(2009) 07 OHC CK 0012

In the Orissa High Court

Case No : Writ Petition (Civil) No. 10428 of 2006

Smt. Suryakanti Behera APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Orissa Aided Educational Institutions Employees Retirement Benefits Rules, 1981 — Rule 8, 8(2)

Citation : (2009) 108 CLT 596

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

Bench : Single Bench

Advocate : Sanjib Mohanty, U.C. Mohanty and S.K. Behera, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner is the widow of Late Bikhari Charan Behera, who died in harness, while working as a Primary School Teacher. The late husband of the Petitioner was born on 1.11.1942 and in due course, would have retired on 01.11.2000. As ill-luck would have it, the Petitioner''s husband expired on 15.05.1975. At the time of his death, he was serving as an Assistant Teacher under the District Inspector of Schools, Jharsuguda at Patrapali Primary School. The Petitioner, being not sanctioned and disbursed with family pension, approached this Court in O.J.C. No. 13548 of 1999. This Court by order dated 20.12.1999, upon considering the case of the Petitioner, directed that the district Inspector of Schools, Sambalpur - II should consider the case of the Petitioner within a period of three months in the light of the ratio laid-down by this Court in the case of Bhimasen Prusty and Others Vs. State of Orissa and Others, . While directing thus, this Court observed that in the said decision.it was held that the cut-off date, i.e., 01.09.1988 for payment of family pension as stipulated in the Orissa Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit (Amendment) Rules, 1989 was arbitrary.

Subsequently, the rules have been amended in 1998 was arbitrary. Subsequently, the rules have been amended in 1998 and in such view of the matter, the prayer of the Petitioner for payment of family pension and other admissible benefits are required to be considered in accordance with the principles decided in the said case as well as the subsequent amendment. Directions were accordingly issued to consider the case of the Petitioner within a period of three months from the date of communication of the said order.

2. After receiving the order of this Court, the pension sanctioning authority, i.e., the District Inspector of Schools wrote a letter to the B.D.O., Kolabira to submit the service record of the husband of the Petitioner for preparation of pension payment order. Thereafter, all the documents along with the pension sanction order were sent by the District Inspector of Schools to the opposite party No. 4 Accountant General, Orissa. After getting the same, the opposite party No. 4 sat over the matter for about three months and thereafter intimated the D.I. of Schools that family pension is not admissible in the case of the Petitioner in view of the notification dated 18.10.2001 published vide S.R.O. Nos. 602/01 and 603/01 dated 18.10.2001 annexed as Annexure-6 to the writ petition. A copy of the said letter was also forwarded to the Petitioner.

3. The Petitioner''s case is that the decision of the opposite party No. 4 is arbitrary, illegal and erroneous as the Petitioner''s case squarely comes under the case of Bhimsen Prusty and Ors. (supra) and applying the law laid down therein, the Petitioner should have been granted the family pension and other benefits. According to the Petitioner, the notification under Annexure-6 dated 18.10.2001, which came into force on the same day has no retrospective application and the case of the Petitioner should have been considered as per the law governing the field on the date when the husband of the Petitioner expired. The Petitioner has further pleaded that the D.I. of Schools being the pension sanctioning authority and he having sanctioned the family pension and recommended the case of the Petitioner to the opposite party No. 4 for release of funds, the opposite party No. 4 was not entitled to take a different view and sit over the judgment on the recommendation of the pension sanctioning authority, i.e., the opposite party No. 3. The Petitioner has further stated that her case is also covered by the decision in the case of Subarna Dibya and Others Vs. State of Orissa and Others, . The act of refusal of payment of family pension and other benefits, such as, T.I. etc. has also been challenged by the Petitioner on the ground of discrimination. In that regard the Petitioner has stated that applying the law laid down in the case of Bhimsen Prusty and Ors. (supra), a large number of widows have already been granted family pension and T.I. and the Petitioner has named some of such persons, who have been granted family pension. The Petitioner being aggrieved by the action of the opposite parties in not granting family pension to her has approached this Court again in the present writ application.

4. No return has been filed by the opposite parties. However, during the course of hearing, learned Counsel for the State submitted that the husband of the

Petitioner having expired on 15.05.1975, it is required to be seen as to what benefit can be granted to the Petitioner. On the said relevant date, Primary School Teachers were governed under the Orissa Non-Government Primary Schools Teachers Contributory Provident Fund, Pension (Triple Benefit) Rules, 1966. Under the said Rules, there was no provision for grant of family pension. Subsequently, Orissa Aided Education Institution Employees Retirement Benefit Rules, 1981 (R.B. Rules, 1981. in short) came into operation with effect from 01.04.1982 repealing the triple benefit Rules, 1966. The said R.B. Rules, 1981 applied to those primary school teachers, who retired on or after 01.04.1982. the Petitioner''s husband having died in 1975, the said R.B. Rules, 1981 had no application to the case of the Petitioner. In 1986 Anr. set of rules, namely, The Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit Rules, 1986 (for short "the R.B. Rules, 1986) came into force with effect from 01.04.1985 repealing the R.B. Rules, 1981. Even in the R.B. Rules, 1986, there was originally no provision for any benefit for the family of a Primary School Teacher dying in harness. It was only in 1989 by a Gazette Notification dated 05.12.1989, Rule-8(2):(b) of the R.B. Rules, 1981 was amended providing for family pension to the families of the employees of the aided educational institutions, the expression "Family Pension" was defined by introduction of Clause-(e)-1 in Section 2 of the R.B. Rules, 1981 stating that "family pension" means the family pension payable to the family of the employees under Rule 8. According to the State, the employees under Rule-8, as referred to above in R.B. Rules 1981, means the persons, who were in service or continued in service on or after 01.04.1982. Hence, this excludes persons, who have retired or died prior to 01.04.1982. It so, therefore, stated that the husband of the Petitioner having died in 1975, i.e., much prior to 01.04.1982, he was not an employee under the R.B. Rules, 1981 and, therefore, the provision of family pension as per Rule 8(2) (b) of the R.B. Rules, 1981 cannot be made applicable in case of the Petitioner. Pursuant to the aforesaid amendment in the R.B. Rules, 1981, families of some employees, who had retired prior to 01.09.1988, were denied family pension on the ground that the amended Rule 8(2) (b) only applied to those employees, who died on or after 01.09.1988. In case of Bhimsen Prusty and Ors. (supra), this Court held that the families of such teachers, who are retired prior to 01.09.1988, shall be entitled to family pension. In 1998 Anr. amendment was brought into R.B. Rules, 1981, which came into operation with effect from 01.09.1988. By the said amendment Sub-rule-2(b) of Rule 8 was amended to the effect that the family of an employee including the employee, who retired or died on or before commencement of those rules, shall be entitled to get family pension as admissible to the family of his/her counterpart in the State Government service. Learned Counsel for the State submitted that "on or before commencement of the Rules" actually refers to the commencement of the amendment Rules, 1998 and not the commencement of the original rules in the year 1981.

5. As no counter affidavit has been filed, the assertions made in the writ petition

that similarly placed persons have been granted family pension has not been controverted by the opposite parties. In the notification dated 18.10.2001 under Annexure-6, Orissa Aided Educational Institutions (Non-Government Fully Aided Primary School Teachers) Retirement Benefit Amendment Rule, 2001 came into force. Sub-rule (2) of Rule 8 of the said R.B. Rules, 1986 was amended to the effect that the family of a pensioner of family of an employee, who died after 1st September, 1988 shall be entitled to get family pension and T.I. as admissible to the family of his counterpart n the State Government service.

6. Notification dated 18.10.2001 under Annexure-6 was challenged before this Court in the case of Subarna Dibya etc. etc. (supra). This Court referring to various earlier decisions, such as, Bhimsen Prusty and Ors. (supra), D.S. Nakara and Others Vs. Union of India (UOI), , State Government Pensioners'' Association v. State of Andhra Pradesh 1986 SC 1907, Raghunath Misra and two Ors. v. State of Orissa OJC Nos. 6242, 6244, 6344 and 6346 of 1994, Sankareswar Nanda and Anr. v. State of Orissa 1988 (II) OLR 172, S.R. Bhagwat and others, Vs. State of Mysore, and judgment in Civil Review Nos. 73, 76-78 and 81-84 of 1992 reviewing the judgment in Trinath Bhuyan and seven Ors. v. State of Orissa O.J.C. Nos. 1781 - 1790 of 1989 held as follows:

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Thus, there are two categories of persons who are entitled or eligible to receive family pension. The first category is the family of a pensioner and the second category is the family of an employee, who died on or after 1 st of September, 1988. Any person who satisfies either of the above two criteria would be eligible to receive family pension. The work ''pensioner'' used in the aforesaid Rule shall mean a primary school teacher of an aided educational institution who was receiving pension and shall also include one who was Otherwise eligible to receive pension, but for some reason or other pension was not paid to him. In other words, ''pensioner'' shall also bring within its ambit an employee who was entitled and/or in consonance with the Rules was eligible to be covered under the pension scheme. According to the 2001 Amended Rules, the family members of such employees shall be entitled to receive family pension. I, therefore, find no ambiguity in the aforesaid Amended Rules.

7. The court ultimately arrived at a conclusion, which reads as follows:

Without entering into the arena of controversy, it would suffice to hold that the family of a member of teaching and non-teaching staff of an aided educational high school, who was otherwise eligible to receive pension, shall receive family pension in consonance with amended Rules.

8. It would be profitable to refer to the case of Bhimsen Prusty and Ors. (supra) wherein this Court referring to the Orissa Pension Rules, 1977 held that family pensions payable under Ghapter-VII of the said Rules and the provisions were made applicable to the Non-Government Fully Aided Primary School Teachers by amendment of the Orissa Aided Educational Institutions (Non-Government Fully

Aided Primary School Teachers) Retirement Benefit (Amendment) Rules, 1989 providing that an employee shall be 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. The said amendment was made effective from 1.9.1988. The said cut-off date 1.9.1988 was held to be not an intelligible dividing line and this Court further relying upon the case of D.S. Nakra (supra) held that since the revised scheme was operative from the date mentioned in the scheme, i.e. 1.4.1978, the continuing rights of the pensioner to receive pension and family pension must also be revised according to that scheme. Hence, whenever, there is an introduction or revision in the family pension scheme, it becomes applicable to all the existing pensioners and there cannot be any reason to continue the right to get the family pension to families of teachers retired after 1.9.1988. Concluding thus, this Court directed that since the Rules have come into force with effect from 1.9.1988, no arrear payment of pension is permissible, but the families of such teachers, who retired prior to 1.9.1988 and have otherwise become entitled to get family pension in accordance with the Orissa Pension Rules, shall be entitled to get family pension in accordance with those Rules for the period for which such payment is payable.

9. In the instant case, considering the previous orders passed by this Court directing to consider the claim of the Petitioner in accordance with the decision in the case of Bhimsen Prusty and Ors. (supra), the pension sanctioning authority, i.e., the D.I. of Schools having calculated the amount of family pension to which the Petitioner would be entitled under Annexure-5 to the writ petition and having forwarded the same to the opp. party No. 4 - Accountant General, Orissa, the said Accountant General had no occasion to issue the letter under Annexure-7 returning the family pension papers of the Petitioner to the D.I. of Schools with the remark that family pension is not admissible in such cases as per notification dated 18.10.2001. The said decision of the Accountant General, Orissa, Bhubaneswar communicated in the letter of the Senior Accounts Officer to the D.I. of Schools under Annexure-7, therefore, is unsustainable and is accordingly quashed. The opp. Parties are directed to make payment of the family pension to which the Petitioner is entitled to, but with effect from 1.9.1988 and no arrear before the said date shall be payable to the Petitioner. It is further directed that payment of family pension and T.I. from 1.9.1988 till the date of payment shall be made to the Petitioner within a period of three months from the date of communication of this order and the current family pension and T.I. shall be paid regularly to the Petitioner thereafter.

10. Another compelling reason for passing the above direction is that the allegation made by the Petitioner that similarly placed persons are being paid family pension having not been controverted by any of the opp. parties, non-payment of family pension and T.I. to the Petitioner suffers from discrimination also, as it violates Articles 14 and 16 of the Constitution.

11. With the aforesaid directions, the writ petition is allowed, but in the circumstances, without cost.

