
(2001) 12 PAT CK 0054
In the Patna High Court
Case No : C.W.J.C. No. 5642 of 2000

Habibun Nisa

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Bihar Municipal Pension Rules, 1987 — Rule 4(1)

Citation : (2002) 2 PLJR 518

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Mahesh Narayan Parbat, Gupteshwar Pd. and Ved Prakash Shrivastawa, for the Appellant; Arvind Kr. Pandey, for the Respondent

Judgement

P.K. Deb, J.—The husband of the Petitioner late Khalil Ahmad was a Peon in the Chapra Municipality and on attaining the age of superannuation he retired on 31.10.1999 but soon after the retirement after complying with the direction mentioned in Annexure-1 of the Municipality the husband of the Petitioner died on 3.11.1999. During the period of service as per the provisions made in the Statute the Petitioner opted for pension and was entitled for retiral benefits and other benefits, such as Provident Fund, Gratuity and Leave Salary etc., etc. After the death of the husband of the Petitioner, the Petitioner made various representations for getting retiral benefits of her husband but the same had not been paid by the Municipality and lastly the present writ petition has been filed. On filing counter affidavit the Chapra Municipality took a stand that vide Annexure-A other benefits of retirement had been made over to the Petitioner but as her husband had never opted for pension he is not entitled to any pensionary benefits nor Petitioner is entitled for any family pension. The amount which had been realised have been received by the Petitioner with rejection. By filing rejoinder the Petitioner has submitted in almost all the cases of pension benefits of the 3rd and 4th grade employees of the Chapra Municipality, stand is being taken to the effect that no (sic)tion had been given by the employees (sic) and order dated 9.11.1987 as contained in (sic) Annexure-2 and the subsequent

order of (sic)the Municipality on 26.11.1987 had been (sic)Annexed with the reply to the counter affidavit wherein it was positively stated that (sic) 4th Grade employees of the Chapra (sic)Municipality as per Rule 4(1) of Bihar Municipal Pension Rules, 1987 had opted for pension except to employees, namely, Siddique Hussain and Mukti Nath Pandey (sic)pose option form was found defective but (sic)terwards the case of Mukti Nath Pandey (sic) also been corrected and pensionary benefits had been given to him. It appears that the same plea was taken by the Chapra Municipality in another case of Parvati Devi and after when M.J.C. petition was filed the Municipality by the order of this Court had given pensionary benefits. There also the same stand was taken but Parvati Devi could be able to produce a list in that M.J.C. case being M.J.C. No. 1562 of 1999 that in the list prepared of pensionary benefits her husband's name appeared. That list was prepared in the year 1999 and from the contents of that list it appears that Municipality was not maintaining proper records as to the option being given of the employees of the Municipality and such list was prepared after collecting some part files. From the Municipality it has been stated that Annexure-2 to the reply to the counter affidavit was a procured one and no where there was any order by any authorities of the Municipality to the effect that pensionary benefits had been opted by all the 4th Grade employees. In the M.J.C. petition when such stand was taken and afterwards the Municipality had to, concede that husband of Parvati Devi had opted for pension then stricture has been made by this Court that the authorities of the Chapra Municipality should not take such unsounded plea in future but still then it appears that in the present case also such plea has been taken. The list which has been produced alongwith the supplementary counter affidavit which was filed in M.J.C. case by the Petitioner of that case i.e. Parvati Devi. It appears that in another case whose name does not appear in that list had been paid pensionary benefits on an order being passed by this Court. Thus, it appears that the Municipality of Chapra is taking such stand in almost every cases. When they have got no papers to show that some of the employees had not opted for pension then it becomes obligatory on the part of it to accept the position that all 4th Grade employees had opted for pension. Only after the death of the person concerned such sort of pleas are being taken in different cases. When the husband of the Petitioner on the face of it is entitled for pension then definitely the family pension to be paid to the Petitioner and other death-cum-retiral benefits available to the husband of the Petitioner should be made available to the Petitioner within a period of eight weeks from the date of the presentation of a copy of this order from the side of the Petitioner by the Respondent No. 3 and the Petitioner shall be entitled to interest at the rate of 9% per annum on the dues of arrears of family pension and other death-cum-retiral benefits of her late husband from the date of due till the date of realisation.