(1986) 08 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 158 of 1986

Nandi Devi APPELLANT

Vs

State of H.P. and Another RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:
Constitution of India, 1950 — Article 14, 16, 38, 39, 41

Citation : (1986) 15 ILR HP 563

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : R.K. Sharma, for the Appellant; P.N. Nag, General, for Respondents No. 1 and 2. and P.A. Sharma, Central Government Standing Counsel, for Respondent No. 3., for the Respondent

Judgement

U.C. Srivastava, J.—The case discloses gross apathy on the part of the administration in dealing with the pensionary claim of an employee who has since died. Regretfully, the conduct has persisted even after the case has been instituted in the Court.

2. The petitioner is the widow of one Bhadu. Her case, as set out in the petition, briefly stated, is that her husband joined the services of the Education Department in the capacity of a part-time Sweeper-cum-Peon in 1945 at the Government High School, Sarahan, Tehsil Pachhad, District Sirmaur. On and from April 1, 1960, he was appointed as a whole-time contingent paid Class IV employee and was given a posting at the same place and in the same School. His services were employed, upon such appointment, as a Chowkidar-cum-Sweeper-cum-Peon. Although services of junior persons (Ranjit Singh, Jeet Singh, Amar Singh and Ors.) were regularised, his services were not regularised till March 11, 1977, despite several representations made by him. Within about 5 months thereafter, he retired on August 31, 1977 after having rendered 32 years of continuous service in the Education Department in different capacities.

3. After his retirement, the husband of the petitioner made a representation on

March 20, 1978, Annexure P-3, requesting that he be granted the pensionary benefits but to no avail. It appears that prior thereto he was informed by the District Education Officer, Sirmaur, vide letter dated January 31, 1978, Annexure P-5, that since he had rendered service in a regular capacity only for a period of 5 months, he was not entitled to the grant of pensionary benefits. After his death, the petitioner also made representations claiming arrears of pensionary benefits on behalf of her husband and also family pension but again to no avail. On the contrary, a threat of recovery was held out on the ground of the alleged overstay of her deceased husband in service. At Annexure P-7 is a letter dated September 22/25, 1981, addressed by the District Education Officer, Sirmaur District, to the petitioner, the material portion of which reads as follows :

With reference to your letter dated 10-9-1981, which was sent to the Hon?ble Chief Minister, Himachal Pradesh, Shimla, and copy endorsed to this office, you are informed that Shri Bhadu Ram, Government Servant?s case was returned by the Accountant General, Himachal Pradesh and Chandigarh, Shimla?s letter No. Pen. I/Mis-Rip./81-82-3528-30 dated 24-7-1981, with the following remarks :

1. On the basis of entries made in the service book in respect of his date of birth, Shri Bhadu Ram was to be retired on 14-8-1973 but he was actually continued in service upto 31-8-1977. In this way from 15-8-1973 to 31-8-1977 Shri Bhadu Ram was paid in excess during this period. Necessary orders have been issued to make recovery of the excess payments and detailed information has been sought for.

2. Shri Bhadu Ram, Employee, remained almost on temporary basis and this period of his service cannot be taken or counted for the grant of pension. Shri Bhadu Ram was also not regularised during his service tenure. Therefore, he is not entitled for pensionary benefits.

It appears, however, that no action in the direction of recovery was taken since the State Government accorded ex-post-facto approval to the re-employment of the deceased husband of the petitioner for the period from August 15, 1973 to August 31, 1977 (vide Annexure P-8). It also appears from Annexures P-8, P-9, P-10 and P-ll, which is the correspondence exchanged between different departmental officers, that the case relating to the sanction and grant of pensionary benefits remained under examination but was not processed further for one reason or the other and mainly on account of the non-availability of the Service Book of the deceased husband of the petitioner.

4. The present petition was thereafter instituted by the petitioner on March 17, 1986 claiming, inter alia, the relief that the services rendered by her deceased husband from April 1, 1960 to August 31, 1977 be treatedasregularforall purposes and that the pensoinary benefits due to her deceased husband be granted and that the family pension be also sanctioned in her favour. Notice was ordered to issue on the petition on May 5, 1986 and it was made returnable on May 19, 1986. The return was directed to be filed on or before May 15, 1986. An

application (Civil Misc. Petition No. 1310 of 1986) was moved oh behalf of the concerned Respondents on May 16, 1986 praying for extension of time by three weeks for filing the return on the ground that old records had to be located before the reply cou?d be filed. The application was granted on May 21, 1986. Yet Anr. application (Civil Misc. Petition No. 1570 of 1986) on the same lines was instituted on behalf of the concerned Respondents on June 10, 1986 seeking two weeks more time for filing the return. The application was granted on June 30, 1986. The time granted accordingly expired on June 23, 1986. The case was listed for hearing on June 30, 1986 when the Court passed following order:

The extended time allowed as per the order of the day passed on CMP No. 1570 of 1986 has expired on June 23, 1986. Still, however, affidavit-in-reply has not been filed. It appears that the State Government is not too keen to contest the petition otherwise it would have filed the affidavit-in-reply within the extended time limit or made an application for further extension of time. Still, however, the matter is adjourned to July 2, 1986 on which day the Court will pass appropriate order in accordance with law.

On July 4, 1986, one more application (Civil Misc. Petition No. 1985 of 1986) for extension of time on the same grounds was filed and two weeks extension was prayed in order to file the return. The Court passed the following order on July 17, 1986 on the said Civil Misc. Petition :

Granted to the extent that the affidavit(s)-in-reply to be filed on or before July 31, 1986. The Court wishes to impress upon the Respondents that since thisis a pension case no further extension of time will be granted and the Court will proceed to decide the case on the basis that the State has no defence to offer, if no affidavit(s)-in-reply is filed within the aforesaid time-limit.

Inspite of so many opportunities having been given and despite the aforesaid peremptory directions, no return has been filed till date. The learned Advocate General made an oral request for one more opportunity to file the return but was unable to assure that even within the said extended time-limit, if any, return will be filed. Having regard to all the circumstances of the case, the request has been rejected and the Court proceeds to decide the case on the basis that the allegations made in the petition having not been contested must be accepted as true.

5. The uncontroverted case set out in the petition, wh;ch has been summarised above, would indicate that the deceased-husband of the petitioner, who was one of the lowliest amongst the lowly paid employees of the State Government, joined service as far back as 1945 on part-time basis. On and with effect from April 1, 1960 till March 10, 1977, he rendered service as a whole-time contingent paid employee. Whereas services of persons junior to him were regularised, his services were not regularised till March 11, 1977, that is, till about five months prior to his retirement. Such an action on the part of the Respondents must be regarded as arbitrary and unreasonable and violative of the fundamental rights

guaranteed by Articles 14 and 16. Besides, the pernicious system of continuance of an employee over such a length of time on contingent paid basis with the ultimate result of denial of all privileges including pensionary benefits to him must also be regarded leading to the breach of Articles 14 and 16 [See: Rattan Lal and Others Vs. State of Haryana and Others, and as opposed to the constitutional goal as reflected in the Directive Principles of State Policy. When the State is dealing with the lowliest amongst the lowly paid employees, it has a still greater responsibility to ensure that he is not subjected topenury in his old age after he has retired after having put in long years of service and his widow is not left without any financial support after his death. His repeated attempts to seek justice at the hands of the administration during his life time met with failure and so did the petitioner?s after his death. The reason appears to be that for a substantial part of his service period, he remained a contingent paid employee and, worse still, his Service Book is not traceable.

6. The welfare State has to have a constitutional goal and commitment to socio-economic justice. This flows inevitably from the Preamble and the Directive Principales of State Policy enshriened in the Constitution. Article 38 enjoins upon the State to strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life and, in particular, to strive to minimise the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people engaged in different vocations. Article 39 requires the State to direct its policy towards securing that the citizens, men and women equally, have an adequate means of livelihood and that there is equal pay for equal work for both men and women. Under Article 41, the State is under an obligation to make effective provisions for securing the right to public assistance in cases of old age, sickness and disablement and in other cases of undeserved -want and, under Article 42, to make provision for securing just and humane conditions of work. The mandate of Article 43, inter-alia, is that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, a work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure.

7. As held in D.S. Nakara and Others Vs. Union of India (UOI), , a political society, which has a goal of setting up of a welfare State, would introduce and has in fact introduced as a welfare measure, wherein the retiral benefit is grounded on considerations of State obligation to its citizens who, having rendered service during the useful span of life, must not be left to penury in their old age. Pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that, it is a measure of socio-economic justice, which inheres economic security in the fall of life, when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. The Constitution having set-up the political society which has a welfare socialistic State as its goal and with the

obligation created under Articles 39(e), 41 and 43(3).

8. The State has apparently failed in the present case to carry out these constitutional mandates insofar as the deceased husband of the petitioner is concerned, since his services were not regularised till almost the end of his career and consequent-tially he was denied pensionary benefits although he retired after having put in long years of service and his widow is left with no means to survive.

9. On the facts and in the circumstances of the case and in light of the legal and factual position adumbrated above, the petitioner is entitled to succeed in the petition. A writ will issue to the first and second Respondents to regularise the services of the deceased husband of the petitioner on and with effect from April 1, 1960, by creation of a supernumerary post, if necessary, and he will be duly confirmed in the said post. Orders in this regard will be issued within a period of two weeks from the date of delivery of a certified copy of this judgment which will be applied for on payment of urgent charges today. The pension case of the deceased husband of the petitioner will be forwarded to the office of the Accountant General, Himachal Pradesh, within a period of four weeks, from the date of the delivery of the certified copy, duly completed in all respects. If the service Book/Record of the deceased husbend of the petitioner is not available, it shall be forthwith recostructed and the periods of service shall be duly verified and the breaks, if any, shall be condoned or regularised. All the monetary benefits becoming due and payable to the deceased husband of the petitioner shall be worked out and released in favour of the petitioner within a period of eight weeks from the date of the delivery of the cetified copy. The family pension becoming due and payable to the petitioner will also be worked out and released in her favour together with the arrears within a period of eight weeks from the date of the delivery of certified copy. The time-limits are mandatory and peremptory and in the event of non-compliance of these directions within the specified time-limits, besides other action, interest at the rate of 12 per cent per annum will be payable to the petitioner on all the monetary benefits due and payable to her as per these orders from the date of the expiry of the eight weeks? period till the date of payment.

10. Rule made absolute accordingly. The petitioner is entitled to the costs of this petition which are quantified at Rs. 250/- and which will be payable by first and second Respondents. The costs shall be deposited in the Registry of this Court within a period of fifteen days from today. Upon such deposit being made accordingly, liberty is reserved to the learned Counsel for the petitioner to apply for the withdrawal of the said amount for onwards remission to the petitioner.