
(2010) 04 JH CK 0002
In the Jharkhand High Court

Mukti Basumallick

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0002

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present petition has been preferred for getting family pension because of the death of the husband of the petitioner. The husband of the petitioner expired on 16th August, 1995. The husband of the petitioner retired on 30th September, 1991 from the services of the respondents. The petitioner has neither received any pension amount nor the family pension and, therefore, the present petition has been preferred.

2. Learned Counsel for the respondents has submitted that a detailed counter-affidavit has been filed, wherein, it has been submitted that when the husband of the petitioner retired from the services of the respondents i.e. on 30th September, 1991, there was no scheme for the pension in operation. Contributory Provident Fund scheme was in existence. The amount towards contributory provident fund has also been paid to the husband of the petitioner.

3. It is further submitted by the Learned Counsel for the respondents that after a long lapse of time, General Insurance Employees Pension Scheme, 1995 was floated, wherein, it has been stated that those who have retired prior to the Year, 1995 can opt for the pension scheme, but, it was a conditional one, as per Chapter-II, Clause-3, that the retired employees have to refund the Corporation's contribution or company's contribution to the provident fund and the whole amount is to be repaid to the respondents with simple interest at rate of 6%. Thus, from the Contributory Provident Fund amount, which is already paid by the

respondents to the husband of the petitioner, the employees contribution is to be repaid so that pension amount can be paid under the General Insurance Employees Pension Scheme, 1995. This amount has not been repaid by the petitioner or by her husband to the respondents and, therefore, the husband of the petitioner is not entitled for pension. Pension Scheme, 1995 is annexed as Annexure-"A" to the counter-affidavit.

4. It is also submitted by the Learned Counsel for the respondents that Family Pension is not payable to the petitioner as the husband of the petitioner was not entitled for the pension, as per Clause 38 in Chapter-VII of the Pension Scheme, 1995 and, therefore, the petitioner is neither entitled for the Family Pension nor the husband of the petitioner is entitled for the any pension amount.

5. Having heard Learned Counsel for both the sides, I see no reason to entertain this writ petition for the following facts and reasons:

(I) The husband of the petitioner was working as Divisional Manager with the respondent-company, who reached at the age of superannuation on 30th September, 1991 with the respondent-company i.e. Respondent No. 2.

(ii) It appears that as on date of the retirement of the husband of the petitioner, no pension scheme was in force.

(iii) It further appears from the facts of the case that the Contributory Provident Fund Scheme was in force and the said amount was already paid to the husband of the petitioner, as stated in the counter-affidavit, as per Paragraphs No. 10 and 17 of the counter-affidavit, filed by the respondents.

(iv) it appears that thereafter, the petitioner expired on 16th August, 1995. General Insurance Employees Pension Scheme, 1995 was floated thereafter and the benefit was extended to those employees, who have retired before 1-11-1993. The benefit of the pension was to be extended, as per Clause-3 of Chapter-II of the Scheme, 1995. The said scheme is annexed as Annexure-"A" to the counter-affidavit. As per the aforesaid Clause-3 of the Pension Scheme, 1995, the retired employees of Respondent No. 2 was to refund amount of company's contribution to the provident fund along with simple interest at the rate of 6% per annum. This amount was admittedly not paid or refunded to the respondent No. 2. Thus, looking to Clause-3 of Chapter-II of the Scheme, 1995, the husband of the petitioner is not entitled for pension. The said scheme reads as under:

3. Application - This scheme shall apply to employees who;

1(a) were in the service of the Corporation or a Company, as the case may be, on or after the first day of January, 1986 but had retired before the first day of November, 1993: and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b), the entire amount of the Corporation's contribution or the Company's contribution to Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Corporation or a company, as the case may be; and

(d) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b), the entire amount of non-refundable withdrawal if any made from Corporation's contribution or the company's contribution to the Provident Fund account and interest accrued thereon, prior to the date of final settlement of the Provident Fund account, together with interest at the rate of twelve per cent per annum from the date of withdrawal till the date of settlement of the Provident Fund account together with a further simple interest on the said amount at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund: or...

(v) It further appears from Clause No. 38 of Chapter-VII of the Scheme, 1995 that unless a person is entitled for pension no family pension will be paid to the surviving dependents of the deceased employee. Thus, family pension is not payable to the present petitioner. If the pension is not payable, as per Clause-38 of the Scheme, 1995, family pension is not payable.

Clause-38(I) of the General Insurance Employee Pension Scheme, 1995 reads as under:

38. Family Pension: (1) Without prejudice to the provisions contained in this scheme where an employee dies:

(a) after completion of one year of continuous service; or

(b) before completion of one year of continuous service provided the deceased employee concerned immediately prior to his appointment to the service or post was examined by the medical officer approved by the Corporation or the Company and declared fit for employment in the Corporation or such Company, as the case may be; or

(c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with the Appendix-V.

(Emphasis Supplied)

(vi) In view of the aforesaid Clause widow of the petitioner is not entitled for family pension.

6. In view of the aforesaid facts and reasons and Clause-3 to be read with Clause-38 of the Pension Scheme, 1995, the petitioner is not entitled for family

pension.

7. Accordingly, there is no substance in the writ petition and the same is hereby, dismissed.