

(2011) 12 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4954 of 2008

Kiran Rathore and Another	Vs	APPELLANT
Joint Project Coordinator and Another		RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Citation : (2011) 12 RAJ CK 0007

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Girish Joshi, for the Appellant; Durga Ram, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Dr. Justice Vineet Kothari

1. The petitioner No.1 claiming to be adopted daughter of deceased workman Narpat Singh, aged about 26 years and Smt. Antar Kanwar, mother of the deceased workman Narpat Singh, aged 65 years, have filed the present writ petition in this Court on 21.7.2008 seeking implementation and payment of benefits in accordance with awards of the Industrial Tribunal passed in favour of workman Narpat Singh vide Annex.1 dtd.10.5.1999, Annex.2 dtd.16.11.2000 and Annex.3 dtd.6.12.2003.

2. While in the first award Annex.1 dtd.10.5.1999, the Industrial Tribunal, Jodhpur held the petitioner workman Narpat Singh entitled to regular pay scale of Rs.750-940 for a period from 15.8.1996 to 24.12.1997, in the second award dtd.16.11.2002 finding his alleged termination w.e.f. 24.12.1997 as illegal, the Industrial Tribunal awarded reinstatement in service with 50% back wages. In the proceedings u/s 33C(2) of the Act, by 3rd award Annex.3 dtd.6.12.2003, the Industrial Tribunal directed the respondent - Department to make payment of Rs.42,744/- with interest @9% per annum from 28.1.2002 till the date of payment. The workman Narpat Singh unfortunately expired on 25.1.2004 soon after the 3rd award u/s 33C(2) of the Act was passed in his favour on 6.12.2003

after a few days. The learned counsel for the petitioners Mr. Girish Joshi therefore, prayed that besides benefit in pursuance of Annex.3 award dtd.6.12.2003 amounting to Rs.42,744/-, the benefits flowing from first two awards also deserves to be paid to the petitioners. Therefore, the present two petitioners filed the present writ petition for claiming benefits flowing from all these three awards.

3. The respondents have filed reply to the writ petition and inter alia have disputed the claim of the compassionate appointment claimed by the petitioner No.1 Kiran Rathore vide application Annex.6 dtd.26.2.2004 disputing even the adoption under the purported adoption-deed Annex.R/2 dtd.20.12.2003 just about one month prior to his death on 25.1.2004. The respondents have also submitted that the petitioner No.1 Smt. Kiran Rathore since got married on 15.4.2005 and in the copy of marriage invitation card produced as Annex.R/1, she has been shown to be daughter of one Bhanwar Singh and not deceased workman Narpat Singh. The learned counsel for the respondents therefore, submitted that as far as case of compassionate appointment to be given to the petitioner No.1 is concerned, the said claim cannot be considered in accordance with the relevant Rules of 1996. He, however, submitted that the petitioner No.2, mother of the deceased workman may be entitled to be benefits to the extent determined and directed to be paid u/s 33C (2) of the Act vide Annex.3 award dtd.6.12.2003 amounting to Rs.42,744/-.

4. The learned counsel for the petitioners Mr. Girish Joshi submitted that the petitioners also deserve to be paid consequential benefits flowing from award Annex.1 and 2 and according semipermanent/ permanent status was required to be given to the aforesaid workman, since he had served for the long period from the year 1988 to 1997. He relied upon the decision of coordinate Bench of this Court in the case of Smt. Kanu V/s State of Rajasthan and Ors. reported in 2008 (4) WLC (Raj.) 248 in which the coordinate Bench of this Court held as under :

15. It is obvious from the facts narrated before this Court that prior to 1989 the services of Work Charges employees of Forest Department were covered under the standing orders issued by the Government. The Division Bench of this Court in Bhartiya Van Vibhag Karamchari Sangh V/s State of Rajasthan and Others (D.B. Civil Writ Petition No.1873/1986) and other connected matters decided on 22.08.1989, held that prior to 1989 the services of work charge employees who were working in Forest Department were required to be regularized. The relevant part of the judgment of Division Bench is as follows:

Therefore, we allow the writ petitions and direct the respondents to examine the case 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 the 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.

18. 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 the respondents. (iv) No order as to costs.

4. Having heard the learned counsels, this Court is of the opinion that even though it would not be appropriate to direct the respondent - State to consider the case for compassionate appointment of the petitioner No.1 Kiran Rathore who claims to be the adopted daughter of deceased workman Narpat Singh at this stage and therefore, this prayer of the petitioner No.1 deserves to be turned down and to this extent, the writ petition is liable to be dismissed.

5. However, as far as consequential benefits which flow from awards u/s 33C(2) of the Act and also to the extent of grant of semi-permanent status/permanent status to which the respondent - workman Narpat Singh would have been entitled during his life time is concerned, such benefits deserve to be computed and granted to the petitioner No.2, the mother of the deceased workman Narpat Singh, Smt. Antar Kanwar, since these monetary benefits flowing from such consequential relief is property of deceased workman on which the mother shall have the right, in the absence of any other claimants like wife and children of deceased workman.

6. Accordingly this writ petition is allowed and the respondents are directed to make payment of awarded sum under Award Annex.3. Dtd.6.12.2003 amounting to Rs.42,744/- with interest @9% per annum from 28.1.2002 till the date of payment and also to accord semi-permanent/ permanent status to the workman as per Standing Orders applicable to the workman Narpat Singh during his life time and the monetary benefits flowing from such grant of such status, also shall be paid to the petitioner No.2 within a period of six months from today. No order as to costs.