(2014) 12 RAJ CK 0209

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5826/2007

Shayer Kanwar APPELLANT

Vs

Food Corp. of India RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2014) 12 RAJ CK 0209

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Narendra Singh, Advocate for the Appellant; M.K. Trivedi, Advocate for the Respondent

Judgement

Sandeep Mehta, J.—Heard learned counsel for the parties.

2. By way of the instant writ petition, the petitioner has prayed for a relief that she should be granted family pension upon the death of her husband, who was working as Watchman in the Food Corporation of India (FCI). The petitioner''s husband was appointed as watchman in the FCI in the year 1978 on probation basis. He completed one year''s probation period and was confirmed vide order dated 17.7.1979. Unfortunately, he passed away on 18.4.1980. The petitioner applied for grant of all the monetary benefits accruing upon death of her husband while in service. She was sent a letter Annex. 6 dated 26.8.1987 issued by the Employees Provident Fund Organisation (EPFO) that she was not entitled to family pension under the Rules because the service of the employee (her husband) was less than two years. The petitioner chose not to challenge the said communication and kept silent. She, however, kept on sending communications with the FCI claiming that she should be awarded family pension. Having failed to get a favourable answer, the petitioner has filed the instant writ petition.

3. Initially, the petitioner had impleaded ''Employment State Insurance Corporation'' as respondent no. 3 to the writ petition though it had no business to do with the pension matter whatsoever. Accordingly, the relevant body i.e.

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Employees Provident Fund Organisation (EPFO) remained unrepresented and the writ petition was allowed on 10.2.2009. When the dues were not paid to the petitioner, she filed a contempt petition wherein the notice was served on EPFO. Appearance was put in on behalf of EPFO and it was submitted that the EPFO was not a party to the writ petition on which, it was given liberty to file a recalling application in the writ petition. Thereafter, EPFO applied for recalling of the aforesaid order as the same was passed without hearing them. The recalling application was accepted on 23.1.2013 and the matter was directed to be heard and decided afresh.

4. Learned counsel for the petitioner submits that subsequent to the Employees Pension Scheme, 1971, a new scheme being Employees Pension Scheme, 1995 has been formulated by the Central Government wherein there is a saving clause which entitles the nominees of the deceased employee to claim family pension under the new scheme of 1995 even if the nomination was made even under the old scheme of 1971. He, therefore, submits that by the effect of repeal and saving clause, the petitioner is entitled to claim pension under the scheme of 1995 because the clause of completing two years'' service has been done away in the new scheme of 1995. He, therefore, prays that the writ petition deserves to be accepted and the respondents be directed to grant family pension to the petitioner.

5. Per contra, learned counsel for the respondents opposes the submissions advanced on behalf of the petitioner and contends that when the petitioner''s husband expired, the scheme of 1971 was in force. In the scheme of 1971, there was a specific stipulation that the deceased employee should have completed two years of service for his family members'' becoming entitled to receive family pension. As admittedly, the petitioner''s husband passed away in 1980, without completing two years service, the petitioner cannot claim benefit of the new scheme of 1995.

6. Heard and considered the arguments advanced at the Bar and perused the material available on the record.

7. It is not in dispute that the petitioner''s husband passed away in the year 1980. At that time, the pension scheme of 1971 was in force and there was a specific rider therein that the employee''s family members would only be entitled to family pension if the employee had served for atleast two years. The petitioner was communicated vide order Annex. 6 dated 26.3.1987 that she could not be granted family pension as her husband had served for less than two years. The petitioner could have challenged the said order at that stage but for the reasons best known to her, she remained silent.

8. The Hon''ble Supreme Court in the case of State of Rajasthan Vs. Rajasthan Pensioner Samaj, , held that right to opt for pension scheme was right of employees and such right cannot be either inherited or exercised by widows of the retired employees. The widows are not entitled to switch over from provident

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fund scheme to pension scheme.

9. Admittedly, the petitioner''s prayer is to be given a permission to switch over from the pension scheme of 1971 to the pension scheme of 1995. This in the opinion of this Court is not permissible.

10. Consequently, the instant writ petition, being devoid of any merit, is hereby dismissed.

11. No order as to costs.

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