(2014) 12 JH CK 0102

In the Jharkhand High Court

Case No : W.P. (S) No. 2396 of 2010

Mumtaz Begum APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2015) 1 JLJR 503

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : H. Waris, Advocates for the Appellant

Judgement

Sujit Narayan Prasad, J.—The petitioner has challenged the order dated 1.10.2009, as contained in memo No. 3488 issued by the Senior Accounts Officer, Office of the Accountant General (A & E), Jharkhand, Ranchi, wherein and whereunder the claim of the petitioner for payment of full family pension has been rejected, with a further prayer for issuance of full family pension order in favour of, the petitioner including the arrears w.e.f. 11.7.1998. The brief fact, as has been argued on behalf of the petitioner, that the petitioner is the second wife of late Abdul Hamid Khan, who retired from service on 22.9.1974 from the post of Havildar working in the office of Senior Superintendent of Police, Ranchi. After his retirement the pension was sanctioned and paid continuously till his death i.e. till 18.6.1982. Since the deceased late Abdul Hamid Khan had two wives, as such the family pension was shared in two equal parts in the names of first wife namely Nazbun Nisa and second wife i.e. the present petitioner vide family pension payment order duly been issued from the office of the Accountant General, Bihar bearing T.S. No. 2440-F in lieu of P.P.O. No. 68755.

2. On 11.7.1998 the first wife namely Nazbun Nisa died issueless. It has been submitted that immediately after death of first wife, half share of family pension of first wife has been ceased. The second wife i.e. the present petitioner has made due application for release of full family pension in her favour, but the same has been rejected vide order dated 1.10.2009 which has been challenged

in this writ petition.

3. The petitioner has relied upon the provision made in the Family Pension Scheme for the State Government Employees, 1964 wherein at Appendix-5, Part-II there is provision as contained in Note (i) which is as follows:--

"[Note (i): Where an officer is survived by more than one widow, the pension will be paid to them in equal share. On the death of a widow her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease."

4. Relying upon the said provision, as contained in Note-(i) learned counsel for the petitioner has submitted that there is no embargo for making payment of full family pension after death of first wife. It has further been submitted that the petitioner being only surviving widow after death of first wife, is entitled to get full family pension in absence of any provision in this regard.

5. On the other hand, learned counsel for the respondents-State has submitted that in view of the provision as contained in Note (i), as indicated herein above, it has subsequently been provided that in case of death of first wife, the share of the first wife will cease.

6. Learned counsel for the respondent-Accountant General has submitted that from bare reading of the provision as contained in Note (i), the petitioner is not entitled to get full family pension because on earlier occasion the family pension was divided in two equal shares. On the death of first wife, her share has to be paid to her eligible minor child. If a widow leaves no eligible minor child, payment of pension of share of first wife will be ceased.

7. Relying upon the above provision as contained in Note (i), it has been argued by learned counsel appearing on behalf of the Accountant General that there is no infirmity in the order dated 1.10.2009 and the same has been passed taking into consideration the specific provision made in Note (i) upon which the petitioner is placing her reliance.

8. Heard the parties.

9. The petitioner is admittedly the second wife of the deceased. After death of the deceased employee, share of the family pension was divided in two equal shares in view of the provision as contained in Note (i). The present petitioner has accepted the same at the time of passing of the two family pension order in between two surviving widows of the deceased employee.

10. The first wife of the deceased employee has died and thereafter the present petitioner has made application for getting full family pension again relying upon the provision made in Note (i) of Family Pension Scheme for the State Government Employees, 1964 which was applicable to all the regular employees on pensionable establishment, temporary or permanent, who were in service on

1.4.1964 or recruited thereafter.

11. From bare perusal of the provision as contained in Note (i), it appears that in case of two surviving widows of the deceased employee, the pension will be paid to them in equal share. On the death of a widow her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will be ceased.

12. From bare reading of this provision, it appears that in the entire provision it has nowhere been mentioned that the second wife will get the rest of the share after death of first wife, rather provision has been made to give share of family pension in favour of her minor child.

13. Thus, the resolution as contained in Note (i) of the Family Pension Scheme for the State Government Employees, 1964 is very clear and specific. The second wife i.e. the present petitioner, who has taken the benefit of Note (i) earlier by getting half of the share of the pension, cannot get benefit of getting full family pension.

14. In that view of the matter, I find that the order passed by Senior Accounts Officer, Office of the Accountant General (A & E), Jharkhand dated 1.10.2009 has got no illegality since being passed by taking into consideration the provision as contained in Note (i) of the Family Pension Scheme for the State Government Employees, 1964. I find no merit in this writ petition and the same is hereby dismissed.