(2005) 10 PAT CK 0044

In the Patna High Court

Case No : LPA No. 1003 of 2003

Most. Roopkali Kuer — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 25-10-2005

Acts Referred:

Citation : (2006) 1 PLJR 323

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : A.J. Bahadur, for the Appellant; Ashok Kr. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and order by which a learned Single Judge of this court dismissed the writ petition filed by the appellant-petitioner and declined to accept her claim for grant of family pension for the death or her husband who, according to the respondent State, was working at the time of his death on 7.3.1973 in the work-charged establishment. The facts of the case are brief and simple. Ram Ayodhya Tiwari, the deceased husband of the appellant was engaged on 6.2.1967 to work as Helper-cum-Jeep Driver in the work-charged establishment in Ganga Project of the Irrigation Department. He was engaged by the Executive Engineeer, Main Western Canal Division, Balmikinagar. From the Main Western Canal Division, Balmikinagar, he was transferred to Canal Main Division, Raxaul which was later renamed as Ghora Sahan Canal Division, Raxaul. Later, by office order issued by the Executive Engineer under his memo No. 3585, dated 8.12.1970 he was ''promoted'' with effect from 1.12.1970 to the post of Tractor Driver in the work-charged establishment in the scale of Rs. 100-212-230/-. He was working in that capacity when he died in a road mishap on 7.3.1973. After his death the appellant, his widowed wife gave birth to a male child.

2. After more than twenty years of his death, the appellant came to this court

seeking a direction to the concerned authorities for payment of family pension for herself and her son. Though the claim was raised before the court for the first time after an extra-ordinary delay of more than twenty years, it was not rejected on that ground and the writ court proceeded to consider her claim on merits.

3. On behalf of the State the appellant''s claim was resisted on the ground that pension/family pension was not available to employees in the work-charged establishment and since Ram Ayodhya Tiwari, at the time of his death, worked in the work-charged establishment, his widow, the present appellant was not entitled to any family pension.

4. The writ court accepted the position that Ram Ayodhya Tiwari was, at the time of his death, in the work-charged establishment and he/his heirs was/were, therefore, not entitled to any pension/family pension and accordingly, dismissed the writ petition filed on behalf of the appellant-writ petitioner.

5. In appeal Mr. Ashok Jung Bahadur, learned counsel appearing on behalf of the appellant did not dispute the position that under the relevant provision of the Bihar Pension Rules, pension/family pension was not available to employees in the work-charged establishment. He, however, strongly submitted that Ram Ayodhya Tiwari, the husband of the appellant was taken in the regular establishment of the State Govt. and at the time of his death on 7.3.1973 he was no longer a work-charged employee.

6. In support of the submission he mainly relied upon the fact that Ram Ayodhya Tiwari the husband of the appellant was given promotion coupled with a time scale of pay. He also relied upon certain provisions of the Bihar Financial Rules, Bihar Public Works Department Code and Bihar Pension Rules and two earlier decisions of the court. Learned counsel submitted that in the work-charged establishment there was no provision for promotion or a time scale of pay and the mere fact that the appellant''s husband was granted promotion coupled with the time scale of pay would indicate that he was taken in the regular establishment of the Government. He invited the court''s attention to Rules 281 and 283 of the Bihar Financial Rules. Rule 281 describes work-charged establishment and Rule 283 lays down the conditions of employment. It provides that each appointment under work-charged establishment would require a previous sanction of the Divisional Officer, the Superintending Engineer or the State Govt. in which, inter alia, the consolidated rate of pay should be specified. From Rule 283 learned counsel sought to infer that the employees under the work-charged establishment should only be paid a consolidated sum as their wages and submitted that the grant of time scale of pay to Ram Ayodhya Tiwari would, therefore, suggest that he was taken in the regular establishment of the Government.

7. I am unable to accept the submission. Merely the grant of time scale of pay can hardly be said to indicate that he was taken in the regular establishment of the Government. Though Rule 283 of the Financial Rules indeed speaks of ''the

consolidated rate of pay'' for the work-charged employee, it does not exclude or bar the grant of time scale of pay to the employees under the work-charged establishment. Moreover, it is common that the Government had allowed time scales of pay for the employees of the work-charged establishment long ago as per the recommendations of one of the pay revision committees. Further, the office order by which the concerned employee was granted ''promotion'' expressly made it clear that the post of Tractor Driver was also in the work-charged establishment. As a matter of fact it was a misnomer to call it promotion and the word ''Promotion'' was apparently used loosely in the order. It was simply that while the concerned employee worked from before as Helper-cum-Jeep Driver, a vacancy arose for a tractor driver and he was engaged in that capacity. The progress in service as promotion has a legal connotation and a promotion would require consideration of the claims of all other candidates in the cadre eligible for promotion. There is nothing to indicate that any exercise of that kind was undertaken before he was granted ''promotion'' as tractor driver.

8. Learned counsel also relied upon para 6 of Finance Department resolution No. PC-1-9-16/87-1853/F, dated 19.4.1990 and F.D. memo No. 1344, dated 4.2.1949 (page 137 of Vol. I (Annexure-A) of P.W.D. Code that provided as follows:

"Subject--revised conditions of service of work-charged establishment:

"The existing distinction between the work-charged establishment, temporary and permanent establishment and daily labour as given in the PWD Code and PWD Accounts Code will be maintained but the conditions of service of work-charge establishment will henceforth be identical with those of temporary Government servants...."

9. In my view, the provisions relied upon by learned counsel are of no help to the appellant as they never meant to obliterate the distinction and bridge the gap between the regular establishment and the work-charged establishment of the Government. The distinction between the two establishments of the Government was explained by the Supreme Court in State of Rajasthan vs. Kunji Raman, AIR 1977 SC 693. The decision in Kunji Raman also noticed an earlier decision of the apex court in Jaswant Singh and Others Vs. Union of India (UOI) and Others, . Relying upon those two decisions a learned Single Judge of this court in Koshi Project Workers'' Association and Others Vs. The State of Bihar and Others, examined the effect of regularization of service of work-charged employees in the Kosi Project and Gandak Project (to which the appellant''s husband belonged). In paras 5, 6 and 7 of the decision the learned Single Judge observed as follows:

"5. The Government order regularising the services of the employees of the Koshi Project and Gandak Project as contained in memo No. 1661 dated 20.8.81 and memo No. 445 dated 22.4.82, respectively, are on the records of the case as Annexures 8 and 9 to the writ petition. It appears from perusal of the said two documents that the State Government had taken a policy decision, vide resolution No. 5712 dated 25.5.78 of the Irrigation (Water Resources) Department, that such employees of the work-charged establishment, who had completed five years or more service upto 1.4.77 and were continuing on the rolls be regularised. The aforesaid decision was given effect to with respect to employees working in work charged establishment of the Koshi Project and Gandak Project by the aforesaid Government order dated 20.8.81 & 22.4.82, respectively.

"6. A dispute has been raised as to whether the aforesaid Government decision as contained in resolution No. 5712 dated 25.5.78 and the consequential Government order in Annexures 8 and 9 are to be construed as making the concerned employees permanent Government servants. In my opinion, having regard to the clear and unambiguous language of the said decision/orders, there is little scope for any controversy that the intention of the Government was merely to give a status of permanence to the employees who had already put in at least five years of service upto 1.4.74 and were continuing on the rolls but in the respective work-charged establishment itself. By the said decision/order the employees were not brought in the regular cadre of the Department. Their separate identity as distinguished from regular Government employees was maintained, which is evident, inter alia, from the fact that even after such regularisation they were to get their salary from the same sub-head meant for the respect work-charged establishment. In my opinion, the term regularization of service in the context has to be understood as different from making the employees regular and permanent Government servants. P.W.D. Code contemplates engagement on daily wages basis or casual basis or seasonal basis in the work-charged establishments. Services of only some of them are required round the year such as those connected with maintenance work. Such persons continued on the rolls almost uninterruptedly from month to month and year to year. With that aspect of the matter in mind it was decided that those who had already rendered five years continuous service upto the cut-off date and were still con-tinuing should be regularised and given a permanent status in the work charged establishment so as to do away with, what may be called, precarious nature of their engagement/appointment, and also give them some respectability in employment.

"7. Once it is held that by reason of aforesaid Government decision dated 25.5.78 and orders dated 20.8.81/22.4.82 employees of the work-charged establishment even after regularisation did not become the permanent Government servants, and they were not intended to be brought in the regular cadre of the department and thus, did not become regular Government servants, it would logically follow that they cannot claim the parity of status or the same service and conditions as are applicable to the regular Government employees of the Works Department."

10. Having thus arrived at the conclusion the learned Single Judge went on to

hold that it was perfectly open to the State Govt. to have to sets of service conditions for the regular establishment and the work-charged establishment. I think that the decision in Kosi Project Workers'' Association enunciates the correct legal position.

11. Counsel for the appellant relied upon another Single Judge decision of this Court in Shambhu Sharan Singh Vs. The State of Bihar and Others, . In that decision a direction was given ''to issue sanction order with respect to the retiral benefits legally payable to the deceased who had completed six years as a work-charged employee before his death while still in service''. The decision simply proceeds on the basis that the Government had taken a decision vide resolution, dated 22.10.1984 that the work-charged employees who had completed five years continuous satisfactory service should be regularised and be allowed alt the retiral benefits, as admissible in the permanent Government service. This decision does not seem to be based on sound principles. It does not take into consideration any other statutory provisions nor does it refer to the earlier binding judgments of the Supreme Court and this Court. I am clearly of the view that the decision in Shambhu Sharan Singh (supra) does not form a good precedent to be followed. In any event the Government resolution, dated 22.10.1984 shall have no application in the case of the appellant''s husband for the simple reason that he died on 7.3.1973.

12. Mr. Bahadur lastly referred to an unreported judgment of a learned Single Judge of this court, dated 7.10.2002 in CWJC No. 8650 of 2001 (Kumud Devi vs. State of Bihar and Ors.). In that decision though the claim of the writ petitioner under somewhat similar circumstances was rejected, there is a reference to a Government circular, dated 23.10.1987 in which it was stipulated that employees in the work-charged establishment who had rendered satisfactory and continuance service for five years upto 21.10.1984 would be absorbed in the regular establishment after consultation with the Finance Department. Para 6 of the said circular provides that in future no appointment should be made on work-charged establishment. Learned counsel submitted that Ram Ayodhya Tiwari had completed five years of continuous satisfactory service in 1972 itself and hence, by the time of his death on 7.3.1973, he must be deemed to be in the regular establishment. In my view the submission is quite misconceived. In the first place the true import of regularisation in the work-charged establishment has been explained in the decision in Kosi Project Workers'' Association which is noticed above. Secondly and more importantly the circular, dated 23.10.1987 shall have no application in the case of Ram Ayodhya Tiwari who died in the year, 1973. The circular of 1987 would apply only to such workmen who were in service as on 21.10.1984 otherwise it would lead to highly anamolous consequences. Take the case of an employee who worked in the work-charged establishment till 1980 or 1981 or 1982 and then abandoned the job and left the service. If the submission advanced on behalf of the appellant is to be accepted in the case of a deceased employee, then another who abandoned and left the job may also claim pension and family pension on the same logic.

13. It may be noted here that similar circulars aimed at regularizing the services of the work-charged employees have been issued, by the Govt. from time to time. Earlier to the 1987 circular was the circular of 22.4.1982 (in the case of Gandak Project) and even prior to that there was the Government order bearing No. 13327, dated 20.6.1971. The 1971 circular provided that all employees in the work-charged establishment who on 1.4.1971 had completed more than ten years of continuous service should be taken over in the regular establishment of the concerned department. The absorption of the work-charged employees in the regular establishment in pursuance of the circular, dated 20.6.1971 gave rise to the question of payment of pension to them since eligibility to pension was ten years service in the regular establishment. In order to clarify the position another circular was issued vide F.D. memo No. 425F, dated 31.3.1976 (Annexure-C to the counter affidavit filed on behalf of the State before the writ court). By that circular it was provided that for the purpose of pension the service rendered in the work-charged establishment would also be taken into account to the extent the service in the regular establishment fell short of the eligibility period of ten years. The case of Ram Ayodhya Tiwari who died on 7.3.1973 would obviously be governed by those two Govt. orders/circulars, dated 20.6.1971 and 31.3.1976. Unfortunately he is not covered by the provisions contained therein.

14. Thus, viewed from any angle the appellant is not entitled to the reliefs prayed for on her behalf. Though we may feel that it is a hard case and we may sympathise with her, we must be on guard against laying down a bad law simply to mitigate the hardships of an individual. In the result, we find no merit in this appeal. It is accordingly dismissed.

