
(2015) 04 JH CK 0039

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3258 of 2006

Sunil Kumar Dhar

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Citation : (2015) 3 JLJR 40

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant

Final Decision : Allowed

Judgement

Rongon Mukhopadhyay, J.

1. Heard Mr. Ananda Sen, learned counsel appearing on behalf of the petitioner, learned J.C. to AAG appearing on behalf of the State and Mr. Anoop Kumar Mehta, learned counsel appearing on behalf of respondent Nos. 2 to 4 - Ranchi University.

2. In this writ application, the petitioner has prayed for quashing the decision of the respondent No. 3 as contained in letter No. 2041 dated 11.05.2005 by which the option exercised by the sister of the petitioner in pursuance of the government decision circulated through Memo No. 356 dated 13.11.2001 has not been accepted. It has further been prayed that the respondents be directed to change the option of the sister of the petitioner under Group "A" Pension cum G.P.F. cum Gratuity Scheme and to provide incidental and consequential benefits such as pension, gratuity, leave encashment and other admissible dues/benefits.

3. The facts which appear from the writ petition is that Miss Rekha Dhar (hereinafter referred to as the "deceased employee") was appointed as a Librarian in Ranchi University on 15.07.1971. Subsequently, she was appointed as Lecturer in the same college vide letter dated 21.11.1973 which was

concurred by the University Service Commission by communication dated 18.04.1974 and which was subsequently confirmed by a permanent concurrence in writing by the Commission on 26.06.1980. The deceased employee was confirmed on the post of Lecturer by the Ranchi University on 27.04.1984 and on 17.05.1995 she was promoted to the post of Reader which was also confirmed by the Ranchi University on 17.10.1995. In the year 1981, the deceased employee had exercised her option in the light of the Statutes for grant of retirement benefit to the employees vide letter No. 5285 dated 21.11.1980 and she had opted for scheme "C" which was related to contributory provident fund. A letter as contained in letter No. 356 dated 13.11.2001 was issued by the Human Resources Development Department in which a fresh and final opportunity was given to the teachers and officers of the University to exercise option in favour of triple benefit scheme i.e. for Group "A" Pension cum G.P.F. cum Gratuity Scheme. A condition was stipulated in the letter dated 13.11.2001 to the effect that the option must reach the office of the University by 31.12.2001. This was followed by a notification dated 10.12.2001; and that the teaching and non teaching employees who were appointed on the sanctioned post and were in service on 01.01.1996 were given the last opportunity to change their option latest by 31.12.2001 subject to the condition that the university contributions in their G.P.F. with interest shall be deposited in the pension fund. As it appears from the notings made at the top of the notification dated 10.12.2001, the same was received in the College on 03.01.2002. Thereafter the respondent No. 5 vide letter dated 10.01.2002 had sent to the Registrar, Ranchi University the list of teachers who have opted for Group "A" for retirement benefit along with requisite forms to the University. The said list included the name of the deceased employee also who had opted for Group "A". Taking note of the fact that although in terms of the notification dated 10.12.2001, the option was to reach the University by 31.12.2001 and since the College itself had received the notification on 03.01.2002 as such a communication was made by the respondent No. 5 to the Registrar, Ranchi University wherein the said fact was mentioned and a request was made to consider the fresh option of the employees. Subsequently another notification has been issued by the Ranchi University dated 01.10.2004 in which it was specifically stated that the employees who did not exercise their option within the stipulated period allowed by the notification issued so far, shall be deemed to have opted for the scheme set out in Appendix "A". However, vide letter as contained in Memo No. 2041 dated 11.05.2005, the fresh option given by the deceased employee was for change of option to Group "A" was not accepted by the University which is under challenge in the present writ application.

4. Mr. Ananda Sen, learned counsel for the petitioner has submitted that admittedly vide letter dated 13.11.2001 a fresh option was sought from the teaching and non-teaching staffs with respect to the triple benefit scheme and the said options were to reach the University by 31.12.2001. It has been submitted that the respondent No. 5 received the said communication on

03.01.2002 which was beyond the period prescribed in the letter dated 13.11.2001. Immediately on receipt of the said communication, the options of the employees concerned were sent to the University which was followed by a letter by the respondent No. 5 bringing to the notice of the University the fact that the letter dated 13.11.2001 had reached the College beyond 31.12.2001 and in such circumstances request was made to consider the option of the deceased employee and others. He thus submits that since there was no opportunity for respondent No. 5 to send the option of its employees within the prescribed period in view of the fact that it was received beyond the period prescribed in the letter dated 13.11.2001, in such circumstances the respondent - University should have accepted the option and passed necessary orders in that regard. The learned counsel for the petitioner on the alternative has relied on the notification issued by the Ranchi University dated 01.10.2004 in which it was categorically mentioned that the employees who have not exercised their option within the stipulated period allowed by the University shall be deemed to have opted for the scheme set out in Appendix "A". He therefore submits that even if the University did not accept the option which was sent to it by the respondent No. 5 beyond the period prescribed in the letter dated 13.11.2001, but in view of the notification issued by the Ranchi University dated 01.10.2004 the deceased employee should have been deemed to have opted for Scheme "A" of the triple benefit scheme and without considering the said facts by a totally non-speaking order the Registrar, Ranchi University has rejected the application of the petitioner on 11.05.2005. It has further been submitted by the learned counsel for the petitioner that in similar situations when the retiral benefits have been paid to the employees and on changing their options from Group "C" to Group "A", the provident fund amount was deposited and the petitioner also in order to get the benefit of Group "A" was ready to deposit the said amount along with the interest accrued thereupon.

5. Mr. Anoop Kumar Mehta, learned counsel appearing on behalf of the Ranchi University on the other hand, submitted that the letter dated 13.11.2001 was very clear and unambiguous inasmuch as, fresh options which were to be exercised by the teaching and non-teaching staffs were to reach the University by 31.12.2001, but as it appears that the same was sent by the respondents on 10.12.2001 and in such circumstances, the impugned order dated 11.05.2005 rejecting the claim of the petitioner has rightly been issued. It has also been submitted that so far as contention of the petitioner that similarly situated employees of the Ranchi University had been given an opportunity to opt for Group "A" from Group "C", the petitioner cannot equate his case to that of the said teachers, inasmuch as, they had opted for the Scheme within the period prescribed in the letter dated 13.11.2001 i.e., by 31.12.2001 and since the deceased employee had opted for the scheme after 31.12.2001, in such circumstances, petitioner cannot derive any benefit.

6. Learned J.C. to Additional Advocate General has also reiterated what has been stated by Mr. Mehta by submitting that the petitioner had opted under the triple

benefit scheme after 31.12.2001 and in such circumstances claim of the petitioner was rightly rejected by the University.

7. The learned counsel for the petitioner has made a two pronged attack on the impugned order dated 11.05.2005 to the effect that the letter dated 13.11.2001 reached the College after 31.12.2001 and this fact when brought to the notice of the University, did not evince any response. In terms of the notification dated 01.10.2004, it was clarified that the employees who did not exercise their option within the stipulated period, shall be deemed to have opted for the Scheme under Appendix "A". In either of the circumstances, the deceased employee had a case to be considered for Group "A" under the triple benefit scheme. As it appears from the impugned order dated 11.05.2005 neither of the facts have been considered and a communication has been made without enumerating therein any reasons for rejecting the claim of the deceased employee. The case of the deceased employee can be equated with those of the employees which has been mentioned by the petitioner in view of the notification dated 01.10.2004 inasmuch as, even if the option was submitted beyond the stipulated period, but in view of the said notification it would have been deemed that the deceased employee had opted for the scheme set out in Appendix "A". These facts were not at all considered while rejecting the claim of the deceased employee.

8. Accordingly, in view of the discussions made hereinabove, the impugned letter dated 11.05.2005 being devoid of any reasons is hereby quashed and set aside and the matter is remitted back to the respondent No. 4 to consider the claim of the petitioner in the light of facts enumerated above and pass a reasoned order in accordance with law within the period of four weeks from the date of receipt of a copy of this order.

9. At this juncture, Mr. Anoop Kumar Mehta, learned counsel for the Ranchi University submits that Mahila College, Chaibasa where the deceased employee was posted comes within the jurisdiction of Kolhan University, Chaibasa. If that be so, the respondent No. 4 shall forward the necessary documents to the Registrar, Kolhan University, Chaibasa who shall consider the claim of the petitioner and pass necessary orders as indicated above.

10. This application is allowed and disposed of.