

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.5971/2006
(Smt. Vidhya Devi Vs. State & Ors.)

Date of order : May 30th, 2008

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Jaidev Singh Bhati, for the petitioner.
Mr. Arjun Singh, Dy. Govt. Advocate.

In this writ petition, the petitioner being widow of late Rekha Ram, employee of the respondent Department, who died while in service on 2.6.1984 has preferred this writ petition for directions to the respondents to grant family pension in accordance with law. Further, it is prayed that entire arrear of the pension along with 18% interest may be granted to the petitioner.

Brief facts of the case are that the husband of the petitioner late Rekha Ram entered into the

service in the erstwhile Rajasthan Nahar Pariyojna on 20.12.1968 on the post of Beldar and he was posted under the respondent Assistant Engineer in the Rajasthan Nahar Pariyojana at Rawatsar.

The husband of the petitioner late Rekha Ram was granted semi permanent status in accordance with Rule 3 (3) of the Work-charged Rules, 1964 w.e.f. 20.12.1970 and his pay was fixed in the pay-scale of Rs.240-290 w.e.f. 1.9.1976 and further his pay was fixed to Rs.415/- per month in the revised pay scale Rules 1983 w.e.f. 20.1.1982.

The petitioner's husband died while in service on 2.6.1984 and till his death although the petitioner's husband was entitled to be declared permanent after completion of ten years of service in accordance with the Rules of 1964 but due to inaction on the part of the respondents, the petitioner's husband was not granted permanent status, so also, regular status as provided under the Rules of 1964.

After death of late Rekha Ram instead of granting pensionary benefits to the petitioner, she was paid Rs.4109/- as amount of gratuity and Rs.7906.75 as amount of C.P.F. and this order was made for payment on 4.6.1985.

In this case, the petitioner has made a

prayer that she is illiterate lady and according to the rules, the husband of the petitioner late Rekha Ram rendered more than 15 years of service with the respondent department and as per Rules of 1964, he was required to be declared permanent after completion of ten years of service, so also as per rules, the petitioner was to be allowed family pension because for work-charged employees pension was made applicable but due to inaction on the part of the respondents no family pension was allowed to the petitioner after death of her husband, who was employee and was working with the respondent Department for a period of 15 years.

Learned counsel for the petitioner has invited my attention towards Rule 22-A of the Rules of 1964, which was added for granting option for pensionary benefits vide notification dated 17.9.1980 in which as per the counsel for the petitioner it was the duty of the respondents to provide option to the work charged employees for grant of pensionary benefits but it was not granted to late Shri Rekha Ram though he was working in the respondent Department under the work charged cadre.

Learned counsel for the petitioner as invited my attention towards certain judgment of this Court, which are as follows :

1. 2004 (3) CDR 2503 (Kiran Devi Vs. State of Rajasthan & Ors.)
2. 2004 (3) CDR 2367 (Gaulabi Bai Vs. Secretary, Govt. of Rajasthan, Department of Irrigation & Ors.)
3. 1992 (1) WLC 89 (Naurti Devi Vs. State of Raj. & Ors.)
4. SB Civil Writ Petition No.1814/1998 decided on 25.10.2007 (Sugan Kanwar Vs. State of Raj.)
5. SB Civil Writ Petition No.1484/2006 decided on 8.3.2007 (Mahendra Kaur Vs. State of Raj. & Ors.)
6. 1991 WLR 340 (Sajjan Singh Vs. State of Raj. & Ors.)

while citing the above judgments, it is submitted by learned counsel for the petitioner that due to inaction of the respondents, the husband of the petitioner late Rekha Ram was not given permanent status and after completion of ten years though he has completed 15 years of service and was semi permanent in the year 1970. Further, it is submitted that option was to be given to the petitioner's husband in accordance with Rule 22-A but unfortunately no option was given to late Rekha Ram and after his death the petitioner has been denied pensionary benefits, which

is totally inaction on the part of the respondents.

Per contra, the State Government while filing reply has made strange assertion in the reply that at the relevant time when the petitioner's husband died there was no provision for pension for the work charge employees, therefore, it is wrong to say that the respondent department has neither granted family pension nor any reasons were assigned for not granting the same. As per the respondents, this writ petition has been filed after delay of 22 years so also, there was no provision for pension in the year 1984 for the work charged employees, therefore, there is no question of granting family pension at this stage hence the petitioner was rightly given the amount of C.P.F. and gratuity in which there is no illegality, as such this writ petition may be dismissed on the ground that the petitioner has claimed the family pension after 22 years before this Court and further on the ground that there was no provision for pension in the year 1984 when the petitioner's husband died. Therefore, this writ petition may be dismissed.

After considering the arguments advanced by both the parties and perusing the judgment cited by learned counsel for the petitioner, it is obvious from the facts that the petitioner's husband was work charged employee and under Rule 3 (3) of the Rules of

1964 was made semi permanent in the year 1970 and this fact is not disputed by the respondents. Further, it is also not disputed that Rekha Ram died while in service in the year 1984 and he had completed 15 years of service. In this case, a patently false reply has been filed by the respondents because Rule 22-A of the Rules of 1964 was added by the State Government vide notification dated 17.9.1980 by which it was specifically provided that option was to be given for grant of pension to those employees who had completed ten years of service and were either made permanent or going to be made permanent. Meaning thereby, the entitlement of pension was in existence in the year 1984 because vide notification dated 17.9.80, the pension was made applicable for the work-charged employees. Therefore, totally false reply has been filed by the respondents that there was no provision for grant of pension for work-charged employees. Rule 22-A of the Rules of 1964, which was added in the Rules vide notification dated 17.9.1980 reads as follows :

“ नियम 22 -ए. पेशन एवं भविष्य निधि हेतु विकल्प - (1) 10 वर्षों की सेवा पूर्ण करने पर नियम 3 के अन्तर्गत एक कार्य प्रभारित कर्मचारी जिसे स्थाई घोषित किया गया है या किया जा रहा है, को यह विकल होगा कि या तो अंशदायी भविष्य निधि में अभिदाय करना जारी रखे या पेंशन लाभों हेतु विकल्प देवे।

(2) उपनियम (1) के अन्तर्गत अंशदायी भविष्य निधि के स्थान पर पेन्शनीय लाभ का विकल्प प्रयोग किये जाने पर,

निम्नलिखित प्रक्रिया का पालन किया जावेगा-

(i) कर्मचारी द्वारा अंशदान की गई धनराशि मय उस पर ब्याज के जो विकल्प की तारीख के दिन कार्य प्रभारित कर्मचारी के लेखे में पड़ी (Stand) हो, को सामान्य भविष्य निधि लेखा में जमा या आकलित (Credit) किया जावेगा;

(ii) राज्य सरकार द्वारा दी गई अंशदान की धनराशि मय उस पर ब्याज के, जो उपरोक्त तारीख के दिन उसके लेखे में पड़ी (Standing) हो, को सामान्य राजस्व (General Revenue) में स्थानान्तरण किया जावेगा।

(iii) इस आदान प्रदान से ऐसी तारीख के पूर्व उसकी एक कार्य प्रभारित कर्मचारी के रूप में की गई सेवा को पन्शन हेतु गणना करवाने का अधिकार होगा, मानो वह सेवा एक पन्शन योग्य संस्थापन में की गई हो :

परन्तु यह है कि पेन्शन योग्य सेवा के लाभ, केवल ऐसी अवधि या अवधियों के सम्बन्ध में अर्जित होंगे जब उसने एक कार्य प्रभारित कर्मचारी के रूप में सेवा की है और जिस दौरान उसने अंशदायी भविष्य निधि में अभिदाय दिया है।

(iv) ऐसे मामलों में यह विकल्प इस नियम के लागू होने की तारीख से छः माह की अवधि में पूर्व में स्थाई घोषित किए कर्मचारी और इन नियमों के नियम 3 के अन्तर्गत एक कर्मचारी स्थायी घोषित किये जाने की तारीख से छः माह की अवधि में परिशिष्ट -ए में दिए प्रपत्र में लिखित रूप में पेयोग किया जावेगा।

(v) एक बार निष्पादित किया गया विकल्प अन्तिम होगा।

(vi) ऐसे व्यक्ति जो विहित अवधि में विकल्प निष्पादित नहीं करते हैं, उनके लिए यह समझा जावेगा कि वे अंशदायी भविष्य निधि के लाभ जारी रखना चाहते हैं। विकल्प नियोजक को प्रेषित किया जावेगा जिस पर सक्षम प्राधिकारी को जो उसे प्राप्त करेगा,

द्वारा प्रतिहस्ताक्षर किया जावेगा। कर्मचारी द्वारा निष्पादित किया गया विकल्प उसकी सेवा पुस्तक में चिपकाया जावेगा और उसकी एक सत्य प्रतिलिपि उसकी निजी पत्रावली में भी रखी जावेगी।

(3) उपनियम (1) के प्रावधानों के अध्यधीन (Subject to) कार्य प्रभारित कर्मचारी के पेन्शनीय लाभ उसे, सरकारी कर्मचारी को पेन्शन स्वीकृत करने सम्बन्धी सरकार द्वारा समय-समय पर जारी नियमों के अनुसार अनुज्ञेय होंगे।

(4) एक ऐसे कार्य प्रभारित कर्मचारी के मामले में जिसे अंशदायी भविष्य निधि नियमों, जो उनके द्वारा पेन्शनीय लाभो हेतु विकल्प देने के पूर्व लागू थे, के अनुसार अभिदाय (Contribute) करना था, परन्तु कतिपय कारणों से कार्य प्रभारित कर्मचारी नियम लागू होने के पश्चात उसने कुछ अवधियों के दौरान अभिदाय (Contribution) नहीं दिया, तो भी उसे उस अवधि/अवधियों का अभिदाय(Contribution) देने की अनुमति दी जावेगी जिससे कि वे मध्यवर्ती (interventing) अवधि/ अवधियां भी पेन्शन हेतु शुमार हो सके।

(5) इस नियम के उप नियमों (1) से (4) में अन्तर्विष्ट कुछ भी होने के बावजूद ऐसा कार्य प्रभारित कर्मचारी जिसने राज्य सरकार द्वारा समय समय पर जारी नियमों के अनुसार पेन्शनीय लाभों हेतु पहले से ही विकल्प दे दिया था, उसे इन नियमों के अन्तर्गत पेन्शनीय लाभों के लिए विकल्प दिया माना जावेगा।

(6) अंशदायी भविष्य निधि की प्रसुविधाओं के लिए पात्र किसी कर्मचारी की मृत्यु यदि पेंशन नियमों के साथ साथ नवीन पारिवारिक पेन्शन प्रसुविधाओं को चुनने का विकल्प निर्धारित तारीख के पूर्व किये बिना ही हो जाती है तो प्रशासनिक अधिकारी स्वविवेक से अंशदायी भविष्य निधि की प्रसुविधाओं के बजाय पेन्शन नियमों के साथ साथ नवीन पारिवारिक पेन्शन नियमों को प्रसुविधायें उन मामलों में दे सकेगा, जहां अभिदर्शाता द्वारा विधि मान्य रूप से नाम निर्देशित किये गये नाम निर्देशित या नाम निर्देशितियों द्वारा या उनके अभाव में अंशदायी भविष्य निधि नियमों

में यथा परिभाषित परिवार के समस्त सदस्यों द्वारा विनिर्दिष्ट रूप से ऐसा अनुरोध किया गया हो। यदि तत्पश्चात् कथित समस्त सदस्य उक्त अनुरोध करने पर सहमत नहीं होते हो तो अंशदायी भविष्य निधि की राशि उन्हें इसकी बाबत के नियमों के उपबन्धों के अनुसार सदत की जायेगी। उर्पयुक्त संशोधन 1.9.82 से प्रभावी होगा। तथापि पूर्व में अन्यथा रूप से विनिश्चित मामलों पर फिर से विचार नहीं किया जायेगा।"

In this view of the matter, it is abundantly clear that there was provision for grant of pension but though the petitioner's husband completed 15 years of service was not given permanent status after completion of 10 years of service and later on he died while in service, therefore, in my opinion there is total inaction on the part of the respondents because first of all they did not pass an order for declaring the petitioner's husband permanent after completion of ten years of service under Rule 3 (3) of the Rules of 1964 and although there was provision for pension and options were to be given to the work charged employee even if they were not made permanent but this benefit was not given to the petitioner. Moreover, a false reply has been filed before this Court that there was no rule for grant of pension even without perusing Rule 22 - A of the Rules of 1964, which is highly objectionable.

From perusal of the judgments cited above by learned counsel for the petitioner, it is clear that this Hon'ble Court has specifically held that deceased

employee who had completed 10 years of service but was not given permanent status under Work-charged Rules, 1964 due to inaction on the part of the respondents is totally unwarranted and right of pension cannot be denied on the ground that order of permanent status was not passed even after completion of 10 years of service. Therefore, in my opinion, the denial of pension to the petitioner on the ground of delay and while saying that there was no provisions for pension at the relevant time, respondent department is misleading this Court and denial of pension to the petitioner is totally illegal and unconstitutional. The husband of the petitioner was very much entitled to be declared permanent after completion of ten years of service under the Rules of 1964, so also for pension.

This Court in case of Smt. Sujan Kanwar Vs. State of Raj. (supra) has held that after completion of ten years of service, the work charged employee becomes entitled for pension and after his death family pension is required to be allowed.

In this case on the ground of delay, this writ petition cannot be thrown because pension is continuous cause of action and moreover, it is required to be said that it was duty of the respondents to grant pensionary benefits while treating the petitioner's husband as permanent

employee because he rendered 15 years of service on the date of his death, therefore, for inaction on the part of the respondents, the petitioner cannot be blamed for any delay because she is an illiterate lady and it is expected from the respondent department to act in accordance with the Rules. But, in this case, not only pension has been denied on illegal ground but respondents have misled this Court while saying that there was no provisions of grant of pension under the Rules of 1964. Further, the claim of pension is continuous cause of action and delay cannot be a ground for rejection of the writ petition.

From above discussions, it is held that the petitioner being widow of late Rekha Ram is entitled for family pension and denial of family pension to the petitioner is illegal and has no foundation of law. Accordingly, the respondents are directed to allow family pension to the petitioner while treating her husband late Rekha Ram as permanent employee of the respondent Department and in view of judgment of Sajjan Singh Yadav's case (supra), petitioner shall be granted all retiral benefits as available under the Rajasthan Service Rules, 1951 within a period of three months from the date of receipt of certified copy of this order. The respondents are further directed to pay 6% simple interest to the petitioner from the date of entitlement, so also, CPF amount already paid to the petitioner may be adjusted from the arrears and

remaining arrears may be paid to the petitioner within the above stipulated period.

The writ petition is allowed with no order as to costs.

(GOPAL KRISHAN VYAS), J.

Arun/-