

VEENA PANDEY

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v.

UNION OF INDIA & ORS.

(Civil Appeal No. 6953 of 2021)

NOVEMBER 18, 2021

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[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Service law:

Pensionary benefits – Entitlement to, under the Pension Scheme – On facts, employee opted for receiving 90% pension during his life time as provided under the Pension Scheme and on his death, his widow-appellant entitled to receive in lump sum, an amount equal to 100 times his full monthly pension, in addition to family pension – On employee's death on 12.01.11, appellant's claim for lump sum amount rejected on the ground that the provision was abolished w.e.f 21.02.2011 and the 10% surrendered amount had been refunded to all pensioners with interest – Writ petition by the appellant seeking disbursal of the pensionary benefits and quashing of the letter whereby she was communicated that no other payment was due – Writ petition dismissed by the Single Judge on the ground of lack of territorial jurisdiction – Said order upheld by the Division Bench – On appeal, held: The Pension Scheme was framed as a measure of social security for ensuring socio-economic justice for the employees in the coal sector – Pension is the deferred portion of the compensation for rendering long years of service – In view thereof, the sum due and payable under the Pension Scheme to be disbursed to the appellant after adjusting the amount refunded earlier – Coal Mines Pension Scheme, 1998 – Para 15(1)(b), Para 15(2).

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Retiral benefits – Pension – Nature of – Held: Pension is the deferred portion of the compensation for rendering long years of service – It is a hard-earned benefit accruing to an employee and is in the nature of property.

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Allowing the appeal, the Court

HELD: 1.1 Pension as is well known, is the deferred portion of the compensation for rendering long years of service. It is a

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- A hard-earned benefit accruing to an employee and has been held to be in the nature of property. [Para 11][407-A-D]
 - 1.2 The High Court did not consider her entitlement on merit, but had dismissed both the Writ Petition and the LPA, citing want of territorial jurisdiction. The employment of the
- B appellant's husband with the respondent employer is however not in dispute. Nevertheless, for over a decade, the widow of the employee is forced to litigate to secure the pension benefits. In the peculiar circumstances of the instant case, without commenting on the legality of the decision to discontinue the
- C said provision in the pension scheme by the employer, as the pensioner was not alive on the date of discontinuance, it is ordered that the sum due and payable under the Pension scheme be computed and be disbursed to the appellant. The amount earlier refunded to the appellant be adjusted suitably during the remittance process. [Para 12, 13][407-B-E]
- D *All India Reserve Bank Retired Officers' Association & ors v. Union of India & Ors, (1992) 1 Suppl. SCC 664; State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another (2013) 12 SCC 210 – relied on.*

E Case Law Reference

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|--------------------------------|------------------|----------------|
| (1992) 1 Suppl. SCC 664 | relied on | Para 11 |
| (2013) 12 SCC 210 | relied on | Para 11 |

F CIVIL APPELLATE JURISDICTION: Civil Appeal No.6953 of 2021.

From the Judgment and Order dated 12.03.2018 of the High Court of Judicature at Patna in Letters Patent Appeal No.701 of 2017 in Civil Writ Jurisdiction Case No. 9837 of 2014.

G Santosh Kumar, Madhurendra Sharma, Rajiv Ranjan Mishra, Yadav Narender Singh, Advs. for the Appellant.

Ms. Madhvi Divan, ASG, Gurmeet Singh Makker, Pranay Ranjan, Ms. Swarupama Chaturvedi, Ayush Puri, Ms. Aakanksha Kaul, Ms. Vaishali Verma, Ashwarya Sinha, Ms. Priyanka Sinha, Alok K. Singh,

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Ms. Madhusmita Bora, Riju Raj Singh Jamwal, Dipankar Singh, A
Ms. Prema Priyadarshi, Advs. for the Respondents.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

1. Leave granted. B

2. The present appeal arises out of claims for pensionary benefits under the *Coal Mines Pension Scheme, 1998* (hereinafter referred to as the ‘Pension Scheme, 1998’ for short). The appellant’s husband Ramashankar Pandey rendered service in the South Eastern Coal Fields Ltd., Bilaspur, after being transferred from Bharat Coking Coal Ltd in 1999. The employee retired on 31.05.2004 as Chief Personnel Manager at Bilaspur and later settled in Bhojpur, Bihar with his family. He opted for receiving 90% pension during his life time as provided under *para 15 1(b)* of the Pension Scheme, 1998 effective from 31.03.1998. Since the employee opted to receive 90% of the total admissible amount of the pension during his lifetime, on his death on 12.01.2011, the widow of the pensioner became entitled to receive in lump sum, an amount equal to 100 times his full monthly pension, in addition to family pension. The record shows that Rs.7091/- p.m. was sanctioned to the employee as Basic Pension under the Pension Scheme, 1998 w.e.f 01.06.2004 and 10% of his Basic Pension i.e Rs. 788/- p.m. was deposited with the department. C D E

3. Following the employee’s death on 12.01.2011, as per the Pension Scheme, 1998 the widow of the pensioner made claim for a sum equivalent to 100 times the full monthly pension of her husband and vide letter dated 30.09.2012, she applied for payment of the lump sum amount in pursuance of *para 15(1)(b)* read with *para 15(2)* of the Pension Scheme, 1998. F

4. The appellant’s representation was however rejected. In the letter dated 22.01.2013 of the Regional Commissioner of the Coal Mines Provident Fund Organization (‘CMPFO’ for short) it was stated that the pensioner had opted for payment of 90% pension under *para 15 (1)(b)* of the Pension Scheme, 1998, but the aforesaid provision was abolished w.e.f 21.02.2011. It was also intimated that the 10% surrendered amount had been refunded to all pensioners with interest under the order dated 30.01.2012 of the Coal Mines Provident Fund Commissioner. G

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- A 5. The appellant was refunded the surrendered amount of 10% with interest (Rs. 36,938/-) along with widow pension arrears (Rs.12,351/-), in total Rs. 49,289/-, whereas she claimed a higher sum under the now abolished provisions of the Pension Scheme.
- B 6. Aggrieved by the above stand of the employer, the appellant moved the High Court of Patna for disbursal of the pensionary benefits and also to quash the letter dated 22.01.2013 of the Regional Commissioner, CMPFO whereunder, it had been communicated that, no other payment is due to the appellant. Her C.W.J.C No.9837/2014 was however dismissed as not maintainable by the learned Single Judge on the ground that no cause of action arose within the territorial jurisdiction of the High Court of Patna. This order was affirmed by the Division Bench by dismissal of the appellant's LPA No.701/2017 with similar observation that the services rendered by the pensioner were outside the territorial jurisdiction of the Patna High Court and hence the writ petition filed by the widow of the pensioner was not maintainable. These orders of the High Court are impugned in this Appeal.
- C 7. Heard Mr. Santosh Kumar, learned counsel for the appellant. Also heard Ms. Madhavi Divan, the learned ASG appearing for the respondents.
- E 8. Ms. Madhavi Divan, learned ASG, points out from the additional counter affidavit of respondent no. 6 that pursuant to the administrative order dated 04.03.2011 of the Commissioner, CMPFO, the appellant's case was settled on 18.04.2011 and 10% surrendered value of monthly pension along with applicable interest thereon was refunded.
- F 9. Mr. Santosh Kumar, learned Counsel appearing for the appellant would however contend that the lumpsum (100 times of full monthly pension) became payable to the widow on the death of her husband, who, subsequent to his retirement, had opted for the same under the Pension Scheme. The counsel further submits that the appellant as the widow of the employee is suffering as she has been non suited by the court on the ground of want of territorial jurisdiction.
- H 10. It is necessary to note that the *Coal Mines Pension Scheme, 1998* was framed as a measure of social security for ensuring socio-economic justice for the employees in the coal sector under the powers conferred by *Section 3-E* of the *Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948*.

11. Pension as is well known, is *the deferred portion of the compensation*¹ for rendering long years of service. It is a hard-earned benefit accruing to an employee and has been held to be in the nature of property by this Court, in *State of Jharkhand and Others Vs. Jitendra Kumar Srivastava and Another*².

12. While considering the appellant's case, the High Court did not however consider her entitlement on merit, but had dismissed both the Writ Petition and the LPA, citing want of territorial jurisdiction. The employment of the appellant's husband with the respondent employer is however not in dispute. Nevertheless, for over a decade, the widow of the employee is forced to litigate to secure the pension benefits.

13. In the above peculiar circumstances of this case, without commenting on the legality of the decision to discontinue the said provision in the pension scheme by the employer, as the pensioner was not alive on the date of discontinuance, we consider it appropriate to pass necessary orders in her favor in this proceeding itself. Resultantly, the sum due and payable under the Pension scheme be computed and the same is ordered to be disbursed to the appellant. The amount earlier refunded to the appellant be adjusted suitably during the remittance process. The respondent/ employer should do the needful in terms of this order, within 8 weeks from today.

14. The appeal is allowed with the above order. Respective costs to be borne by the parties.

Nidhi Jain

Appeal allowed.

¹ *All India Reserve Bank Retired Officers' Association & ors Vs. Union of India & ors*,
(1992) Supp 1 SCC 664

² (2013) 12 SCC 210