(2004) 01 MP CK 0010

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 3216 to 3218 of 1998

Munni Bai APPELLANT

Vs

Municipal Corporation, Jabalpur RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 47, 47(2)(a)

Citation : (2005) 1 MPLJ 164

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : S.K. Mukherjee, for the Appellant; Sanjay K. Agrawal, for the Respondent

Judgement

Arun Mishra, J.

In these writ petitions, petitioners are claiming family pension payable on account of the service rendered by their husbands, who had served in Municipal Council, Jabalpur. The service of Shri Santram Yadav, whose widow is claiming family pension in W.P. No. 3216/1998, was regularized on 1-1-1984. The service of Shri Vishnu Prasad Gond, whose widow is claiming family pension in W.P. No. 3217/1998, was regularized on 1-1-1984 and similarly in the case of Shri Bhaddi Lai, whose widow is claiming family pension in W.P. No. 3218/1998, service was regularized on 1-1-1984. An order was passed regularizing the services on 31-3-1993.

As the services of the employees were regularized, petitioners are claiming benefit of family pension in terms of Rule 47 of M.P. Civil Services (Pension) Rules, 1976, which have been made applicable to the employees of Municipal Council.

The petitioners have assailed non grant of family pension as illegal, arbitrary and without any justification.

A return has been filed in W.P. No. 3216/1998 by the Municipal Council. A perusal of the return indicates that stand of the respondent is that qualifying service of 10 years was not rendered by the deceased husband of the petitioner. Deceased had rendered 5 years 4 months of regular service. Similar stand has been taken in all the cases. The only submission raised is that 10 years of qualifying service was not rendered by the deceased employees.

Shri S.K. Mukherjee has submitted that Rule 47 of M.P. Civil Services (Pension) Rules, 1976 is attracted therefore, petitioners are entitled for family pension. Once an employee has died, there is no requirement of rendering 10 years qualifying service for payment of contributory family pension.

Shri Sanjay K. Agrawal, learned counsel appearing on behalf of Municipal Council has relied upon the Sub-rule (2) of Rule 43 of M.P. Civil Services (Pension) Rules, 1976, which provides qualifying service of 10 years is required.

The relevant portion of Rule 47(1), (2) and (3) is quoted below:-

47. Contributory family pension.- (1) The provision of this rule shall apply:-

(a) to a Government servant entering service in a pensionable establishment on or after 1st April, 1966, and

(b) to a Government servant who was in service on 31st March, 1966 and came to be governed by the provisions of the Family Pension Scheme for State Government Employees, 1966 contained in Government of Madhya Pradesh Finance Department Memo No. 1963/C.R. 903-IV-R.II, dated 17th August, 1966 as in force immediately before the commencement of these rules.

(2) Without prejudice to the provisions contained in sub-rule (3), where a government servant dies -

(a) while in service provided he had been medically examined and found fit for appointment under the Government.

(b) After retirement from service and was on the date of death in receipt of a pension or compassionate allowance, referred to in Chapter V.

(2A) The amount of family pension shall be fixed at monthly rates and be expressed in whole rupees and where the family pension contains a fraction of a rupee it shall be rounded off to next higher rupee provided that in no case family pension in excess of the maximum prescribed under this rule shall be allowed.

(3)(a) Where a Government servant, who is not governed, by the Workman''s Compensation Act, 1923 (No. 8 of 1923), dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 percent of the pay last drawn or notice the family pension admissible under sub-rule (2), whichever is less, and the amount so admissible shall be payable from the date following the date of death of the Government servant:-

(i) for a period of seven years, or

(ii) up to the date on which the deceased Government servant would have attained the age of 67 years had he survived, which ever period is less.

(b) Where a Government servant, who is not governed by the Workmen Compensation Act, 1923 (No. 8 of 1923) dies after retirement after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 percent of the pay last drawn by the pensioner before retirement or twice the family pension admissible under sub-rule (2), whichever is less, and the amount so admissible shall be payable from the date following the date of death of the pensioner:-

(i) for a period of seven years; or

(ii) till the date of which the pensioner would have reached the age of 67 years had he remained alive, whichever period is shorter;

Provided that the amount of family pension shall not exceed the pension sanctioned to the Government servant at the time of retirement. In cases where the amount of family pension as admissible under clause (b) of sub-rule (2) of this rule exceeds the pension sanctioned at the time of retirement, the amount of family pension sanctioned under this sub-rule shall not be less than that amount. The term ''pension sanctioned at the time of retirement'' shall mean ''the pension inclusive of the part of the pension which the retired Government servant may have commuted before death.''

(c)(i) Where a Government servant who is governed by the Workmen''s Compensation Act, 1923 (No. 8 of 1923) dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 percent of the pay last drawn or one and a half times the family pension admissible under sub-rule (2) whichever is less.

(ii) Where a Government servant who is governed by the Workmen''s Compensation Act, 1923 (No. 8 of 1923) dies after retirement after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50 percent of pay last drawn by the Government servant or one and half times the family pension admissible under sub-rule (2), whichever is less.

(iii) The family pension so determined under sub-clause (i) or (ii) shall be payable for the period mentioned in clause (a) or clause (b) as the case may be:

Provided that where a compensation is not payable under the aforesaid Act, the Head of Office shall issue a certificate to the Audit Officer to the effect that the family of the deceased Government servant is not eligible for any compensation under the aforesaid Act and the family shall be paid family pension on the scale and for the period mentioned in clause (a).

(d) After the expiry of the period referred to in clause (a) or (b), the family, in receipt of family pension under those clauses or clause (c), shall be entitled to family pension at the rate admissible under sub-rule (2).

Rule 43(2) of the M.P. Civil Services (Pension) Rules, 1976, reads thus:-

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be appropriate amount as set out below, namely.........

A bare reading of Rule 43(2) makes it clear that Rule 43(2) is applicable in the case of person, who has retired not in case of death of an employee. Rule 43 deals with the situation of payment of pension on qualifying service of 10 years in the eventuality of retirement of an employee. Rule 47 deals with the Contributory Family Pension. A bare reading of Rule 47(2)(a) makes it clear that in case of Government servant, who has died while in service provided he had been medically examined and found fit for appointment under the Government. Family of deceased is entitled to a Contributory Family Pension. Figure to be arrived at on the basis of calculations provided in the rule.

In my opinion, when the service of the deceased employees were regularized and deceased husband had rendered service of 5 years 1 month in W.P. No. 3216/1998, in W.P. No. 3217/1998 for the period of 2 years and 6 months and in W.P. No. 3218/1998 for a period of 4 years and 9 months. Petitioners being widows, cannot be deprived of the benefit of family pension payable under Rule 47 of the Rules of 1976. Let arrears of pension be worked out and paid positively within 6 months along with the interest @ 6% per annum and payment of monthly family pension be commenced from 1-3-2004.

Writ petitions are disposed of with the above directions. Parties to bear their own costs as incurred.