
(2011) 09 JH CK 0122
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1185 of 2007

Manoj Oraon

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Citation : (2011) 4 JCR 358

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—Learned counsel appearing for the petitioner submit that the petitioner's father, Late Lurku Jones Toppo @ Late Lurku Oraon was working as "Kamdar" in Plant Conservation Centre, Department of Agriculture, Ranchi. While he was under the employment he died in harness on 30.08.1984. At that time, the petitioner was the minor. Even then the mother after taking another marriage left home leaving the petitioner at lurch. When the petitioner got major, he filed this writ application for a direction to the authority to make payment of the Family Pension which was due to be paid after the death of his father, under the scheme known as Family Pension Scheme, 1964, whereby the petitioner would be entitled to have Family Pension till he attained the age of 21 years as the petitioner's father had worked in the Department for more than 2 years, which under the scheme is more than qualifying period of one year and hence, the authority be directed to make payment of the arrears of the Family Pension to the petitioner.

2. A counter-affidavit has been filed, wherein, statement has been made that the petitioner would not be entitled to have Family Pension as the petitioner's father had not completed the qualifying period of service of ten years for earning Pension and under the situation the petitioner is not entitled to get relief as claimed.

3. It has also been stated in the counter-affidavit that the petitioner's father was in temporary service and that he had not completed even two years of service

and that even during those two years, they were intermittent breaks in service due to absence of the petitioner's father from the duty.

4. Having heard learned counsel appearing for the parties, it does appear that on one hand the stand of the petitioner is that the petitioner being the son of the deceased employee, would be entitled to family pension in view of the provision, as enshrined in Family Pension Scheme, 1964 whereas the stand of the State is that since the petitioner's father had not completed period of qualifying service for having pension, the petitioner being the son of the deceased employee would not be entitled to family pension.

5. In view of the conflicting stand, one needs to take notice of the scheme known as Family Pension Scheme, 1964, which was formulated at the instance of the Govt. of India for providing special securities to their employees. Clause 7 of the Family Pension Scheme, 1964 reads as follows:--

1. The family pension will be admissible in case of death while in service, or, after retirement on or after the 1st April, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government Servant should have completed a minimum period of one year of service.

2. Family for purpose of the Scheme will include the following relatives of the officer:--

- (a) wife, in the case of a male officer;
- (b) husband, in the case of a female officer,
- (c) minor sons; and

6. From its perusal, it does appear that even in a case where a Government servant has completed a minimum period of one year of service, the relatives mentioned above including minor son would be entitled to have family pension, though there are certain restrictions which have been put in, in Clause 14, which reads as follows:--

This Scheme is not applicable to:--

- (a) persons who retired before the 1st April, 1964, but may be, re-employed on that date or thereafter,
- (b) pension paid from contingencies;
- (c) Work-charged staff; and
- (d) Contract Officers.

7. Here in the instant case, as per the statement made in the writ application and also in the counter-affidavit, the petitioner's father had put in service for more than one year. However, it has been stated in the counter-affidavit that he

had been employed temporarily. Even if the petitioner's father had been employed temporarily, the petitioner would not be debarred from having benefit under the said Scheme, as restriction which has been put in for disentitling from having benefit is not applicable in the case of the petitioner as it is none of the case that the petitioner's father was either Work charged employee, casual labour, contract labour or that the salary was paid from the contingencies. On the contrary I do find that the statement is there in the counter-affidavit that the petitioner's father was drawing salary meaning thereby that he was in regular pay scale. Therefore, even if the petitioner's father was a temporary employee, the petitioner, being the son of the deceased employee, would be getting benefit of the scheme. Accordingly, I do find that the petitioner would be entitled to have family pension in terms of the Family Pension Scheme, 1964.

8. Accordingly, this writ application is disposed of directing the respondent No.3- District Agriculture Officer, Ranchi to consider the case relating to payment of the arrears of family pension to the petitioner in the light of this order and also in the light of the scheme known as Family Pension Scheme, 1964 within a period of one month from the date of receipt/production of a copy of this order. Application disposed of.