(2000) 05 PAT CK 0053

In the Patna High Court

Case No : C.W.J.C. No. 6659 of 1999

Chandrakalo Devi APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 08-05-2000

Acts Referred:
Railway Services (Pension) Rules, 1993 — Rule 92

Citation : (2002) 1 PLJR 772

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Udit Narayan Singh, for the Appellant; J.P. Karn and Subhas Pd. Singh, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ application the Petitioner has sought for issuance of the writ of mandamus comrnanding the Respondents to pay the retiral benefits such as family pension, gratuity and G.P.F.

2. In short the facts mentioned in the writ application are that the Petitioner is a widow of late Bharat Singh who died in harness on 6.12.1971. The husband of the Petitioner was initially appointed as Sainik in Railway Protection Force in the North Eastern Railway on payment of Rs. 30/- per month in the scale of Rs. 30-35 plus usual allowances on the terms and conditions mentioned in his appointment letter contained in Annexure-1. One of the terms and condition was that he will not be eligible for any pension or benefit under the State Railway Prpvident Fund or Gratuity Rules or to any absentee allowance beyond those admissible to temporary employees under the rules in force from time to time during such temporary service.

3. In the year 1964 the family pension scheme for Railway Employees was introduced vide Railway Board letter No. F P 63 P N - 1/14 dated 2nd January, 1964 by which the employees were given different options for joining the said

scheme or continuing with the provision relating to C.P.F. Rules. Undisputely the Petitioner''s husband did not exercise that option for family pension under the 1964 scheme and ultimately died on 6.12.1971 while continuing under, the provision relating to the Contributory Provident Fund Scheme. Accordingly the Petitioner was paid contributory provident fund.

4. The issue as to whether under the similar circumstances the widow will be entitled for family pension under the 1964 scheme came up for consideration before the Apex Court in the case of Krishna Kumar v. The Union of India and the Apex Court vide its judgment reported in Krishena Kumar and Others Vs. Union of India and others, , approved the cut off date for exercising of options and held that there was, therefore, no discrimination and the question of striking down or reading down clause giving option did not arise. However, the Apex Court relying upon the report of the 4th Central Pay Commission issued certain directions for grant of ex gratia monthly payment to such person.

5. Learned standing Counsel appearing for the Union of India has submitted that on consideration of the report of the 4th Central Pay Commission regarding grant of relief to the family of the deceased civil central Government employees who were governed by the contributory provident fund scheme, the President vide Ministry of Personnel, Public Grievances and Pension Notification No. 4/1/87 and P.W. (PIC) dated 13.6.1988 had decided that the widows and dependent children of the deceased CPF beneficiaries who had retired from service prior to 1.1.1986 shall be granted ex gratia payment of Rs. 150/- per month with effect from 1.1.1986 and that was also made admissible to the widows and dependent children of the C.P.F beneficiaries who died while in service prior to 1.1.1986. Besides this they were also granted dearness allowance under the revised pattern. It appears that on consideration the Apex Court in the case of Krishna Kumar v. The Union of India (Supra) issued certain guidelines to be applied in such cases. It is not the case of the Respondents that after the issue of the said notification the Petitioner who is illiterate widow was ever informed about her entitlement under the aforementioned notification dated 13.6.1988.

6. The Petitioner claims that she filed a representation before the Railway Minister for grant of family pension but she received no response except letter dated 31.3.2000 (Annexure-7) from the Respondent No. 5 wherein she has been directed to report physically to his office on any working days along with the documents to enable his office for her payment and final settlement of dues. This Court fails to appreciate as to how the Respondent No. 5 asked the Petitioner to report physically to his office when he was aware that she is a widow. Moreover, no such requirements under the said notification has been pointed out by the learned standing Counsel appearing for the Respondents. The presumption is that the concerned office has the record of all the employees and the ex-employees including those who died before the issuance Of the aforementioned notification dated 13.6.1988. Thus in my opinion, it was the responsibility of the, concerned authority to get necessary for mality completed for grant of the

benefit under the aforementioned notification. This view, also gets support from Rule 92 of the Railway Service Pension Rule, 1993 under which the responsibility to complete the necessary formalities for grant of family pension under 1964 scheme has been fixed on the authority. It is not the case of the Respondents that the concerned authority ever took any steps in the matter. Thus this Court finds that the Respondents have malafide kept the Petitioner deprived of the benefits under the aforementioned Government notification dated 13.6.1988 for almost 12 years without there being explanation much less plausible explanation. Even after the decision of the Supreme Court in the year 1990 no action was taken to grant benefit under the said decision to the Petitioner.

7. Accordingly this writ petition is allowed with cost of Rs. 5000/-. The Respondents-are directed to get the necessary calculation made with, respect to the ex-gratia payment pursuant to the aforementioned Government notification dated 13-6-1988 and in the light of the decision of the Apex Court in the case of Krishna Kumar v. The Union of India (Supra) and pay the entire benefits to the Petitioner within four weeks of the receipt production of a copy of this order. In the facts and circumstances aforementioned the Petitioner will also be entitled for interest on delayed payment @ 10% per annum from the due date till the said payment is made. In case of non compliance of any part of this order, the concerned authority shall not draw his salary and other allowances till the order is fully complied with.