(2004) 01 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 7212 (S/S) of 2001

Smt. Parwati Pande APPELLANT

Vs

State of Uttaranchal and Others RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2004) 01 UK CK 0004

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Ashish Joshi, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard the learned Counsel for the parties at length.

2. By the present writ petition the Petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing paragraph No. 24 of Government Order dated 17.12.1965 and commanding the Respondents to release family pension in favour of the Petitioner.

3. Briefly stated the facts giving rise to the present writ petition are that the husband of the Petitioner late Sri Narayan Dutt Pandey was posted as Principal, in Junior High School, Mallital, Nainital who retired after superannuating age on 31.10.1974. Sri Narayan Dutt Pandey was getting pension during his life time. The Petitioner has stated that after the death of her husband she has moved a representation before the Director, Education Basic Uttar Pradesh, Lucknow for granting her family pension. The matter was referred to the Finance and Accounts Officer (Finance Controller), Allahabad, who ultimately rejected the representation of the Petitioner vide order dated 3.7.1999 on the ground that as per paragraph 24 of G.O. No. A-5355/15-5133-1962 dated 17.12.1965, the family pension can be given only for the period of 10 years or up to the age of 65

years whichever is less, after the date of superannuation.

4. The Respondents have filed a counter affidavit and admitted the fact that Sri Narayan Dutt Pandey was appointed as Assistant Teacher on 17.7.1936 in Nagar Palika, Nainital. He remained employed under the Nagar Palika till 31.7.1972 and after promulgation of Basic Education Act 1972, his services were transferred to Basic Shiksha Parishad. The Respondents have reiterated that according to the proviso of paragraph 24 of G.O. No. 5355/15-3133-1962 dated 17.12.1965, no family pension is payable to the Petitioner after the death of her husband.

5. It has been held in State of Kerala and Others Vs. M. Padmanabhan Nair, by the Hon''ble SC that pension is a valuable right and property and the Petitioner has a right to claim by virtue of the continuous services rendered by him. The observations of the Apex Court are quoted below:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

6. The aforesaid judgment of the Apex Court has also been followed in Dr. Uma Agrawal Vs. State of U.P. and Another, and has held as under:

Now-a-days, several writ petitions are being filed in this Court and various High Courts seeking relief for disbursement, of retiral benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer J. stated in State of Mysore Vs. C.R. Sheshadri and Others, , a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant-not unusual in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and Others Vs. M. Padmanabhan Nair, this Court had occasion to point out that usually the delay occurs by reason of non-production of the L.P.C. (fast pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

7. Apex Court in State of Kerala and Others Vs. M. Padmanabhan Nair, , has held as under:

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.

8. In the instant case the husband of the Petitioner died on 2.11.1995, she has stated that she moved a representation for sanction of family pension in favour of her but finally her representation was rejected by the Respondents on 3.7.1999.

9. The rules governing the family pension are for the benefit of the employees and their dependants. They are piece of beneficial legislation and they intend to promote social justice. The widow of a retired Government servant has right to get family pension after the death of her husband. In the present case the Petitioner is aged about 82 years. Such an old lady, after the death of her husband in the year 1995, is knocking the doors of the Respondents to get her valuable right of family pension, but she is deprived by the authorities on some hyper-technical ground.

10. Apex Court in the case Kapila Hingorani v. State of Bihar 2003 (7) AIC 18 SC has held as under:

The States of India are welfare States. They having regard to the constitutional provisions adumbrated in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and Part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity.

11. It may be observed at this stage that payment on family pension to the Petitioner for the services rendered by her husband is a part of Article 21 of the Constitution of India, which reads as under:

[21. Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.]

12. In the case Islamic Academy of Education and Another Vs. State of Karnataka and Others, the Apex Court has relied upon the judgment in Kapila Hingorani Vs. State of Bihar, and Munn v. Illinois 94 US 113 : 24 1 Ed 77 (1877) and has observed human condition in the light of Article 21 of the Constitution of India. The observations of the Apex Court are quoted below:

Recently in Kapila Hingorani v. State of Bihar (supra) a Bench of this Court noticed the following observations of Field J. in Munn v. Illinois as to what is life, which was in the following terms:

Something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed.

13. It is well settled proposition of law that award of pension is not a bounty from the employer or an act of charity. It is the indefeasible right of the employee and after his death of his dependants and family members. An old woman of the age of more than 82 years cannot be expected to earn her livelihood independently and refusal of family pension to her amounts to deprive her from enjoyment of life, which is a fundamental right under Article 21 of the Constitution of India. In my view the claim of the Petitioner for family pension has wrongly been rejected in a capricious manner.

14. In view of the above discussion paragraph 24 of Government Order No. A-5355/15-5133-1962 dated 17.12.1965, annexure-CA 2 to the writ petition, so far as it relates to the Petitioner is quashed. The Respondents are directed to release family pension in favour of the Petitioner within one month after the receipt of certified copy of this order.

15. The writ petition is accordingly allowed. No order as to costs.

