
(2008) 04 RAJ CK 0119
In the Rajasthan High Court

Kanu (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Citation : (2008) 4 RLW 2945

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—The present petitioner is widow of late Shri Narain Ram, who was work charged employee of Forest Department. This writ petition has been filed by Smt. Kanu Devi for claiming family pension from the date of death of her husband with interest @ 15% p.a. so also for compassionate appointment.

2. According to the facts narrated in the writ petition, the husband of petitioner late Shri Narain Ram was appointed as Beldar/ Cooli w.e.f. 16.3.1981. He was allowed to work for about ten years and thereafter seniority list was published, which is placed on record as Annex.2, whereby objections were invited for assigning proper seniority for balder. In the said list name of late Narain Ram was appearing at serial no. 16. Therefore, according to the Work Charged Rules, 1964, he was entitled to be given permanent status and his services were required to be regularised but unfortunately the services of Late Shri Narain Ram were not regularised and ultimately he died while in service on 28.12.1991. Thereafter, petitioner being widow of Late Narain Ram repeatedly filed representation one after another and some representations were also filed through Union for pensionary benefits and providing appointment on compassionate ground.

3. When nothing turned out positive then petitioner filed the present writ petition in 2003 for the aforesaid reliefs. The contention of learned Counsel for the petitioner is that under Rajasthan Work Charged Rules, 1964 the husband of petitioner was very much entitled for grant of permanent status after completion of ten years of service, so also he was declared semi permanent in accordance

with Rule 3(3) of the Rules of 1964 but due to inaction on the part of respondents petitioner's husband was not regularised though seniority was assigned by the respondents in the cadre of casual labour. Learned counsel for the petitioner argued that prior to 18.1.1989 Work Charged Rules were not applicable upon the employees of Forest Department but by notification dated 18.1.1989 Rules of 1964 were made applicable upon the employees of Forest Department also. It is contended by the learned Counsel for the petitioner that prior to issuance of notification dated 18.1.1989 in case of *Bhartiya Van Vibhag Karamchari Sangh v. State of Rajasthan* (D.B. Civil Writ Petition No. 1873/86) and other connected matters, the Division Bench of this Court vide judgment dated 22.8.1988 directed that the respondent Forest Department shall examine the cases of large number of employees working in the Forest Department and regularise their services.

(4). Learned counsel for the petitioner also invited the attention of the Court towards the judgment of learned Single Judge of this Court passed in case of *Norti Devi v. State of Rajasthan and Anr.* reported in 1992 (1) W.L.C.(Raj.) 89, wherein, family pension was granted to the petitioner on the ground that petitioner's husband had completed ten years of service in 1973 in work charged establishment and arrears were ordered to be paid within two months.

5. Similarly, in case of *Gulab Bai v. The Secretary, Govt, of Raj. Department of Irrigation* reported in 2004 (3) CDR 2367 (Raj.), learned Single Judge of this Court has held that the work charge employee who had completed ten years of service is entitled for permanent status so also the wife of deceased employee of work charge establishment entitled for family pension.

6. Another judgment relied upon by learned Counsel for the petitioner is *Kiran Devi (Smt.) Vs. State of Raj. and Others*, in which learned Single Judge of this Court held the petitioner entitled for family pension as petitioner's husband had put in more than 13 years of service.

7. While citing these cases, learned Counsel for the petitioner submitted that in this case also the petitioner's husband worked on the post of Beldar/Cooli which is evident from final seniority list and completed more than ten years of service till he died on 28.12.1991, meaning thereby, after the death of petitioner's husband Narain Ram, petitioner is entitled for family pension.

8. Learned counsel for the petitioner vehemently argued that in case of *Sujan Singh v. State of Raj. and Ors.* Reported in WLR 1991 (S) Raj. 340, this Court adjudicated the controversy whether after declaring any work charge employee as permanent he is entitled for benefits under the Rajasthan Service Rules or not. Learned Single Judge after considering Work Charge Rules and provisions of RSR, 1951 came to the conclusion that after completion of ten years of service by any work charge employee irrespective of the fact that he has been regularised or declared permanent, he is entitled for benefits under the RSR. Therefore, as per counsel for the petitioner denial of family pension to the

petitioner is totally illegal & arbitrary action of the respondents.

9. Per contra, Learned Government Counsel vehemently argued that petitioner is not entitled for family pension and for appointment on compassionate ground because husband of petitioner Late Narain Ram was working as daily rated employee @ Rs.22/- and though he had completed ten years of service but he was not declared permanent by the Department, therefore, widow of Late Narain Ram is not entitled to get family pension because late Narain Ram was not permanent employee of the Forest Department.

10. Learned counsel for the respondent State further argued that petitioner's claim is highly belated because petitioner is claiming family pension w.e.f. 28.12.1991 the date on which her husband died and this writ petition has been filed in the year 2003, therefore, at this belated stage she is not entitled to get any benefit of family pension. so also at this belated stage relief of compassionate appointment cannot be given.

11. I have heard learned Counsel for the parties and perused the entire pleadings of the case. It is an admitted case that petitioner's husband was initially appointed on 16.3.1981 and he died on 28.12.1991, meaning thereby, he had completed ten years of service, therefore, as per judgment of this Court in case of Sujjan Singh (supra), the husband of petitioner was very much entitled for grant of permanent status as per the Work Charged Rules, 1964 which were made applicable in Forest Department by way of notification dated 18.1.1989, but this benefit was not extended to him, therefore, in absence of order of permanency, respondents are raising void that petitioner is not entitled for family pension because her husband was daily rated employee and was not declared permanent. In my opinion, the stand taken by the Government Counsel is totally unwarranted. The respondent Department was under obligation to declare petitioner's husband as permanent employee even after his death with effect from the date of completion of ten years which they do so in number of cases.

12. In these circumstances, I am in agreement with the learned Counsel for the petitioner that she is entitled for family pension because her husband Late Narain Ram completed ten years of qualifying service for the purpose of getting family pension.

In my considered opinion, the case of present petitioner is covered by the decision rendered by this Court in Norti Devi's case (supra) in which learned Single Judge of this Court while considering similar set of facts passed the order of grant of family pension in following terms:

In these circumstances, it is directed that the respondent shall start paying the family pension to the petitioner forthwith and the arrears shall be paid to the petitioner within a period of two months from the date the certified copy of the order is served upon the respondents after deducting the Government deduction from the amount of provident fund paid to the petitioner. Since arrears are to be paid to the petitioner and no interest is being awarded thereon in favour of the

petitioner, I deem it proper not to give any direction with regard to charging any interest on the amount of the contribution made by the Government in the provident fund amount paid to the petitioner's husband.

13. Similarly, in case of Smt. Gulab Bai (supra) also the learned Single Judge of this Court has held that work charge employee is entitled to permanent status after completion of ten years of service and while holding so allowed the family pension to the widow of the deceased employee. The relevant paras 6 and 9 of the order passed by learned Single Judge read as under:

6- ;g vk"p;Z dk fo"k; gS fd [kksVwyky] tks fd odZpktZ ,EiykbZ Fkk] dks 10 o"kZ dh lsok iw.kZ djus ds mijkUr ijekusaV LVsVI nsuk pkfg, Fkk] fdUrQ vizkFkhZx.k us [kksVwyky ds vf/kdkjks Ikj dksbZ /;ku ugh fn;k bls ds mijkUr [kksVwyky dh e`R;q gks x;h A izkfFkZuh ds ikfjokfjd isa"ku ds izdj.k flapkbZ dks izsf"kr dj fn;k x;k vkSj nks foHkkxks ds ijLij fooknks esa izkfFkZuh dk izdj.k my> x;k A isa"ku deZpkjh dk vf/kdkj gksrk gS] fdUrQ vizkFkhZx.k us isa"ku dks vf/kdkj u le>dj izkfFkZuh ds lkFk bl rjg dk O;ogkj fd;k gS tSlS izkfFkZuh viuk vf/kdkj ugh oju~ Hkh[k ekax jgh gks A fjV ;kfpdk ds lkFk la;ksftr i= fnukad 30-9-1985 izn"KZ&2 ds voyksdu ls Li"V gS fd vf/k"kk"kh vfHk;Urk QhYM e"khujh [k.M] izFke] lh,-Mh-dksVk dks izkfFkZuh dks ikfjokfjd isa"ku fn;s tkus ds lEcU/k esa i= fy[kk Fkk] fdUrQ ml ij dksbZ dk;Zokgh ugha dh xbZ A

9- ifj.kker% ;g fjV ;kfpdk Lohdkj dh tkrh gS A vizkFkhZx.k dks funsZ"k fn;k tkrk gS fd os izkfFkZuh dh fnukad 11-10-1983 ls ikfjokfjd isa"ku fu;ekuqlkj vkadfyr djds ,fj;j dk Hkqxrku bl vkns"k dh izekf.kr izfrfyfi izkIr gksus ls rhu ekg ds Hkhrj dj nsxs rFkk izfrekg mls ikfjokfjd isa"ku vnk djrs jgsxs A izkfFkZuh dks lh-ih-,Q-dh jkf"K dk Hkqxrku fd;k x;k gS] mls mldh isa"ku dh jkf"K esa ls lek;ksftr fd;k tk ldsxk A izkfFkZuh ml isa"ku dh ns; frfFk ls okLrfod Hkqxrku frfFk rd mls "ks"k jkf"K ij 12 izfr"kr okf"KZd dh nj ls C;kt o fjV ;kfpdk [kpkZ :i;s 3000@& vizkFkhZx.k ls izkIr djus dk vf/kdkfj.k gksxh A

14. It is obvious from the facts narrated before this Court that prior to 1989 the services of Work Charged employees of Forest Department were covered under the standing orders issued by the Government. The Division Bench of this Court in *Bhartiya Van Vighag Karamchari Sangh v. State of Rajasthan and Ors.* (D.B. Civil Writ Petition No. 1873/1986) and other connected matters decided on 22.8.1989 held that prior to 1989 the services of work charge employees who were working in Forest Department were required to be regularised. The relevant para of the judgment of Division Bench is as follows:

Therefore, we allow the writ petitions and direct the respondents to examine the cases of large number of employees working in the Forest Department and regularise their services in terms of the certified standing orders produced on record as Ex.R.5. It should be done within a period of six months from today.

The parties are left to bear their own costs.

16. In view of above discussion, petitioner is entitled for family pension as per

Rules.

17. So far as prayer for providing compassionate appointment is concerned, in my opinion, after lapse of considerable time, the purpose of providing compassionate appointment loses its effect because as per the verdict of Hon'ble Apex Court the purpose of providing compassionate appointment is to give immediate relief to the family of deceased employee. In the present case after lapse of about 13 years petitioner is claiming direction for providing compassionate appointment which is not permissible under the law, therefore, prayer for compassionate appointment is hereby rejected, but upon facts and circumstances of the case, so also considering the various judgments of this Court, I am of the opinion that right of family pension cannot be denied on the ground of delay because claim of pension is recurring cause of action, therefore, petitioner is entitled for family pension w.e.f the date when her husband died.

17. In the result, this writ petition is partly allowed in following terms:

(i) respondents are directed to treat the petitioner's husband as permanent because he had completed ten years of service before death, which is a condition precedent for declaring the work charge employee as permanent.

(ii) Respondents are directed to grant family pension to the petitioner for the service rendered by her husband in Forest Department w.e.f. 28.12.1991 within a period of three months from the date of receipt of certified copy of this order.

(iii) Respondents are directed to pay interest @ 6% on the arrears of family pension because respondents have failed to grant family pension to the petitioner though petitioner's husband Late Shri Narain Ram completed ten years of service and under the Rules he was entitled to be declared permanent but he was not declared permanent due to inaction on the part of respondents.

(iv) No order as to costs.