
(1995) 05 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1991 of 1994

Ram Sahai Sharma

APPELLANT

Vs

The State of Raj. and Others

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21

Citation : (1995) 3 WLC 563 : (1995) 2 WLN 604

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Judgement

Arun Madan, J.—The writ petition pertains to the relief claimed by the petitioner for grant of pension/family pension to the petitioner whose son Late Bal Krishan Sharma had died while in service.

2. The facts giving rise to the filing of this writ petition briefly stated are that that Late Bal Krishan Sharma son of the petitioner Was initially appointed on the post of Munshi in Public Works Department on 1.11.1973 and had completed 10 years of qualifying service satisfactorily as Munshi on 31.10.1983 and had thus become entitled for confirmation on the post of Munshi w.e.f. 31.10.1993. However, for reasons beyond control of the petitioner and due to inaction on the part of the Authorities of respondent department the petitioner's son, deceased employee, was no confirmed in service during his life time and he died on 22.6.1985. Subsequently the petitioner's son was confirmed on the post of Munshi vide order, dated 20.12.1986 w.e.f. 31.10.1983 vide Annexure 1. It has been further contended in the writ petition that since the son of the petitioner was not confirmed during his life time, he could not opt for pension and submit his option for pension. After confirmation in terms of the order vide Annexure 1, as referred to above, the petitioner herein, being the father of the deceased employee, applied in proper performate for grant of pension to him on account of death of his Late son and submitted the same before the Executive Engineer, P.W.D. Dn. II, Bharatpur (respondent No. 4). It is further stated in the writ petition that

respondent No. 4 vide order, dated 22.12.1986 forwarded the option for pension performate duly filled in by the petitioner to the State Insurance Department with a view that the pension due on account of Late son of the petitioner be got sanctioned to his father, i.e., the petitioner herein. The Director, State Insurance Department informed the office of respondent No. 4 that the option form duly filled in by the father of the deceased employee could not be accepted and, therefore, the deceased employee is not entitled for pensionary benefits.

3. It has been further contended in the petition that due to old age of the petitioner, he is passing his last days of life in great hardship and has been approaching the respondents for past 7 years personally as well as by way of representations but to no avail. Ultimately respondent No. 4. vide its letter dated 18.7.1992 to the Superintending Engineer (respondent No. 3) informed that payment of G.P.F. and C.P.F. has already been made to the father of the deceased employee and as such clarification was sought as to whether a fresh pension performate should be again got filled up from the father of the deceased employee and whether the same should be sent to the Insurance Department or Not? (Annexure 2). The forwarding Authority had also requested the Superintending Engineer that if any rules are prevalent in this regard, clear order with direction be issued on account of hardship being faced by the father of the deceased employee.

4. It has been further contended in the petition that vide letter dated 27.6.1992, respondent No. 3 had asked respondent no. 4 to send the required performate without any delay with a view to take further action in the matter at the earliest. It wands further mentioned in the said communication that the petitioner's matter regarding granted of family pension could not be referred to the District Public Grievances Redressal and Vigilance Committee, Bharatpur in absence of compliance of the aforesaid requirement. It was also mentioned in the said communication that the payment of all due claims have already been made to the petitioner and it was further indicated that the deceased employee is not entitled to any pension/family pension vide Annexures 3 and 4 respectively.

5. It has been further contended in the petition that notwithstanding the series of representations and several communications addressed by respondent No. 3 to respondent No. 4. for clearance of pensionary dues on account of deceased son of the petitioner as a last resort the petitioner sent a notice of demand for justice which was duly served upon the respondents on 29.3.1994 vide Annexure 5. But despite this notice the respondents did not take any steps for redressal of the grievances of the petitioner, hence the petitioner was left with no option but to move this Court by way of present writ petition challenging the impugned action of the respondents on the grounds inter alia that, the impugned action of the respondents in not releasing family pension due on account of Late son of the petitioner on the ground of technicalities that the deceased employee had not filled in due performate, i.e., the option form for pension, is totally unjustified, unreasonable and arbitrary being involative of Articles 14, 16 and 21 of the

Constitution of India. It has been further stated in the grounds that since the petitioner was not confirmed by the respondents during his life time on the post of Munshi till he died on 22.6.85 though he had become entitled for confirmation w.e.f. 31.10.83 on which date he had satisfactorily completed 10 years of qualifying service, the lapses, if any, was on the part of the respondents in not confirming the deceased employee and the petitioner cannot be made to suffer for these lapses. It is in this context that the petitioner has challenged the impugned action of the respondents in refusing to grant the family pension as admissible to the petitioner notwithstanding the fact that the petitioner was legally entitled to opt for family pension after the demise of his son, since he is the only person entitled to opt for the same as the wife of the deceased employee had pre deceased and the petitioner's son died issue less.

6. In response to show cause notice issued by this Court on 14.11.1994, respondent No. 2, i.e., the Director, Pension Department, Government of Rajasthan, Jaipur, filed its reply wherein it has been contended by the said respondent inter alia that Under Rule 282 of the Rajasthan Service Rules the respondent department is only authorised to issue authorities of G.P.G. P.P.O. and C.P.O. and other pensionary benefits to retired Government servants or his dependents on the basis of pension cases alongwith required administrative sanction received by it from the concerned Administrative Department. It has been further stated in the reply that the respondent-department comes in picture only for the purpose of granting pensionary benefits to a retired Government servant or his dependents only after receiving duly completed pension case alongwith required administrative sanction. In the absence of required administrative sanction as aforesaid, the respondent-department at its own cannot grant pensionary benefits to any Govt. servant or his dependents. It has been further stated that since the pension case of the petitioner has not at all been received by the respondent till date, it is not possible to grant family pension to the petitioner. The respondent has however, acknowledge the receipt of the order dated 25.7.1994 passed by this Court alongwith an application of the petitioner, dated 6.12.1994 and the matter was again examined, but from the record of the respondents it was transpired that no such case for family pension was received in the office of the respondent, hence is handicapped in allowing the payment of family pension to the petitioner as per directions of this Court dated 25.7.1994.

7. In reply to the writ petition filed on behalf of respondents Nos. 1, 3, and 4 the said respondents have contended inter alia that they have already forwarded the case of the petitioner for grant of pension/ family pension to the Director State Insurance and G.P.P., Jaipur with the option form filled up by the petitioner. In reply to the grounds, the respondents have contended that the petitioner is not entitled to get pension because the option form was not filled in by the deceased employee. It has been further contended in the reply that the payment of C.P.F. and G.P.F. has already been made to the petitioner on 19.1.1987 and the petitioner has got no right to claim pension because the option form was not

filled up by the deceased employee.

8. I have heard learned Counsel for the parties and examined their rival claims and contentions as also the D.B. Judgment of this Court in the matter of Smt Laxmi Bai v. State of Rajasthan WLR 1991 Raj. 89

9. In the matter of Laxmi Bai v. State of Rajasthan (supra) the petitioner had sought a direction from this Court to pay to the petitioner family pension as per Chapter XXIII A of Rajasthan Service Rules (for short R.S.R.). The Late husband of the petitioner was in the State Service and retired w.e.f. 20.4.1955 and died on 25.3.67. The petitioner's husband was not a pensioner and was a member of Contributory Provident Fund. A declaration was also sought that the words "in service on 29.2.64" in Rule 268-H may be declared illegal. The question which had arisen before this Court was whether in view of State Government Order, dated 18.7.1988 regarding extension of the provisions of New Family Pension Rules, 1964 to the widows of Government servants who retired or died before 1.3.64 or opted for family pension benefits, whether a direction could be given by this Court to the State Government to pay family pension to the widow of the deceased Govt. servant as admissible and to pay them family pension on account of her having exercised options for the same, it was held by this Court that when a direction has been given by this Court, then it is the duty of the State Government to comply with the said direction. There is no need to observe it afresh and the petitioner may opt for pension within a period of 15 days and the option would be considered to be her option or her husband's option and on her so opting, the respondents were directed to make payment of family pension subject to the verification of the petitioner's identity. It was further held that in memorandum dated 10.3.77 relating to work charge employees, the said memorandum recorded that the work charge employees who were absorbed on regular posts but died before exercising their option for pension, the said employees shall be deemed to have opted for pension under that memorandum and so a deeming provision may be ordered to be made.

10. In view of the observations of this Court in the aforementioned case, I am of the considered opinion that the ratio of the said decision is fully attracted to the facts of the present case and notwithstanding the fact that the deceased employee had not opted for family pension during his life time which he could not have done on account of his premature death, but since the said employee had completed 10 years of qualifying service and was confirmed on the post of Munshi vide order, dated 20.12.86, w.e.f. 31.10.83. i.e., the date on which he had completed 10 years of service, the petitioner should not be made to suffer for denial of family pension, since the lapse, if any, is on the part of the respondents for which the petitioner cannot be blamed by being deprived of his right to earn livelihood under Article 21 of the Constitution of India and made to suffer. I am further of opinion that since petitioner had duly forwarded option form to Insurance Deptt. vide letter, dated 22.12.86 of the Executive Engineer, P.W.D. Dn. II, Bharatpur, for seeking approval confirmation with a view to get the

pension sanctioned to the petitioner and in view of the repeated communications sent by respondent Nos. 3 and 4 to respondent No. 2, it was incumbent upon respondent No. 2. to have released pension/family pension as admissible to the petitioner in accordance with Rules. I am further of the opinion that the payment of C.P.F. and G.P.F. falls in a separate account and cannot be clubbed with the family pension. Since G.P.F. and C.P.F. had already been paid to the petitioner as on 19.1.1987, as so stated in the reply of respondent No. 2, the said respondent is under a bounden duty to pay family pension to the petitioner and pay the same at the earliest without any further delay.

11. This Court by its order, dated 25-7.94 had issued interim mandamus to respondent No. 2 to pay family pension to the petitioner in view of the decision of this Court in Smt. Laxmi Bai's case (supra) within a period of 3 months from the date of filing certified copy of the order, I am informed that this direction has not been complied with by respondent No. 2 till date.

12. A perusal of the case file reveals that the petitioner had already submitted his option form duly filled in and the same was forwarded to the Insurance Department vide letter dated 22.12.86 of the Executive Engineer P.W.D. Dn. II, Bharatpur and for seeking approval confirmation for sanctioning the family pension to the petitioner and in view of the said letter it cannot be said that the petitioner had not exercised his option for obtaining family pension.

13. In the result, the petitioner in this writ petition is entitled to succeed. Respondent No. 2. Viz the Director, Pension Department, Government of Rajasthan, Jaipur is accordingly directed to obtain the option form which was forwarded to the Insurance Department in terms of letter, dated 22.12.86 of the Executive Engineer, P.W.D. Dn. II, Bharatpur and immediately on receipt of the same, if not already received, shall release the family pension as admissible to the petitioner on account of his son, deceased employee, of respondent Nos. 3 and 4. Respondent No. 2 is further directed to prepare the pension case of the deceased employee within a period 8 weeks and release the family pension in favour of the petitioner within a period of four weeks thereafter from the date of this order on filing certified copy. The amount of family pension shall be handed over by respondent No. 2 to the petitioner at his residence. A copy of this order be also sent to respondent No. 2 for its immediate compliance. It is further directed that the due amount will carry interest at the rate of 18% per annum from the due date till payment. The parties are left to bear their own costs.