(1999) 10 PAT CK 0095

In the Patna High Court

Case No : C.W.J.C. No. 11745 of 1998

Kalawati Kuer APPELLANT

Vs

The Bihar State Electricity Board and others RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Citation : (2000) 1 PLJR 115

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Judgement

R.M. Prasad, J.—Heard learned counsel for the parties. It appears that pursuant to the order dated 22.9.1999, the payments of the admitted dues have been made to the petitioner.

2. However, learned counsel for the petitioner submits that nothing has been stated in the counter affidavit filed on behalf of the Board or in the order passed by the Chairman in regard to the claim of the petitioner for payment of salary for the period of long absence of her deceased husband since 1973 to 21.9.1980. He submits that this Court in the order dated 1.9.1999 has observed to consider the said question and if any leave was due to the deceased employee, the Board may consider to adjust it and pay the salary for the said period after disposing of the claim of the petitioner. But nothing has been stated on behalf of the Board in that regard.

3. Having regard to the said facts this Court directs the respondents to examine the said grievance of the petitioner and dispose it of by a reasoned order. They are also directed to issue salary which is found to be admissible for the aforementioned period within four weeks of the receipt/production of a copy of this order.

4. As regard the claim of the petitioner for grant of family pension, respondents no. 1 and 2 in their counter affidavit have stated that the same is not payable as the scheme of pension was made applicable for the workmen of the Board with

effect from 8.12.1987. This fact is not disputed by the learned counsel for the petitioner. However, it is submitted that fixation of date for applicability of the scheme for payment of family pension is contrary to the principle laid down by the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), . In support of the said contention, he referred to paragraph 42 of the said decision of the Supreme Court.

5. This Court fails to appreciate as to how the principle laid down in D.S. Nakara''s case is applicable to the facts of the present case. In the said case, the question was as to whether the date of retirement is the relevant consideration for eligibility when a revised formula for computation of pension is introduced and is made effective from a specific date. It was not the case where the scheme for grant of pension itself was introduced on a particular date as is the fact in the present case. When the scheme of family pension itself was introduced from 8.12.1987, the question of grant of said benefit prior thereto does not arise.

6. From the counter affidavit it appears that before the introduction of the said scheme of family pension on 8.12.1987, there was scheme for grant of contributory provident fund, which was given up and the provision regarding grant of family pension was introduced from 8.12.1987.

7. The Supreme Court in the case of State of W.B. vs. Ratan Behari Dey, reported in 1994(1) PLJR (S.C.) 33 held that the power of the State to specify a date with effect from which the Regulation framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory. The Supreme Court under more or less similar circumstances in the said case found that "we cannot say that the Government acted unreasonably in specifying the said date". In the said decision the Supreme Court placed reliance on a decision in the case of Krishena Kumar and Others Vs. Union of India and others, in which the principle enunciated in Nakara''s case has been duly explained by a Co-ordinate Bench. According to the Supreme Court, Nakara was a case where an artificial date was specified classifying the retirees, governed by the same Rules and similarly situated into two different classes, depriving one such class of the benefit of liberalised Pension Rules. It was found in that case that the specification of the date (from which the liberalised Rules were come into force) was arbitrary.

8. In the present case, the family of the employee dying before the introduction of the scheme relating to family pension was governed by different sets of rules under which they were entitled for the benefit of contributory provident fund whereas the families of the employees died on 8.12.1987 have been granted the benefit of the scheme of family pension by replacing the benefit of contributory provident fund.

9. Learned counsel for the Board has placed reliance on the order of this Court dated 15.10.98 passed in C.W.J.C. No. 2231 of 1993 in which a learned single

Judge of this Court was considering the same question and held that "so far as the pension is concerned, he is not entitled to pension in view of the fact that the scheme for grant of pension was introduced in the year 1987 whereas the petitioner had retired in the year 1979. The submission is well founded."

10. Accordingly, this Court does not find any merit in regard to the claim of the petitioner for grant of family pension. The writ application is, accordingly, disposed of.