the said fact stated in the supplementary affidavit. However, he contended that since those persons superannuated while the Scheme was in operation they have been given pensionary benefit, whereas in the case of husband of the petitioner he on closure of the Scheme was retrenched and, as such, pensionary benefits are not admissible to him. In this regard, he placed reliance on Rule 45(a) of the Bihar Pension Rules.

7. I am unable to appreciate this submission. Rule 45(a) of the Rules provides that in case where a Government servant is appointed for a limited time only, or for a specified duty, on the completion of which he is to be discharged, no claim to pension is admissible. In fact, Rule 108 of the Bihar Pension Rules provides that if a Government servant is selected for discharge owing to the abolition of a permanent post, he shall, unless he is appointed to another post, the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of

his own have the option of taking any compensation pension or gratuity to which he may be entitled for the service he has already rendered. According to Rule 58, the service of a Government servant does not qualify for pension unless it conforms to three conditions, namely, (i) the service must be under Government; (ii) the employment must be substantive and permanent; (iii) the service must be paid by Government. Under Rule 59 the Provincial Government is empowered to declare that any specified kind of service rendered in a non-gazetted capacity shall be qualified for pension and also in individual cases subject to such conditions as it may think fit to impose in his service direct that the services rendered by a Government servant shall count for pension even though either or both the conditions referred to in conditions (i) & (ii) above are not fulfilled in the case of service paid from general revenues. The State Government vide memo no. Pen 1024/69/11779F, dated 12.8.1969 after careful consideration decided that if the service of temporary or officiating Government servant is not confirmed on a post is continuous or more than 15 years it will be considered as pensionable under Rule 59 of the Bihar Pension Rules. Qualifying service of 15 years was later reduced to 10 years. Respondents cannot dispute that the service under the scheme was pensionable service obviously because person similarly situated working in the scheme have been granted retiral benefit including pension and gratuity.

8. It may be mentioned here that under Rule 101(a) of the Bihar Pension Rules resignation of the public service or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination only entails forfeiture of past service. Rule 103(d) provides that an interruption in the service of a Government servant entails forfeiture of his past service, except abolition of the post or loss of appointment owing to reduction of establishment. The case of the petitioner's husband is not covered by the said provision. Petitioner's husband was discharged/retrenched obviously owing to abolition of the Scheme and at that time he possessed qualifying service rendered by him for receiving pension which includes gratuity as per its definition. Thus, petitioner's husband was entitled for grant of life time compensation pension under Chapter VI which includes gratuity under Rule 27 till his death as it is not disputed that he possessed qualifying service in terms of Rules 58 & 59 of the Bihar Pension Rules.

9. Moreover, it is not disputed by the said two officials who are present in Court that the appointment of the husband of the petitioner as well as those referred to in paragraph 5 of the supplementary affidavit were made in the scheme and not for limited time. Neither the Director, Mass Education nor the Joint Secretary, who has passed the order contained in Annexure-A denying pensionary benefits to the petitioner have been able to give any explanation as to how the petitioner has been denied of the same treatment to those persons who are similarly situated except that they attained the age of superannuation while the scheme was in operation and the petitioner's husband remained in service till the Scheme was in force and possessed more qualifying service than those persons. Thus, even otherwise I do

not find any justification for treating the case of the petitioner's husband, who possessed more qualifying service, differently from those who are mentioned in paragraph 5 of the supplementary affidavit only because they attained the age of superannuation while the Scheme was in operation. Learned Government Pleader No. VIII appearing for the said two officials has not been able to refer any such provision either in the Scheme or in Bihar Pension Rules under which such Government servant can be treated differently. In my opinion under the aforementioned circumstances, there is no rational for denial of life time pension or even death-cum-retiral benefits in the case of petitioner's husband and thus the action of the respondents is wholly arbitrary and discriminatory.

10. Learned counsel for the State has not been able to show that as per the Scheme under which petitioner's husband was appointed leave encashment was not admissible. The leave encashment dues cannot be withheld since that is paid in lieu of unutilised leave and, therefore, partakes the character of salary as also held by the Division Bench in the case of [Bajrang Deo Narain Sinha Vs. The State of Bihar and Others](#), .

11. Accordingly, this Court directs the Respondents to issue necessary sanction order with regard to the remaining aforementioned dues and produce it on Monday next (4.10.2004) when the matter shall be listed at the top of the list. As prayed by learned Government Pleader No. VIII, let a copy of this order be supplied to him.