(2004) 04 PAT CK 0008

In the Patna High Court

Case No : LPA No. 480 of 2004

Ramsati Devi APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Citation : (2005) 3 PLJR 415

Hon'ble Judges : Ravi S. Dhavan, C.J;Shashank Kr. Singh, J

Bench : Division Bench

Advocate : R.B. Mahto and Satya Narain Mishra, V.R.P. Singh, for the Appellant; S. Alamdar Hussain, for the Respondent

Final Decision : Allowed

Judgement

1. All the appellants are widows. Their husbands were called "Monthly Men". This means that they were employees, as it is explained to the Court by counsel for the appellant, of the University. Counsel for the parties are not at issue on this that they received the minimum of the scale at the end of the month. This is an unfortunate case. What the widows will get, in case they receive a relief, will be a family pension.

2. The deliberations of the Court have been made easier as counsel for the contesting parties, the appellant and the respondents'' alike, are not at issues that in similar circumstances in the matter relating to Jagwanti Devi vs. Rajendra Agricultural University and Ors. A learned Judge decided the writ petition held such category of employees to be entitled to pension. This was C.W.J.C. No. 109 of 1998. The order dated 4 December, 1998 is reproduced:

"A counter affidavit is being filed on behalf of Rajendra Agricultural University, let it be kept on record.

The widow of the deceased employee has been dragged to this Court by filing the instant writ application for payment of the pensionary benefits to the deceased employee, who retired on 31st December, 1978 and subsequently died on

24.3.1997. The claim of the petitioner is set out in paragraph 1 of the writ application which reads as follows:

(i) For a direction to the respondents to pay to the petitioner the arrears of pension for the period 1.1.1979 to 31.1.1991 and arrears of 10% pension from 1.2.1991 to 24.3.1997.

(ii) For a direction to the respondents to fix and pay to the petitioner the family pension from 25.3.1997 onwards.

(iii) For a direction to the respondents to pay to the petitioner the 100% gratuity.

(iv) For a direction to the respondents to pay to the petitioner the amount of unutilised leave encashment equivalent to 240 days salary of her husband last Ghuran Mahto.

(v) For a direction to the respondent to pay to the petitioner the amount of Provident Fund and Group Insurance Schemes of her husband late Ghuran Mahto.

(vi) For further direction to the respondents to pay to the petitioner the arrears of interim relief.

(vii) For a further direction to the respondents to pay the petitioner the interest upon the entire dues amount from the dates they became due till the date of their respective payment.

(viii) For any other relief or reliefs to which the petitioner be deemed entitled."

In this case, a counter affidavit has been filed wherein, inter alia, it is stated that since the contribution has not been made in G.P.F. account and, as such, the petitioner is not entitled to G.P.F. amount for the period in question. It is further submitted that the services of such employee have been taken in regular: establishment w.e.f. 1.1.1979 and, as such, the petitioner is not entitled for the pensionary benefits. The stand taken in the counter affidavit has to be rejected in view of the fact that the University itself had taken a decision in the year 1978 to the effect that those employees who have completed 10 years of regular service are entitled for the pensionary benefits and in that view of the matter the stand taken by the respondent-University is not tenable in the eye of law.

Accordingly, I direct the University to pay all the admitted dues, legally payable to the petitioner, in terms of the prayer made in this writ application, as quoted above, as early as possible, preferably, within three months from the date of receipt/production of a copy of this order. It goes without saying that if the statutory amount not deposited \\n the G.P.F. account, as alleged by the respondent in that event the respondent is not liable to pay the G.P.F. amount to the petitioner since the widow of the deceased employee has been dragged to this Court for grant of pensionary benefits, she is entitled to interest at the rate of 12% per annum from the date of retirement till the date of respective payments alongwith cost which is assessed at Rs. 1,000/-. Both the interest and cost shall be paid alongwith the principal amount within the aforesaid period.

This disposes of this writ application."

3. Arising out of these proceedings the University sought to challenge the order of the learned Judge. The appeal was filed beyond limitation. The order impugned is dated 4 December, 1998. The Letters Patent Appeals No. 714, 731, 750, 751, 753 and 764 of 1999 were filed on 21 June, 1999. Clearly the University was not serious in filing the Letters Patent Appeal. On the ground of latches of an unexplained limitation, the appeals were dismissed. The order of the Court dated 4.2.2000 is reproduced:

"This appeal has been filed beyond limitation. There is no order of the Court condoning the delay for filing the appeal beyond limitation. The prayer that the late filing of the appeal be condoned is vehemently opposed on behalf of the respondent petitioner.

On perusing the pleadings explaining the delay in filing the appeal, the Court finds that no good reasons have been given as to why this Letters Patent Appeal had not been filed within time. In the circumstances, this appeal is dismissed on the ground of limitation.

The interim order dated 13.7.1999 is discharged."

4. On the dismissal of the Letters Patent Appeals the University challenged the order before the Supreme Court. The Supreme Court dismissed the SLP with the following orders:

"Heard learned counsel for the parties.

In our view, the order passed by the High Court does not call for any interference. However, we make it clear that the decision rendered by the High Court would not be treated as a precedent as it is based on the facts and well as on the concessions."

5. The decision of the Supreme Court, was to the effect, that the order passed by the High Court does not call for any interference. The aspect that it may be treated as a precedent, perhaps, may be that the University may have pleaded so. The order records that the decision rendered by the High Court would not be treated "(i) as a precedent as it is based on facts and (ii) well as on the concessions."

6. In so far as the decision is concerned, it is clear that it is not on the Letters Patent Appeals because these appeals were dismissed on the ground of laches and this laches was certified by the Supreme Court. The decision of the learned Judge is the ratio decidendi which was not interfered with but was not to be acted as a precedent. This implies that if the circumstances were similar exactly to the class which were held to receive pension then it would be a case of similarity. In any other matter the decision was not to act as a precedent.

7. Learned counsel for the University accepts that the case of five widows is not dissimilar and on facts is exactly the same as was decided by the learned Single

Judge in C.W.J.C. No. 109 of 1998. If that be the case then the order of the Supreme Court on the SLP would apply to these widows also.

8. In the circumstances, in a similar situation between the same class and between the same parties the University can hardly resile from one decision which holds that one set is entitled to pension, and another similar class may not be entitled to it. The widows who have appealed to this Court, in the circumstances are also entitled to pension. So ordered. The judgment of the learned Judge dated 4.3.2004 is set aside. The appeal succeeds.