IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7673 of 2007

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1. Union of India through the General Manager, E.C. Railway, Hazipur.
2. The F.A. & C.A.O. E.C. Railway Hazipur.
3. The Divisional Railway Manager, E.C. Railway, Danapur.
4. The Sr. Divisional Personnel Officer, E.C. Railway, Danapur.
5. The Sr. Divisional Financial Manager, E.C. Railway, Danapur.

.... Petitioners

Versus

Munna Mahto Son of Late Ram Ashis Mahto, resident of Bari Khagaul, Near Masjid, By Shri Harish Prasad, P.O. Khagaul, District- Patna.

.... Respondent

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Appearance :

For the Petitioners : Mr. Bindhyachal Singh, Advocate.
Mr. Parijat Saurav, Advocate.

For the Respondent : Mr. M.P. Dixit
Mr. Sanjay Kumar Choubey.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

13 05-02-2015 Heard learned counsel for the Union of India, learned counsel for the petitioner as also learned counsel for the Private respondent.

In this case issue is whether the private respondent is entitled for family pension or not. As the Central Administrative Tribunal decided the matter in favour of the private respondent hence the Union of India has come to this Court.

Husband of Smt. Lachminia Devi, the private respondent (deceased) entered in service in the year 1952. He died on 19.02.1968 in harness. After death of her husband the private respondent i.e. the deceased Smt. Lachminia Devi was paid the entire provident fund dues with effect from 01.01.1986. She was being paid Ex-gratia pension as per recommendations of the Fourth Pay Commission.

It may be noted here that the Fourth Pay Commission recommended for payment of Ex-gratia pension in respect of those persons to whom family pension was not otherwise payable. The private respondent contends that in terms of the Family Pension Scheme for the Railway Servants, 1964 upon death of her husband she was entitled to the family pension which obviously will be much higher than the Ex-gratia pension. The Tribunal noticing Rule-75 of Family Pension Scheme for railway servants, 1964 allowed her claim also basing its order on earlier judgment by the Tribunal in the case of Smt. Brija Devi & Ors which was absolutely affirmed by the High Court in C.W.J.C. No. 1864 of 2003 by a reason of dismissal of the writ petition of Union of India by order dated 19.02.2003. The first thing which we would like to notice is that the Division Bench dismissed the writ petition of Union of India without any specific order. It was dismissal in limine which was not the judgment of affirmance. It is wrong to say that the judgment in the case of Smt. Brija Devi & Ors was at all affirmed by this Court.

Having heard learned counsel for the parties, this writ petition is being disposed of at this stage with their consent.

In order to appreciate the controversy in question necessary facts are required to be noted. It appears that prior to 1964 all the Railway employees were members of the contributory fund scheme, then with effect from 01.01.1964 the Railways came up with the Family Pension Scheme for the Railway Servants, 1964, the relevant part thereof is quoted thereunder:-

> *"75. Family Pension Scheme for railway Servants, 1964.*
> *(1)The provisions of this rule shall apply:-*
>
> *(a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and*
> *(b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension the Scheme for railway employees, 1964, contained in Railway Board's letter No. F(P)63PN-1/40, dated the 2nd January, 1964 as in force immediately before the commencement of these rules.*
> *Note: The provisions of this rule has also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme."*

The Tribunal was of the opinion that these rules clearly predicates automatic shift of provident fund to Family Pension Scheme in respect of all the employees who were working on that day. We are unable to accept this for the simple reason that Rule 75 (1) (b) makes it abundantly clear that it would be upon option being exercised to switch over from contributory provident fund to the Family Pension Scheme. If what is submitted by the private respondent regarding automatic switched over of the contributory provident fund in to the Family pension Scheme of the Railways is correct then Rule 75 is totally in different manner showing that all Railway employees hence forth would be governed by the Family Pension Rule which is contrary if we refer the case reported in AIR 1995 SC 983 in the case of R. Subramaniam Vs. Chief Personnel Officer, Central Railway, Ministry of Railways in which the Apex Court has clearly noticed that the option has to be exercised for switched over otherwise a person would continue under Contributory Provident Fund Scheme.

In the present case the private respondent, namely, Smt. Lachminia Devi whose husband was died in 1968 and who was in receipt of the Ex-gratia pension with effect from 01.01.1986 moved the Tribunal in the year 2006 claiming that she was entitled to Family Pension under the Scheme. Firstly, such belated application ought not to have been entertained by the Tribunal. We are not cognizant of the judgment of the Apex Court in the case of S.K. Mastan Bee Vs. The General Manager, South Central Railway & Anr, reported in 2003 LAB. I.C. 76 but the facts are different.

Here the private respondent did not deny that she was regularly from 1986 getting Ex-gratia pension then why she chooses to move the Tribunal only in 2006 is not explained. In case of contributory provident fund there are deductions from the account of the employees and equal contribution by the employer and all were invested and deposited to earn interest. This accumulated amount is given to the employee upon retirement in one lump-sum payment. In Pension Scheme there may or may not be deduction from the salary during service period, but upon superannuation month by month in proportionate to the last pay drawn the pension amount is paid. Thus, it is necessary to exercise option once new schemes are introduced. This is what which came to be governed by the provisions of Family Pension in Rule 75 (1) (b). The switched over is not automatic because such pension was not payable in Fourth Pay Commission. This was payable only to those employee who are in receipt of cumulative provident fund.

Thus, from the facts it is clear that the private respondent had never opted for family pension scheme rather had continued on C.P.M. which was also accepted by the private respondent when she received Ex-gratia pension payment and continued to receipt it thereafter.

Thus, in our view the Tribunal was clearly in error in holding otherwise. We cannot sustain the order of the Tribunal, which is accordingly set aside. The O.A. application on behalf of the private respondent before the Tribunal is thus dismissed.

The writ petition is allowed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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