(2008) 08 JH CK 0132

In the Jharkhand High Court

Smt. Shanti Devi APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 07-08-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 38, 39, 41

Citation : (2008) 08 JH CK 0132

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application has been made for quashing the order dated 07.07.2001 (Annexure-1), passed by the Commissioner-cum-Secretary, Department of Primary, Secondary and Mass Education, Bihar, Patna, which was communicated under Memo. No. 1194 dated 19.07.2001 to the Secretary, Human Resources Development Department Jharkhand, Ranchi and to the Director, Primary Education, Jharkhand, Ranchi, besides the District Superintendent: of Education, Dhanbad and a copy thereof addressed to the petitioner, whereby, the family pension payable to the petitioner on her husband''s death on 02.06.1974 has been refused on the ground that only those employees, who had died or retired on or after 31.03.1976 were entitled for family pension. Further prayer has been made for issuance of a direction to the Respondents to pay the family pension to her.

2. The case of the petitioner is that the petitioner''s husband late Pramada Prasad Lala was a Primary School Teacher in Lower Primary School at Nawagarh Baghmara, which was earlier run by a Private Managing Committee. Later, such Primary Schools including the school in which her husband was employed, were taken over by the Government of Bihar and the service of the petitioner''s husband was also taken over with effect from 01.01.1971. After her husband''s death on 02.06.1974, she was granted the benefit of Provident Fund but she was not given other benefits of family pension.

The petitioner''s claim is that under the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976, the School in which her husband was employed, was deemed to have been taken over by the State Government alongwith the services of her husband, since 01st January, 1971 and, therefore, the petitioner was entitled to the benefits including Family pension, Gratuity and Leave encashment in accordance with the rules laid down by the State.

3. When her claim was not accepted, the petitioner filed a writ application, before this Court vide C.W.J.C. No. 3771 of 1998 (R).

4. On considering the issues raised, this Court by its order dated 07.08.1999, passed in C.W.J.C. No. 3771 of 1998 (R), remitted the matter to the Secretary, Primary, Secondary and Mass Education, Government of Bihar, Patna to determine the question as to whether the services of the deceased-husband of the petitioner stood taken over by the State with effect from 01st January, 1971 in terms of the Bihar Act 30 of 1976 (Taken Over Act) or not and thereby, the petitioner is entitled for the benefits of Family Pension, Gratuity and Leave Encashment or not. It was also directed that if so necessary, the Secretary shall call for a Report from the District Superintendent of Education, Dhanbad relating to the services rendered by the petitioner''s husband. The decision on the issue was directed to be taken by the Secretary within four months from the date of the order.

5. When the order of this Court as passed in the aforesaid writ application, C.W.J.C. No. 3771 of 1998 (R) was not complied with, the petitioner filed another writ application before this Court vide C.W.J.C. No. 1798 of 2000 (R). While disposing of the writ application by its order dated 07.02.2001, this Court gave the liberty to the petitioner to file a petition for initiation of a proceeding of contempt against the erring Officers including the Secretary, Primary, Secondary and Mass Education, Government of Bihar, Patna and/or the Secretary of such Department of State of Jharkhand, whoever is liable.

6. The petitioner thereafter filed a contempt application before this Court vide M.J.C. No. 264 of 2001. The Respondent-Secretary, Primary, Secondary and Mass Education, Government of Bihar, Patna filed a show cause, wherein, it was stated that the order of this Court dated 17.08.1999, passed in C.W.J.C. No. 3771 of 1998 (R) has already been complied with though belatedly. Considering the show cause replies, the contempt proceeding was dropped with a liberty to the petitioner to challenge the order of the Respondent-Secretary, before the appropriate Forum.

7. The contention of the petitioner in the present writ petition is that inspite of the directions contained in the earlier writ applications, the Respondents have though accepted the fact that the services of the petitioner''s husband were taken over with effect from 01.01.1971, but have denied the petitioner''s claim for family pension on the plea that the Government instructions laid down a cut-off date of 01.04.1976 for grant of Triple Benefit Scheme and Family Pension is

applicable only to those teachers who retired/died after the aforesaid cut off date. Counsel for the petitioner argues that the Respondent-State cannot artificially fix a cut off date by making a distinction between two sets of employees, namely, those who retired/died prior to 31.03.1976 and those who retired/died thereafter and such action of the State Government is arbitrary. In support of his contention, learned Counsel for the petitioner relies upon a judgment of the Patna High Court in the case of Most. Pramila Devi v. State of Bihar reported in 2000 (3) All PLR 34 and on a earlier judgment of the Patna High Court in the case of Smt. Sharda Devi v. State of Bihar and Ors. 1996 (2) PLJR 470.

8. The stand taken by the Respondent Nos. 4 and 5, namely, the Deputy Commissioner, Dhanbad and District Superintendent of Education, Dhanbad is that though admittedly in view of the fact that the School, where the petitioner''s husband was employed was taken over by the Government on 01.01.1971, yet, the petitioner is entitled to the benefits under the Triple Benefit Scheme, only which existed at the time when her husband died and she is not entitled therefore to Family Pension. It is further stated that so far as the Family Pension is concerned, the same was introduced by the State Government for the first time on 01st June, 1976 providing that those who retired or died prior to 31st March, 1976, shall be entitled to the benefit under the Triple Benefit Scheme under the previous rules but those who retired after 31s1 March, 1976 shall be governed by the Bihar Pension Rules and since the petitioner''s husband died on 02.06.1974, therefore, the petitioner cannot claim family pension. Learned Counsel for the Respondents refers in this context to the provisions contained in Section 4 (2) of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act, 1976, wherein, it was declared that every Teacher or other employees holding Office or posts in a taken over School was deemed to be employee of the State Government on the same terms and conditions of service as was applicable before the taking over, until the terms and conditions of service was duly altered by the State Government. Learned Counsel adds that such alteration was done by the State Government by the 1976 Act. The Respondents have relied upon a Division Bench Judgment of the Patna High Court in the case of Sona Devi v. State of Bihar reported in 1998 (1) PLJR 669.

9. The question, which arises for consideration, thus is as to whether the petitioner, whose husband was a teacher in the middle/primary school, which were taken over by the said Act of 1976 from a retrospective date i.e. from 01.01.1971 can be denied family pension on the ground that her husband had died prior to the date of enactment of 1976 Take Over Act.

10. Undisputedly, the 1976 Act was notified on 31st December, 1976, but by virtue of Sub-section 13 of Section 1, the said Act, was deemed to have come into force with effect from 01s1 January, 1971. Thus the effective date of taking over of such schools by the State Government, except those schools, which were required to be examined by the District Committees for the purposes of

assessing the feasibility of faking over, was with effect from 01st January, 1971. The school in which the petitioner''s husband was employed came under the first category and it was deemed taken over w.e.f. 1.1.1971.

11. It may be worth noting that in the case of Smt. Sharda Devi (Supra), it was brought to the notice of the Court that the Family Pension Scheme for the State Government employees was introduced by the State Government vide Finance Department Memo No. Pen-103/64-9505/F1 dated 3rd September, 1964 and on considerations of the provisions contained, therein, the Court had directed for payment of Family pension to the petitioner, therein.

12. In the case of Sona Devi (Supra), the Division Bench of the Patna High Court considered, only the question as to whether for the purpose of family pension, the Respondent-State can fix a cut-off date or not. The said question arose because of the plea of the Respondents that the petitioner was entitled to the benefit under the Triple Benefit Scheme. which existed at the time when the husband of the petitioner, therein, died and she was not entitled for family pension. It was also pleaded by the Respondents, therein, that the Family Pension was introduced by the State of Bihar for the first time on 07th June, 1976, which provided that those teachers who retired or died prior to 31st March, 1976, shall be entitled for the benefit under the Triple Benefit Scheme, but those who retired after 31st March, 1976 shall be governed by the Bihar Pension Rules. However, the relevant provisions dealing with Family Pension Scheme introduced by the State Government including one contained in the Finance Department''s memo dated 03rd September, 1964 were not placed and, as such, it appears that the Division Bench declined to express any opinion on the claim of the Family Pension under the 1964 Rules. The decision in Sona Devi''s case therefore, cannot have application to the facts of the present case.

13. In the case of Lalita Devi and Another Vs. State of Bihar and Others, the decision of the State Government, which reviewed its earlier decision and drew up a fresh Scheme, which provided for grant of Pension for life to the widow of the deceased-Government servant and it was held that the 1977 instructions cannot sustain the test of reasonableness and all principles governing Articles 14 and 16 read with Articles 38, 39 and 41 of the Constitution of India inasmuch as by fixing a cut-off date under the 1977 instruction would amount to arbitrarily denying the benefit available to the family of the teachers under the existing Scheme of 1964 and thereby acting to their detriment. It was further held in the aforesaid judgment that admittedly, the husband of the petitioner died in harness much after 01.01.1971, which is the effective date to take over of the School, by the Government and by virtue of which the Teachers and employees of the Schools, became Government servants and thus they cannot be differentiated in the matter of grant of pensionary benefits by issuing executive instructions.

14. In the present case, admittedly, the husband of the petitioner died in harness on 02.06.1974, i.e. much after the effective date of take over i.e. 01.01.1971 by virtue of which they became Government servants under the 1976 Act.

Therefore, in my opinion, the petitioner cannot be differentiated in the matter of grant of pensionary benefits.

15. This writ application is, therefore, allowed.

16. The Respondents are directed to take immediate steps for release of family pension and other pensionary benefits of the petitioner, with uptodate statutory interest after making necessary adjustments of the amount already paid, if any, under the Triple Benefit Scheme, within four weeks of the receipt/production of a copy of this judgment. However, in the facts and circumstances, there shall be no order as to costs.