
(2008) 02 P&H CK 0050
In the Punjab And Haryana At Chandigarh

Om Parkash

APPELLANT

Vs

Uttar Haryana Bijli Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Citation : (2008) 3 SLJ 470

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to the order dated 10.2.2006, Annexure P-9, whereby the claim of the petitioner for pensionary benefits has been declined.

The petitioner joined on the post of Tractor Trailer Operator on work-charged basis on 24.8.1981. On 24.3.1987, the State Government took policy decision to regularise the services of all those work-charged employees who have completed four years service on 31.12.1986. It is the case of the petitioner that he made number of representations for regularisation but no decision was taken and consequently he was retired on 31.7.2005 on attaining the age of superannuation.

2. It is the case of the petitioner that he sought retiral benefits thereafter in terms of the directions issued by this Court. The claim of the petitioner for retiral benefits has been considered but declined on 10.2.2006, Annexure P-9. It is contended that such order is absolutely illegal, unjustified and the petitioner is entitled to pension. In reply, it has been pointed out that the petitioner was asked to appear before the Screening Committee on 5.12.1996 but before the petitioner could appear before the Screening Committee, a criminal case was registered against the petitioner in respect of the accident caused by him while driving the truck of the department. After the decision of the criminal case, the case of the petitioner for regularisation was again considered by the Screening

Committee on 24.3.2007.

3. The Executive Engineer Central Store, Uttar Haryana Bijli Vitran Nigam Limited, Panipat, was informed of the decision. After the receipt of the said order, the petitioner gave his opinion by way of affidavit that he wants to continue as work charged driver up to the age of 60 years and on the basis of said option, the petitioner was permitted to work as work-charged driver up to the age of 60 years. Consequently, on attaining the age of 60 years, he retired on 31.7.2005. It is also pointed out that since the services of the petitioner were never regularised, the petitioner is not entitled to pension.

The question of grant of family pension after the death of a work-charged employee before regularisation of service came up for consideration before Hon"ble Supreme Court in Uttar Haryana Bijli Vitran Nigam Limited and Ors. v. Surji Devi 2008(1) RAJ 644 (SC), Civil Appeal No. 576 of 2008 decided on 22.1.2008, wherein it has been held that the family pension cannot be paid to the dependants of the deceased work-charged employee.

4. In the aforesaid case, Hon"ble Supreme Court considered Rule 3.17-A(g) of the Punjab Civil Services Rules, Volume II, Part I, as applicable to Haryana, which is to the following effect:

3.17-A(g). The entire service rendered by an employee as work-charged shall be reckoned towards retirement benefits provided:

- (i) such service is followed by regular employment;
- (ii) there is no interruption in the two or more spells of service or the interruption fall within condonable limits; and
- (iii) such service is a whole time employment and not part-time or portion of day.

It was held that the statutory provisions of the Punjab Civil Services Rules debar grant of family pension in favour of the family members if the deceased employee was a work-charged employee and not a permanent employee or temporary employee.

5. The period during which an employee worked as a work-charged employee could be taken into consideration only when his services are regularised and he becomes permanent and not otherwise. Hon"ble Supreme Court held as under:

14. The scheme relating to grant of family pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2, vis-a-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. Husband of the respondent was a work-charge employee.

His services had never been regularised. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the

regularisation scheme but sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law. (See Maruti Udyog Ltd. Vs. Ram Lal and Others, , State of Bihar and Others Vs. Amrendra Kumar Mishra, , C.T. Radhakrishnan Vs. C.T. Viswanathan Nair and Another, , State of Karnataka and Others Vs. Ameerbi and Others, and State of M.P. and Others Vs. Sanjay Kumar Pathak and Others, .

6. The statutory provisions, as noticed hereinbefore, debar grant of family pension in favour of the family members as the deceased employee if was a work-charge employee and not a permanent employee or temporary employee. The period during which an employee worked as a work-charge employee could be taken into consideration only when his services are regularised and he becomes permanent and not otherwise.

The ratio of the aforementioned judgment is fully applicable to the facts of the present case. The family pension is admissible in case of death of an employee or after retirement, if he is in receipt of compensation, invalid, retiring or superannuation pension. Therefore, admissibility of family pension is to those dependent family members of the deceased employee who have been granted compensation, invalid, retiring or superannuation pension.

7. In view of the said judgment and the fact that the petitioner has opted to be a work-charged employee and has taken the benefit of extended period of retirement cannot be permitted to claim pension. He is estopped to turn around and claim pension after he has taken the benefit of extension in age.

In view of the above, we do not find any merit in the present writ petition and the same is consequently dismissed.