
(2019) 01 JH CK 0121

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 187 Of 2014

State Of Jharkhand

APPELLANT

Vs

Giribala Devi And Ors

RESPONDENT

Date of Decision : 08-01-2019

Acts Referred:

Bihar Pension Rules, 1950 — Rule 116, 128

Citation : (2019) 01 JH CK 0121

Hon'ble Judges : D.N. Patel, J;B.B. Mangalmurti, J

Bench : Division Bench

Advocate : Vikash Kumar, Shailendra Kumar Singh

Judgement

D.N. Patel, J

1. Instant appeal is directed against the order dated 01.02.2013 passed in W.P. (S) No.5398 of 2006 by which the order dated 29.09.2005 was quashed and the application was allowed.

2. The relevant facts, as enumerated, are that the husband of respondent namely Premanand Adhikari was appointed as Tahsil Karamchari on 28.10.1955 in Khunti Circle falling at that time within the District Ranchi. He served till 24.04.1958 and thereafter he was transferred from Khunti to Tamar Circle. He applied for premature retirement in December, 1968 although he was to attain the age of 58 years in the year 1989 as his date of birth was 30.01.1931. After rendering services of about 13 years, he applied for premature retirement on medical ground vide his application dated 06.08.1969. Since the husband of petitioner was suffering from different deceases, he died on 27.08.1999. The further case is that the respondent being wife, approached various authority for grant of family pension, gratuity, GPF and leave encashment etc. Pursuant to that, Accountant General, Jharkhand wrote a letter to Circle Officer, Tamar in the year 2003 and 2005 but no action was taken. Then petitioner/respondent filed W.P. (S) No.2442 of 2003 and the same was disposed of vide order dated

31.01.2005.

"Learned counsel for the petitioner submitted that petitioner resigned on health ground and therefore he is entitled to invalid pension. He further submitted that petitioner could not lay her hands on any medical certificate issued to her husband in terms of the rules, as yet. Therefore she may be given liberty to claim invalid pension, if such medical certificate is found on search.

Accordingly if petitioner produces such medical certificate already issued to her husband in terms of the rules, within two months from today, orders will be passed on her claim, in accordance with law within two months from the date of receipt of such claim.

Respondent No.5 is directed to see that the amount of G.P.F. along with statutory interest, in accordance with law is paid to the petitioner within a period of two months from the date of receipt/production of a copy of this order."

3. Thereafter, the Deputy Commissioner, Ranchi passed Office Order dated 29.09.2005 and held that the employee was not entitled for pension. This order was challenged before the writ court and the same was quashed and the writ was allowed which are quoted hereinbelow :-

"9. Admittedly, the husband of the petitioner has served for more than thirteen years. The minimum qualifying period for grant of pension is 10 years under the Pension Rules. When the husband of the petitioner submitted his application dated 12.12.1968 it was open to the respondents to reject such application. It was also incumbent upon the respondents to get the husband of the petitioner examined by a Medical Board constituted in terms of Rule 116 R/w Rule 128 of the Bihar Pension Rules for ascertaining the medical condition of the husband of the petitioner. No such Medical Board was constituted by the respondents and the medical certificates submitted by the petitioner have not been disputed by the respondents.

10. I find that in an identical case a similarly situated person namely, Basant Kumar Banerjee has been granted similar benefits by this Court vide order dated 02.02.2009 passed in W.P.(S) No.1012 of 2007. In the said case Basant Kumar Banerjee was appointed on 07.01.1957 and after rendering service for a period of eleven years twenty six days, he asked for premature retirement and claimed payment of invalid pension. As he was not granted pensionary benefits, he moved this court in C.W.J.C. No.1551 of 2001 which was disposed of with a direction to the respondents to consider his case. However, as his claim was rejected, he moved this Court in W.P.(S) No.1012 of 2007 which was allowed by order dated 02.02.2009. In the said case, this Court has found as under,

"Having found that the application had been filed for invalid pension, it was incumbent upon the respondents to get Medical Board constituted in terms of Rule 116 r/w Rule 128 of the Bihar Pension Rules for examination of the medical condition of the petitioner but that never seems to have been constituted and

hence, on account of non-examination by the Board, the petitioner now can not be denied the benefit of invalid pension, once he has been found to have completed more than eleven years of the service.

Accordingly, the impugned order dated 21.07.2006 as contained in Annexure-7 is hereby quashed. Consequently, Deputy Commissioner, Ranchi respondent no.3 is directed to take decision in the matter of payment of invalid pension within a period of two months from the date of receipt / production of a copy of this order.

In the result, this writ application is allowed."

11. In view of the aforesaid facts particularly, in view of the fact that the husband of the petitioner had sought permission for premature retirement and the fact that medical certificates submitted by the petitioner have not been doubted by the respondents, I find that impugned order dated 29.09.2005 is liable to be quashed and is hereby quashed. The writ petition is allowed."

4. Learned counsel appearing on behalf of appellant-State of Jharkhand submitted that the Writ Court has not considered that the husband of petitioner Premanand Adhikari, Ex-Revenue Karamchari, Tamar Anchal had resigned from service on health ground after completion of more than 13 years of service, but, as per Pension rules governing the pension/family pension are not applicable in the present case as the resignation amounts to forfeiture of past services. He further submitted that in an earlier writ application invalid pension was claimed and after death of the employee, present respondent claimed for family pension which are against the pension rules. No medical certificate was attached with the application therefore, the direction in W.P.(S) No.2442 of 2003 was given for payment of G.P.F. along with statutory interest in accordance with law to the petitioner within a period of two months as well as orders will be passed on her claim. The Deputy Commissioner, Ranchi after consideration of the matter found petitioner-respondent not entitled for family pension and rejected her claim. Learned Counsel also submitted that the application dated 12.12.1968 filed on behalf of the husband of the petitioner for invalid pension was probably forged and fake but the writ court did not consider the same.

5. Counsel for the petitioner-respondent submitted that this Court has passed order for payment of pension and other retirement benefits in similarly situated employees in W.P. (S) No.1616 of 2004 who had also resigned from service.

6. Having heard learned counsel for the parties and on perusal of the papers attached with it, it appears that the husband of petitioner after serving more than 13 years had sought permission for premature retirement. As per pension rules, the minimum qualifying period for grant of pension is ten years and admittedly the husband of petitioner had rendered the services for more than ten years. Now after lapse of several decades, the question of medical condition of the petitioner or non-attachment of medical certificate with the application, cannot be a valid ground for denial of family pension to the petitioner-respondent; as admittedly the husband of the petitioner had rendered thirteen

years of service.

7. For the aforesaid reasons and rules referred hereinabove and also looking to the peculiar facts of the present case that the husband of the respondent no.1 had tendered his resignation (on 12-12-1968) before several decades due to ill-health, this L.P.A. is hereby dismissed, as no error has been committed by the learned Single Judge while deciding W.P.(S) No.5398 of 2006 vide judgment dated 1st February, 2013 and we are in full agreement with the reasons given by learned Single Judge in paragraph nos. 9, 10 and 11 of the judgment dated 1st February, 2013.