
(2008) 09 OHC CK 0089
In the Orissa High Court
Case No : Writ Petition (C) No. 5671 of 2006

Smt. Pratimarani Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Orissa Aided Educational Institutions Employees Retirement Benefits Rules, 1981 — Rule 3, 8(2)

Citation : (2008) CLT 891 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : K.K. Swain and P.N. Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner is the widow of late Bhruguram Jena, who, while discharging his duties as a primary school teacher in a Non-Government Aided Primary School died in harness on 17.7.1974.

2. Facts reveal that the date of birth of the husband of the Petitioner as recorded in the Service Book was 20.6.1939 and in ordinary course, he would have retired from service on 30.6.1999. He died a premature death on 17.7.1974. The Petitioner after obtaining the death and legal heir certificates of her husband made an application to the District Inspector of Schools, Basta, for grant of family pension and T.I. to her. The Petitioner pleads that as her application found no favour with the District Inspector of Schools and she came to know that several other similarly situated widows of Non-Government Aided Primary School Teachers, who have died in harness are availing family pension and T.I., she made several representations to the District Inspector of Schools ventilating her grievances and making a fervent prayer to pay her family pension as she started living a life of a destitute.

3. Mr. K.K. Swain, learned Counsel for the Petitioner strenuously urged that the

husband of the Petitioner being appointed as aided primary school teacher on 30.6.1962, by the time of his death, he has already rendered 12 years of service and in ordinary course would have retired in the year 1999. The Petitioner under the relevant rules is entitled to receive family pension. He submitted that the concept of family pension was introduced with effect from 1.9.1988 by virtue of the amendment incorporated in the year 1989 in the Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit Rules, 1986 (for short, "the Retirement Benefit Rules, 1986"). The case of the Petitioner is that under the said Rules, an employee is eligible for pension, gratuity or death-cum-retirement gratuity at the rate admissible to his counterpart in the State Government service and in the event of his death, his family shall be eligible for family pension as admissible to the family of his counterpart in the State Government service. Mr. Swain further contended that pursuant to the aforesaid amendment in the year 1989, a cut-off date being "1.9.1988" was fixed as the amendment was stated to be made effective from 1.9.1988. Fixation of the said cut-off date was challenged before this Court in the case of Bhimasen Prusty and Others Vs. State of Orissa and Others, and this Court in the said judgment while holding that law is well settled that between one homogeneous class artificial discrimination cannot be made in the matter of grant of pensionary rights and that once any revised scheme of pension is introduced, it becomes equally applicable to all existing pensioners and relying upon the decisions in the case of State Government Pensioners' Association and Others Vs. State of Andhra Pradesh, and D.S. Nakara and Others Vs. Union of India (UOI), , held that the amendment to the rule has to be interpreted as having not introduced any such discrimination. But since the rules have come into force with effect from 1.9.1998, no arrear payments of pension is permissible but the families of such teachers, who are retired prior to 1.9.1988 and have otherwise becomes entitled to family pension in accordance with the Orissa Pension Rules, shall be entitled to get the family pension in accordance with those Rules for the period for which payment is payable.

4. A counter affidavit has been filed by the School and Mass Education Department wherein the allegation made by the Petitioner that similarly situated widows are being granted with family pension has not been disputed. However, it has been contended that the Petitioner having approached this Court about 30 years after the death of her husband, this writ petition should be dismissed on the ground of laches and pursuant to the Government notification No. XIV. Codes, 64/2000-28099-SME dated 18.10.2001, the Petitioner is not entitled to receive family pension. The said notification has been annexed to the counter affidavit as Annexure-A/3 from which, it appears that by the said notification, an amendment was brought to the Orissa Aided Educational Institutions Employees Retirement Benefit Rules, 1981 (for short, "the Retirement Benefit Rules, 1981") substituting Clause (b) of Sub-rule (2) of Rule 8 to the effect that the family of pensioner or the family of an employee who died on or after 1.9.1988 shall be entitled to get family pension as admissible to the family of his counterpart in the

State Government service.

5. Learned Counsel for the School and Mass Education Department submitted that the Petitioner will not be entitled to any family pension in view of the above amendment.

6. On examining the question as to whether the Petitioner is not entitled to receive family pension pursuant to the amendment brought to the Retirement Benefit Rules, 1981 by the amending Act of the year, 2001, it would be seen that the said ground taken in the counter affidavit is fallacious.

7. Rule 3 of the Orissa Aided Educational Institutions" Employees Retirement Benefit Rules, 1981 prescribes as follows:

3. Application of the rules - The rules shall apply to the teaching and non-teaching staff of all recognized non-Government Colleges, High Schools, Senior Basic Schools and M.E. Schools which come under the direct payment system and all non-Government Primary Schools including Sanskrit Tols and Junior Basic Schools fully aided by Government in Education and Youth Services Department directly or through Panchayat Samitis constituted under the Orissa Panchayat Samiti Act, 1959 or through a Notified Area Council or Municipality constituted under the Orissa Municipal Act, 1950:

Provided that Government may, by general or special order as may be issued in that behalf, specify and other educational institution or category of institutions and the staff working therein to whom the rules shall apply.

8. Rule 3 of Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers") Retirement Benefit Rules, 1986 provides as follows:

3. Application of the Rules- (1) These rules shall apply to the Teachers of every Non-Government Primary School fully aided by Government in Education and Youth Services Department directly or through a Panchayat Samiti constituted under the Orissa Panchayat Samiti Act, 1959 for a Municipality or Notified Area Council constituted under the Orissa Municipal Act, 1950)

(2) The Orissa Aided Educational Institutions Employees" Retirement Benefit Rules. 1981 will cease to apply to the persons specified in Sub-Rule (1) with effect from the 1st day of April. 1985. (Emphasis Supplied)

9. A bare reading of the aforesaid two rules makes it abundantly clear that after coming into force of the Retirement Benefit Rules, 1986, the teachers of Non-Government Fully Aided Primary School were excluded from operation of the Retirement Benefit Rules, 1981. Hence, the amendment brought to the Retirement Benefit Rules, 1981 which is relied upon by the opp. parties is in no way relevant for the purpose of this case. Under Rule 8 of the Retirement Benefit Rules, 1986, it is provided as follows:

8. (1) An employee shall be eligible for pension, gratuity or death-cum-retirement gratuity and T.I. at the rate admissible to his counterpart in State

Government service.

(2) The family of an employee, including the employees who retired or died on or before the commencement of these rules, shall be entitled to get family pension and T.I. as admissible to the family of his counterpart in the State Government service.

10. From the above rules, it would be seen that the Petitioner representing the family of the deceased employee, who is her husband, is entitled to receive family pension and T.I. as the husband of the Petitioner admittedly expired in harness on 17.7.1974 which is prior to the commencement of the Retirement Benefit Rules, 1986.

11. Now coming to the question of delay on the part of the Petitioner in approaching this Court, the Petitioner has amply stated in the writ petition that she became aware of their right to receive family pension only when she came to learn that similarly placed widows of deceased teachers of Aided Primary Schools are receiving such pension and even thereafter, she has made sincere attempts by making representation before the District Inspector of Schools for grant of such family pension. In view of such circumstances, vis-a-vis, the position of the Petitioner after the death of her husband, this Court feels it appropriate that ends of justice will not be served if the writ petition is thrown out on the technical ground of laches. Accordingly, the stand of the opp. parties with regard to non-maintainability of the writ petition on the ground of laches is not accepted.

12. In the result, the writ petition is allowed and the opp. parties are directed to pay the family pension and T.I. to the Petitioner, as admissible to her counterpart in the State Government service, with effect from 1.9.1988. The arrear family pension payable to the Petitioner shall be calculated and paid to her by the opp. parties within a period of two months from the date of communication of this order. The Petitioner shall also be paid current family pension regularly. There shall be no order as to costs.