
(2020) 08 JH CK 0236
In the Jharkhand High Court
Case No : Writ Petition(S) No. 7555 Of 2017

Kisni Devi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 49

Citation : (2020) 08 JH CK 0236

Hon'ble Judges : Aparesh Kumar Singh, J;Anubha Rawat Choudhary, J

Bench : Division Bench

Advocate : Tarun Kumar

Final Decision : Dismissed

Judgement

1. Mr. Tarun Kumar, learned counsel appears for the petitioner and Mr. Neeraj Kumar, A.C to learned ASGI are present through Video Conferencing.

2. Applicant is the writ petitioner and widow of the employee Late Kauleshwar Prasad Vishwakarma. She is aggrieved by the orders dated 21.03.2016 and 24.10.2016 passed in O.A./051/00182/2015 and MA No. 051/00039/2016. The impugned orders read as under:

"No one appears on behalf of the applicant even though, written statement has been filed. The applicant seems not interested in pursuing the instant litigation. On going through the prayer also, it is noted that the applicant has claimed arrear of pension from 2001 and arrear of family pension from 2010. Since the O.A was filed only on 20th August 2015, the claim is hopelessly barred by limitation. Hence, the O.A is dismissed."

"Heard on MA wherein the applicant has prayed for restoration of the O.A. On perusal of the final order passed by this Tribunal on 21.3.2016 in OA 182 of 2015, it is seen that it was passed on merit and such MA is not maintainable. The applicant is advised to challenge the same before the Hon'ble High Court by filing writ petition. In the result, the MA is dismissed."

3. Learned counsel for the petitioner on the basis of pleadings on record submits that the employee was entitled to pensionary benefits since he worked as an Extra Departmental Agent from 28th February, 1959 and thereafter was promoted as Mail Peon on 25th February, 1992 and retired on 31.10.2001. The superannuation age of Extra Departmental Agent is 65 years and is not pensionable, whereas on superannuation from the post of Mail Peon at the age of 60 years, service is pensionable, provided the person completes a minimum qualifying period of 10 years of service on the post of Mail Peon before retirement. The employee had completed 9 years and 9 months (approximately) on the post of Mail Peon when he retired. Since pensionary dues were not being paid, applicant-widow approached the learned CAT for family pension and arrears of pension, but the same has been dismissed by the impugned order. The applicant is a poor and rustic villager suffering from huge financial hardship.

4. Learned counsel for the petitioner relies upon a decision of the Patna High Court in the case of Rajdeo Thakur-Vs. Union of India & others in CWJC No. 3893 of 2009 judgment dated 10th August, 2009. He submits that in that case also, the employee had been denied pension despite being in Group-'D' post for 9 years and short of few months from completing the qualifying period of 10 years of service for being eligible for pension. He submits that learned Single Judge held that delay in holding the Departmental Promotion Committee Meeting for promotion to Group-'D' post cannot result in injustice to him in matters of pensionary benefits. The respondent were directed to treat the petitioner as having completed minimum qualifying period of service of 10 years and grant him pension. Therefore, the present petitioner's husband should also be given parity in treatment.

5. Learned counsel for the respondent has straightaway opposed the prayer relying upon the decision of this Court in the case of Union of India & Anr. Vs. Bhim Ram dated 18th July 2018 and a recent decision of the Apex Court in the case of Union of India & Ors. Vs. Gandiba Behera rendered in Civil Appeal No.8497 of 2019 dated 8th November 2019. It is submitted that the case of Bhim Ram, is more or less on similar facts. This Court refused to grant any relief since he had not completed the minimum qualifying period of 10 years of service for being eligible for pension. Learned counsel for the Respondent further submits that in the case of Gandiba Behera (Supra), the Apex Court has relied upon the decision of Union of India and others Vrs. The Registrar & Anr passed in Civil Appeals No. 13675-13676/2015 dated 24th November 2015 and settled the legal position. The Apex Court has also mentioned the case of several such employees who were short of 10 years of qualifying service in Group-'D' post and held that there is no power vested in the Court to relax those statutory conditions. Learned counsel submits that the case of the petitioner herein shall be squarely governed by the decision rendered in the case of Bhim Ram (Supra) and Gandiba Behera (Supra). As such, no relief can be granted. He submits that the Original Application also remained unrepresented and was dismissed.

6. We have considered the submissions of learned counsel for the parties in the light of material facts pleaded and taken note above and also gone through the decisions cited by rival parties on this issue. The claim of the writ petitioner was duly considered by the Superintendent of Post Office, Giridih Division and rejected vide order dated 16.10.2014 (Annexure-4) relying upon Rule 49 of CCS Rule, 1972, which provides for pension on completion of minimum 10 years of qualifying service without any exception. The order of rejection is well reasoned based upon the statutory rules and the issue now stands settled by the Apex Court vide judgment passed in the case of Gandiba Behera (Supra). The case of the writ petitioner falls squarely within the ratio rendered by the Hon'ble Supreme Court in the case of Gandiba Behera (Supra) and also decision of this Court in the case of Bhim Ram (Supra). Special Leave Petition preferred against the judgement in the case of Bhim Ram was also dismissed by the Hon'ble Supreme Court. Petitioner's late husband had not completed minimum period of 10 years of qualifying service in Group-D post for being eligible for pension.

7. In such circumstances, no legal right to claim family pension or arrears of pension can be said to have accrued in favour of the petitioner widow. As such, writ petition being devoid of merit, is dismissed.