
(1998) 09 AHC CK 0073
In the Allahabad High Court
Case No : C.M.W.P. No. 2021 of 1994

Smt. Bhagmaniya Devi

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Citation : (1999) 1 AWC 271

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : B.N. Rai, for the Appellant;

Judgement

D.K. Seth, J.—The husband of the petitioner was appointed in 1947 in the Civil Supplies Department. It is alleged that he was retrenched from the said Department on 9th March, 1954. However, the widow in the writ petition, has not made any such pleading. On the other hand, she said that her husband continued in the Civil Supplies Department till 9th March, 1954 and, thereafter, he was appointed as Routine Grade Clerk on 18th April, 1954, in the Tubewell (East) Division, Department of Irrigation. She claims that he had in his credit, 28 years of service, namely 7 years in the Civil Supply Department and 21 years in the Irrigation Department, till 1st March, 1975. Before that the petitioner's husband had a heart attack some time around 1st March, 1973, since when he was on leave. The authorised leave had expired on 1st March, 1975. The petitioner alleges that her husband had applied for voluntary retirement w.e.f. 1st March, 1975. The husband of the petitioner would have retired on 31st August, 1984. Subsequently, the petitioner's husband died on 3rd March, 1990. The widow had applied for pension after completion of the formalities, which was refused by the respondents by letter dated 22nd February, 1990. Application for pension was filed on 22nd February, 1990 by the widow since her husband was suffering from Brain Haemorrhage during that period. But pension was refused by letter dated 24th September, 1990. It is this order, which has since been challenged.

2. In the counter-affidavit, the respondents have made out a case that the husband of the petitioner had never applied for pension on 4th March, 1975. No such letter is available in the office of the respondents. The formalities having been completed by the petitioner and not by the husband of the petitioner, therefore, no action can be taken on that basis. The said rejection of the claim was on the ground that the petitioner's husband was not entitled to leave after 1st March, 1975 and that the petitioner's husband neither applied for extension of leave nor he had asked for voluntary retirement. Therefore, no pension was available to him.

3. I have heard both Sri B. N. Rai, learned counsel for the petitioner and Sri K. R. Singh. learned standing counsel at length.

4. Admittedly, the respondents have never passed any order either of termination or of retirement after 1st March, 1976. Admittedly, the petitioner's husband would have retired on 31st August, 1984. After 31st August, 1984, it was open to the respondents to allow the pensionary benefits to the petitioner's husband since they did not terminate his service. The petitioner's husband shall be deemed to have retired notionally on 31st August, 1984 and the period between 1975 and 1984 ought to have been treated as "leave without pay". Inasmuch as if the respondents did not sanction leave, in that event, it was open to them to terminate the service of the husband of the petitioner on the ground of unauthorised absence. Since despite such unauthorised absence, the petitioner's husband service was not terminated, it can safely be presumed that the respondents had allowed the husband of the petitioner to continue in service on leave without pay. Therefore, it was incumbent upon them to pay the retiral benefits to the husband of the petitioner as applicable in the facts and circumstances of the case. Since no steps have been taken despite the petitioner's husband having been on unauthorised leave after 1st March, 1975, the respondents could have treated him either to have been resigned or to have retired prematurely w.e.f. 1st March, 1975. Since leave was sanctioned from 1st February, 1973 on medical ground, information had already been with the respondents to the extent that the husband of the petitioner was ill due to heart attack and was unable to attend office because of such heart attack and thus it was open to the respondents to declare him medically unfit and retire him on that ground prematurely. There were so many alternative procedure, which were open to the respondents to adopt. The respondents had adopted either of the alternative procedures and allowed the husband of the petitioner to continue in the same state of affairs till 31st August, 1984. But such continuance would not entitle the husband of the petitioner to any other additional benefit after 1st March, 1975.

5. In such situation, the husband of the petitioner be treated to have retired notionally w.e.f. 1st March, 1975 and he would be entitled to all such retiral benefits which are available to him under the rules. Even if the period of service in Civil Supplies Department is not accepted, still then the husband of the

petitioner had served for 21 years in the Irrigation Department, where 20 years' service is the minimum qualifying period for pension. Thus, the petitioner's husband had qualified for pension even in the Irrigation Department. Therefore, there could not be any justification to refuse pension to the petitioner's husband on the alleged grounds. The ground alleged in the impugned order dated 24th September, 1990 may be ground for refusing leave. But the said rule cannot be applied for the purpose of determining as to whether the petitioner's husband would be treated to have retired on 1st March, 1975 or resigned from the said date. Respondents having not taken any step on account of non-extension of leave, it is not open to them to take any other steps.

6. The facts and circumstances of the case reveal a total indifference on the part of the respondents themselves and lack of humane consideration. On the other hand, it appears that they have proceeded purely on technicality without any humane consideration and that too completely on misconception of the provisions. It might be presumed that the action of the respondents were deliberate and for which, they had themselves mis interpreted the rules to suit their own purpose. The misinterpretation is so apparent on the face of it that this Court has no alternative but to come to a finding that it was a deliberate action.

7. Thus, it appears that the blame cannot be put on the petitioner in the facts and circumstances of the case. It is the respondents themselves, who are to be blamed for bringing about such a situation. The respondents, therefore, should be saddled with interest on the amount, which had remained unpaid for such a long period causing undue hardship and sufferings to the suffering husband of the petitioner as well as to the petitioner during all the time after 1st March, 1975.

8. Mr. B. N. Rai, has relied on the decision in the case of Jai Shanker Vs. State of Rajasthan, . in support of his contention. The said decision lays down that even if a person overstays his leave, he may be removed from service. But until his service is terminated in accordance with law. he is entitled to continue In service.

9. He also relied on the decision in the case of Dayal Saran Sanan Vs. Union of India (UOI) and Others, , wherein it was held that the respondents cannot withhold pension. In the said case, it was further held that an order of forfeiture of benefit of service cannot be made without observing the principles of natural justice. Then again in the present case, there was no order of forfeiture of service benefit. Therefore, there is no scope for the respondents to withhold the pension in view of the ratio decided in the said case.

10. Mr. Rai had also relied on the decision in the case of State of Assam and others v. Akshaya Kumar Deb. 1975 SLJ 693. In the said case, it was held that continuous absence of an employee without leave for a period of 5 years or more, is a conduct, which must normally entail cessation or termination of service. Such cessation of service in substance and effect stands on the same footing as removal from service. The reason for equating cessation of service

with removal is that it involves imputation cast upon the incumbent. Therefore, in order to impose cessation of service, an opportunity is a must. It was held in the said case that it amounts to a major penalty, which requires giving of an opportunity. Then again it was further held that such cessation of employment will not entail forfeiture of the benefit of past service. It was further held that such order does not cause forfeiture of the benefit already earned, such as pension, etc.

11. Thus, even if in the present case, the service of the husband of the petitioner could be treated to have been ceased, still then the benefit of the past service, cannot be forfeited and there having been no order of forfeiture, there is no ground for withholding the retiral benefits or service benefits, namely pension etc.

12. Mr. B. N. Rat has also relied upon the decision in the case of B. M. Tripathi v. State of U. P. and others. 1971 All 346. In the said case, the petitioner had absented himself without any leave. Therefore, it was held that the petitioner therein should be deemed to have resigned after the expiry of the sanctioned leave and he will cease to be in Government employment on the expiry of such unauthorised leave by way of inflicting the penalty of removal from service.

13. The above decisions clearly support the contention of Mr. Rai to the extent that in the facts and circumstances of the case, the pension of the husband of the petitioner could not have been refused.

14. In the circumstance, the writ petition is allowed. The respondents will calculate the amount of pension payable to the husband of the petitioner treating the husband of the petitioner to have resigned/retired from service w.e.f. 1st March, 1975 on the basis of his service in the Irrigation Department for a period of 21 years, which is pensionable and grant him pension according to calculation made on the basis of last pay he would have withdrawn had he been in service till 1st March, 1975. with subsequent calculation as might have been increased on account of subsequent revision in pension till the date of his death, namely 3rd March, 1990. The respondents shall pay the family pension or widow pension as admissible to the petitioner w.e.f, 4th March, 1990 in accordance with law and the rules applicable to the petitioner till such time she would be so entitled to receive the same. Such calculation is to be made within a period of 6 months from today. After such calculation, the amount of arrears are to be paid to the petitioner for the period since 1st March, 1975 together with Interest @ 18% per annum simple till the date of payment, within two months from the date of such calculation. The respondents shall pay current pension to the petitioner immediately on the expiry of 6 months from the date a copy of this order is served on the respondents concerned. In a case any other formality is required to be completed or if there is any lacuna in the forms filled up earlier, the respondents shall get the same complied with by the petitioner and the petitioner undertakes to comply with such formalities as may be required. immediately. The order passed hereby, is preemptory. No costs.