A THE STATE OF BIHAR & ORS.

v.

RAJMATI DEVI & ANR.

(Civil Appeal Nos. 3900-3901 of 2022)

B MAY 20, 2022

[M. R. SHAH AND B.V. NAGARATHNA, JJ.]

Pension – Family Pension – Entitlement to – Deceased husband of Respondent no.1, whether governed by the New C *Contributory Pension Scheme of 2005 or the Old Pension Rules of 1950 – Held: When the husband of Respondent no.1 came to be absorbed in government service, the Old Pension Rules were already abolished, and the New Pension Scheme was in existence – He was, therefore, governed by the New Pension Scheme which, however,* D *did not provide for family pension – Respondent no.1 accordingly not entitled to family pension – Bihar Pension Rules, 1950 – Bihar Government Servant Contributory Pension Scheme, 2005.*

Allowing the appeals, the Court

HELD:1. The husband of respondent No. 1 came to be E **absorbed in the government service in the year 2014 w.e.f. 02.03.2009. Till 02.03.2009, he remained the employee of the Bihar Research Society, of which he was an employee and working. The Old Pension Rules, 1950 came to be abolished and the New Contributory Pension Scheme came to be introduced** F **w.e.f. 01.09.2005. Under the New Contributory Pension Scheme, there is no provision for pension/family pension. As per the Scheme, all those who are appointed after 31.08.2005 shall be governed by the New Contributory Pension Scheme. Therefore, at the time when the husband of respondent No. 1, who died in the year 2013, was absorbed, the Old Pension Rules were** G **abolished and the New Contributory Pension Scheme was in existence. As per the corrigendum issued in the appointment order and as per clause 6, the prior service rendered by the concerned employee prior to his absorption shall not be treated as a government service. Therefore, the husband of respondent**

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No. 1 can be said to be a government servant and in government service w.e.f. 02.03.2009 only. Therefore, the husband of respondent No. 1 was governed by the New Contributory Pension Scheme under which there is no provision for the pension/family pension. Therefore, the High Court has committed a grave error in directing the appellant to pay the family pension to respondent No. 1 applying the Old Pension Rules, which were applicable prior to 31.08.2005. The aforesaid aspect has not been considered by the High Court at all and the Single Judge simply considered that on the death of the husband of respondent No. 1, who died in harness while in service, respondent No. 1 is entitled to the family pension under family pension scheme. However, the High Court has not at all considered that on coming into force the New Contributory Pension Scheme, no government employee appointed after 31.08.2005 shall be entitled to any other benefit except under the New Contributory Pension Scheme. In that view of the matter, respondent No. 1 shall not be entitled to the family pension under the Old Pension Rules, which were not applicable at the time when the husband of respondent No. 1 came to be absorbed in the government service w.e.f. 02.03.2009. [Para 6][288-D-H; 289-A-C]

2. Accordingly, the judgments and orders passed by the Single Judge as well as the Division Bench of the High Court holding that respondent No.1 shall be entitled to the family pension under the Old Pension Rules are hereby quashed and set aside. It is observed and held that as the husband of respondent No. 1 was absorbed in the government service only w.e.f. 02.03.2009, he shall be governed by the New Pension Scheme i.e., Bihar Government Servant Contributory Pension Scheme, 2005. [Para 7][289-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.3900-3901 of 2022.

From the Judgment and Order dated 11.04.2017 of the High Court of Judicature at Patna in LPA No.1099 of 2016 and Order dated 04.09.2017 in Civil Review No.334 of 2017.

Shivam Singh, Abhinav Singh, Manish Kumar, Advs. for the Appellants.

Jayant K. Sud, ASG, Ms. Rachitta Rai, Ms. Alka Agrawal, Ms. Vimla Sinha, T. S. Sabarish, Ms. Gargi Khanna, Shantanu Sharma, Raj Bahadur Yadav, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 11.04.2017 passed by the Division Bench of the High Court of Judicature at Patna in Letters Patent Appeal No. 1099/2016, by which, the Division Bench of the High Court has dismissed the said appeal preferred by the State and has confirmed the judgment and order dated 02.09.2015 passed by the learned Single Judge holding that respondent No. 1 being widow of the deceased employee would be entitled for grant of family pension from the date of death of her husband, the State of Bihar has preferred the present appeals.

2. The husband of respondent No. 1 herein joined the Bihar Research Society, an autonomous society registered under Societies Act, as a peon. The said society was taken over by the Government of Bihar vide Bihar Research Society (Taking Over) Act, 2007. By resolution dated 31.08.2005, the State abolished the Old Pension Rules i.e., Bihar Pension Rules, 1950 and replaced the same with New Pension Scheme i.e., Bihar Government Servant Contributory Pension Scheme, 2005, w.e.f. 01.09.2005. As per the New Pension Scheme, the employees appointed after 31.08.2005 shall be governed by the new contributary pension scheme under which the government employees appointed after 31.08.2005 shall not be entitled to the pension/family pension. The Bihar Research Society (Taking Over) Act, 2007 (hereinafter referred to as the Act, 2007) came into force on 02.03.2009 resulting in taking over of the Institute/Society where the husband of respondent No. 1 was working. The husband of respondent No. 1 died on 23.03.2013 while in service. The employees of the aforesaid Society were taken into government service vide order dated 25.03.2014 w.e.f. 02.03.2009. A corrigendum came to be issued by the State of Bihar amending the employment order dated 25.03.2014 substituting the word "appointed" with the word "absorbed". Clause 6 was inserted by the corrigendum stating that prior to date of acquisition, the service would not be calculated as government service. That respondent No. 1 filed the writ petition before the High Court praying for family pension and other retiral benefits. By judgment

and order dated 02.09.2015, the learned Single Judge allowed the said writ petition and directed the State to pay the family pension to respondent No. 1 from the date of her husband's death i.e., 23.03.2013.

2.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge allowing the family pension, the State preferred the Letters Patent Appeal before the Division Bench of the High Court. By the impugned judgment and order, the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge, which has given rise to the present appeals.

3. Learned counsel appearing on behalf of the appellant has vehemently submitted that pension and family pension was available to the employees of the State Government who were governed by the Old Pension Rules. It is submitted that when the husband of respondent No. 1 was absorbed in the year 2014 w.e.f. 02.03.2009, the Old Pension Rules were abolished and the New Contributory Pension Scheme was replaced. It is submitted that therefore, the Old Pension Rules were not applicable to the husband of respondent No. 1 and therefore, respondent No. 1 shall not be entitled to the family pension under the Old Pension Rules.

3.1 It is submitted that the Old Pension Rules were abolished on 01.09.2005 and thereafter, the New Pension Scheme came into force, therefore, New Pension Scheme was applicable to all the employees of the State Government, who were appointed/absorbed on or after 01.09.2005.

3.2 It is submitted that a corrigendum dated 22.06.2015 was also issued by the Government making it abundantly clear that the term of Government service will be calculated only from the cut-off date i.e., 02.03.2009 and the services of the adjusted employees, prior to date of acquisition in Bihar Research Society shall not be calculated as a government service. It is submitted that in that view of the matter, the High Court has committed a grave error in allowing the family pension applying the Old Pension Rules, 1950.

3.3 Making the above submissions, it is prayed to allow the present appeals.

4. The present appeals are vehemently opposed by Ms. Rachitta Rai, learned counsel appearing on behalf of respondent No. 1. It is

vehemently submitted that the husband of respondent No. 1 was absorbed in the State Government service w.e.f. 02.03.2009 by way of adjustment vide Section 5 of the Act, 2007. It is submitted that it was not a fresh appointment and therefore, his services were to be treated as continuous.

4.1 It is submitted that the husband of respondent No. 1 died in harness and while in service and therefore, as per clause 7(1) to the family pension scheme, on the death of her husband who died while in service, respondent No. 1 was entitled to the family pension and the family pension scheme being beneficial scheme, both, the learned Single Judge as well as the Division Bench of the High Court have rightly held that respondent No. 1 is entitled to the benefit of the family pension scheme.

5. We have heard learned counsel appearing on behalf of both the parties at length.

6. At the outset, it is required to be noted that the husband of respondent No. 1 came to be absorbed in the government service in the year 2014 w.e.f. 02.03.2009. Till 02.03.2009, he remained the employee of the Bihar Research Society, of which he was an employee and working. The Old Pension Rules, 1950 came to be abolished and the New Contributory Pension Scheme came to be introduced w.e.f. 01.09.2005. Under the New Contributory Pension Scheme, there is no provision for pension/family pension. As per the Scheme, all those who are appointed after 31.08.2005 shall be governed by the New Contributory Pension Scheme. Therefore, at the time when the husband of respondent No. 1, who died in the year 2013, was absorbed, the Old Pension Rules were abolished and the New Contributory Pension Scheme was in existence. As per the corrigendum issued in the appointment order and as per clause 6, the prior service rendered by the concerned employee prior to his absorption shall not be treated as a government service. Therefore, the husband of respondent No. 1 can be said to be a government servant and in government service w.e.f. 02.03.2009 only. Therefore, the husband of respondent No. 1 was governed by the New Contributory Pension Scheme under which there is no provision for the pension/family pension. Therefore, the High Court has committed a grave error in directing the appellant to pay the family pension to respondent No. 1 applying the Old Pension Rules, which were applicable prior to 31.08.2005. The aforesaid aspect has not been considered by the High Court at all and the learned Single Judge simply considered that on the

death of the husband of respondent No. 1, who died in harness while in service, respondent No. 1 is entitled to the family pension under family pension scheme. However, the High Court has not at all considered that on coming into force the New Contributory Pension Scheme, no government employee appointed after 31.08.2005 shall be entitled to any other benefit except under the New Contributory Pension Scheme. In that view of the matter, respondent No. 1 shall not be entitled to the family pension under the Old Pension Rules, which were not applicable at the time when the husband of respondent No. 1 came to be absorbed in the government service w.e.f. 02.03.2009.

7. In view of the above discussion and for the reasons stated above, the impugned judgment(s) and order(s) passed by the High Court deserve(s) to be quashed and set aside. Accordingly, the judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court holding that respondent No. 1 shall be entitled to the family pension under the Old Pension Rules are hereby quashed and set aside. It is observed and held that as the husband of respondent No. 1 was absorbed in the government service only w.e.f. 02.03.2009, he shall be governed by the New Pension Scheme i.e., Bihar Government Servant Contributory Pension Scheme, 2005. The present appeals are allowed, accordingly. No costs.

Bibhuti Bhushan Bose Appeals allowed.