

(2019) 12 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 24159 Of 2019

Raj Kumari Kunwar

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 05-12-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54(16), 54(17)

Citation : (2019) 12 PAT CK 0010

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Tej Pratap Singh, S.D. Sanjay, Ravindra Kumar Sharma

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has moved the Court for the following reliefs:

"i) For passing appropriate writ(s) order(s) or direction(s) for setting aside the order dated 3.12.2018 bearing Memo No. 2400521/UPAO-FP/24AR/2018/0517 issued from the office of Respondent No. 2 whereby and where under the grant of family pension to the petitioner has been rejected on the ground that the pensioner (Late Biswa Ranjan Prasad, husband of the petitioner) did not intimated post-retiral change in his family during his life time in terms of rule 54(16) of CCS (Pension) Rules 1972 and held that in the event of his death payment of Family pension is not justifiable in terms of rule 54(17) of CCS (Pension) rule 1972 as neither the name was endorsed in the service documents of the pensioner nor any information existing for grant of family pension.

ii) For passing appropriate writ(s), order(s) or direction(s) to the respondents to grant family pension to the petitioner who is legally wedded wife of Ex RFN (Late) Biswa Ranjan Prasad who got married with the petitioner after death of his first wife.

iii) For other writ, order or direction to which the petitioner is found by this Hon'ble Court may kindly be issued."

3. The petitioner claims to have married deceased Biswa Ranjan Prasad, after the death of his first wife in the year 2006. He superannuated while working as a Constable in Assam Rifles. The husband of the petitioner died on 21.04.2012. The authorities have refused to pay family pension to the petitioner on the ground that her husband had not got changes made in the Pension Payment Order during his life time showing her to be the wife entitled for family pension.

4. Learned counsel for the petitioner submitted that out of the wedlock a male child was born who is a minor and the petitioner is left in the lurch without any source of income for her or her child.

5. Learned counsel for the respondents submitted that Rule 54 (16) of CCS (Pension) Rules, 1972 which requires that retiral changes in the family of the employee has to be intimated to the authorities in the lifetime of the employee.

6. Having considered the matter, what has been stated by learned counsel for the petitioner, for which there is some evidence on record, the Court is persuaded to intervene in the matter. Though there may be rules governing the field which are technical in nature, but if a right exists, the Rules governing those rights cannot be so lightly read so as to frustrate the main claim, if the same is bona fide and genuine. In the present case, it is a fact that the petitioner married the deceased after the death of the first wife, just because of an omission by her late husband to intimate such change to the authority concerned, cannot, in the considered opinion of the Court, be fatal for the claim otherwise sustainable and due in law. Such would be a travesty of justice and is also inequitable.

7. For reasons aforesaid, the writ petition stands disposed off with a direction to the respondent no. 2 to get the matter verified from the authorities, which includes the District Magistrate, Bhojpur, with regard to the veracity of the claim of the petitioner. If the report is in favour of the petitioner, necessary orders with regard to grant of family pension and also payment of the remaining retiral dues of her husband shall be made to her within three months from the enquiry report being made available to the respondent no. 2.

8. As the matter is urgent, the Court deems it appropriate to direct the respondent no. 2 to refer the matter for enquiry within one month from the date of production of a copy of this order before him. Upon doing so, a direction is issued to the authority, to which such reference is made, to ensure that the enquiry is conducted and report sent to the respondent no. 2 within two months from the date of the respondent no. 2 making a request to the concerned authority for conducting the enquiry. The respondent no. 2 shall also forward a copy of this order to the concerned authority while making request for such enquiry. On the basis of the report submitted, consequences, as indicated above, shall follow.

9. The Court would indicate that in enquiry, all aspects would be gone into as to who is still alive and may have claim in family pension/retiral benefits of the late employee, including offspring(s) of the first wife, if any.