

SUNITA BURMAN

A

v.

THE COMMISSIONER, M.P. HOUSING AND
INFRASTRUCTURE DEVELOPMENT BOARD AND OTHERS

(Civil Appeal No. 7068 of 2022)

B

OCTOBER 14, 2022

**[DR DHANANJAYA Y CHANDRACHUD AND
HIMA KOHLI, JJ.]**

Family Pension – Retiral Dues – Entitlement to – Division Bench of High Court in Writ Appeal reversed order passed by Single Judge in Writ Petition whereunder Respondent No.1-Housing Board was directed to pay family pension and other retiral dues to her on demise of her husband – Issue as to whether deceased husband of appellant was a regular employee of respondent No.1-Housing Board and if not, would appellant still be entitled to receive family pension if the deceased had remained a work charged employee in the establishment of respondent No.1- Housing Board till the date of his demise – Held: The deceased husband of appellant was not a regular employee of respondent No.1-Housing Board – He had remained a work charged employee in the establishment of Housing Board till the date of his demise – Being cognizant of the vacuum relating to service conditions of the employees working in its work charged establishments, respondent No.1-Housing Board had to extend the benefit of pension to the said employees by bringing them within purview of the National Pension Scheme (NPS) and they were given an option to become a member of the said Scheme so as to avail the benefit of pension – As her deceased husband had elected not to opt for the said Scheme, the appellant cannot claim entitlement to payment of family pension on his demise from respondent No.1-Housing Board – Madhya Pradesh Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1975 –Work Charged and Contingency Paid Employees Gratuity Benefit Rules, 1962 – Madhya Pradesh Work Charged and Contingency Paid Employees Leave Rules, 1977.

C

D

E

F

G

H

A **Dismissing the appeal, the Court**

- HELD:** 1.1. An affidavit dated 15th September, 2022 has been filed on behalf of the respondent no.1-Housing Board stating *inter alia* that the contents of the order dated 2nd July, 2015, providing for an option under the National Pension Scheme (NPS) to the work charged employees of the Housing Board was duly brought to the notice of all concerned, in accordance with the directions issued at serial No.12 of the endorsement at the foot of the said order that required the same to be displayed on the notice board. The affidavit further states that in response to the aforesaid order calling for requisite options from all the work charged employees of the Housing Board, out of 48 such employees, only 16 had opted to avail the benefit of NPS. Clause 8 of the said order clearly provides that if an employee wants to opt for pension, he can do so by giving his option and thereafter, 10% of his payable salary will be deducted on a monthly basis from his account and the respondent No.1-Housing Board will match the said amount by contributing its share on a monthly basis. Thus, the only option that was made available to the work charged employees of the respondent No.1-Housing Board was to exercise the option mentioned in para 8 of the order dated 02nd July, 2015, namely, the NPS. However, as per the records, during his life time, the appellant's husband did not opt for the said Scheme. [Para 12][982-E-H]
- 2.1. The deceased husband of the appellant had remained a work charged employee till the date of his demise on 26th April, 2016. His services had not been regularized. The Office Order dated 29th October, 1997 relied on by the appellant to urge that the services of the deceased husband of the appellant had been regularized, is being misread as can be discerned from the first para of the said order which states that daily wages Muster Roll employees working between 26th May, 1974 to 30th June, 1981 and named therein were being appointed in work charged establishments and further, that the M.P. Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1977 was made applicable to them. However, the aforesaid rules were never adopted by the respondent No. 1 – Housing Board or extended to its work charged employees. Being cognizant of the vacuum relating to the service conditions of the employees working in its work charged establishments, the Board of

Directors of respondent No.1-Housing Board had deliberated over the matter and decided on 6th April, 2015 to extend the benefit of pension to the said employees by bringing them within the purview of the NPS and they were given an option to become a member of the said Scheme so as to avail the benefit of pension. As her deceased husband had elected not to opt for the said Scheme, the appellant cannot claim entitlement to payment of family pension on his demise. [Para 14][983-E-H; 984-A-B]

2.2. The deceased husband of the appellant was not a regular employee of the respondent No.1 – Housing Board. He had remained a work charged employee in the establishment of the Housing Board till the date of his demise. Even while serving in the said capacity, the appellant's deceased husband could have opted for pension under the NPS that was made available to the work charged employees of the respondent No.1 – Housing Board in terms of the order dated 02nd July, 2015. But he did not opt for the said Scheme. The appellant is, therefore, not entitled to receive family pension from the respondent No.1-Housing Board. [Para 15][984-C-D]

Prem Singh v. State of Uttar Pradesh and Others (2019)
10 SCC 516 : [2019] 11 SCR 1075 – distinguished.

Kesar Chand v. State of Punjab 1988 SCC OnLine E
P&H 338 – referred to.

Case Law Reference

[2019] 11 SCR 1075 distinguished Para 4
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7068 F
of 2022.

From the Judgment and Orders dated 23.01.2020 of the High Court of Madhya Pradesh, Main Seat at Jabalpur in Writ Appeal No. 1600 of 2018.

Prathvi Raj Chauhan, Ms. Priya Sharma, Arup Banerjee, Advs. G
for the Appellant.

Saurabh Mishra, AAG, R. C. Mishra, Sr. Adv., Ilin Saraswat,
Ms. Ananya Mishra, Mahendra Kumar, Ms. Ilma Saifi, Rajnish Kumar

H

- A Jha, Ms. Mrinal Gopal Elker, Ms. Anuradha Mishra, Ankit Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by

HIMA KOHLI, J.

- B 1. The appellant – widow of Late Munna Lal Burman, is aggrieved by the judgment dated 23rd January, 2020, passed by the Division Bench of the High Court of Madhya Pradesh, Principal Seat at Jabalpur in Writ Appeal No. 1600 of 2018 reversing the order dated 06.09.2018, passed by the learned Single Judge in Writ Petition No. 95 of 2007 whereunder the respondent No. 1 – M.P. Housing and Infrastructure Development Board¹ was directed to pay family pension and other retiral dues to her on the demise of her husband.
2. The admitted facts of the case are that on 28th April, 1977, Munna Lal Burman, husband of the appellant was engaged by the respondent No. 1 – Housing Board as a Muster Roll employee on daily wages. *Vide* office order dated 29th October, 1997, he was appointed in the work charged establishment of the Housing Board. While continuing to work in the establishment, Munna Lal Burman expired on 26th April, 2016. On 01st August, 2016 and 09th September, 2016, the appellant submitted applications to the respondent No. 1 – Housing Board for grant of family pension which were turned down *vide* letter dated 14th October, 2016, with an observation that there was no provision for grant of pension/family pension to employees working in the work charged establishment. Aggrieved by the said decision, the appellant filed a writ petition registered as Writ Petition No. 95 of 2017 before the High Court of Madhya Pradesh, Principal Seat at Jabalpur praying *inter alia* for grant of family pension, retiral dues, gratuity etc., on the demise of her husband. The said petition was allowed by the learned Single Judge, *vide* judgment dated 06th September, 2018 and the respondent No. 1 – Housing Board was directed to fix the retiral dues and family pension payable to the appellant in a time bound manner and release the arrears of family pension with interest. The reasons that weighed with the learned Single Judge for allowing the writ petition are as follows :-

“12. In the present matter, it is clear from the order of appointment dated 29.10.1997 that the provisions of M.P. Work-charged and

H ¹ For short ‘Housing Board’

Contingency Paid Employees Rules were made applicable in the case of Late Munnalal. Regulation 5(d) of M.P. Gruha Nirman Mandal Regulations, 1998 provides that grant of pension/family pension and death-cum-retirement benefits to the regular officers and employees of the Board with effect from 01.07.1973 shall be regulated in accordance with M.P. Civil Services (Pension) Rules, 1976.

13. The M.P. Housing and Infrastructure Development Board has adopted the Regulations, 2015, which has been approved and confirmed by the State Government vide order No.F.23- 3/15/18-6 Bhopal dated 17.04.2015. The regulations 5(e) of the 2015 Regulations provides that the order of grant of pension/family pension and death-cum-retirement benefit to the regular officers and employees of the Board with effect from 01.07.1973 shall be regulated in accordance with. the M.P. Civil Services (Pension) Rules, 1976. However, the regular officers and servants of the Board who have been appointed, on or after Ist of January, 2005, shall be covered by new National Pension Scheme. Hence, it is clear that the National Pension Scheme was not applicable to the deceased employee, as he was not appointed on or after Ist January, 2005. Hence, the mistake committed by the respondent-Board in deduction of Rs.1940/- from the salary of late Munnalal under the National Pension Scheme, seems bonafide.”

3. Aggrieved by the aforesaid decision, the respondent No. 1 – Housing Board preferred an appeal registered as Writ Appeal No.1600 of 2018 that was allowed by the Division Bench, *vide* judgment dated 23rd January, 2020 and it was held that the deceased husband of the appellant being a member of the work charged establishment, was not entitled to pension as he could not be treated at par with the regular employees of the respondent No. 1 – Housing Board.

4. Mr. S.K. Gangele, Senior Advocate appearing for the appellant argued that the High Court has fallen into an error by holding that the appellant’s husband being a work charged employee of the respondent No. 1 – Housing Board, is not entitled to pension. Placing reliance on the office order dated 29th October, 1997 issued by the respondent No. 1 – Housing Board which refers to a decision taken to regularize Muster Roll employees as per their seniority, it was submitted that the name of the appellant’s husband featured at serial No.5 of the tabulated statement

- A forming a part of the aforesaid office order, which showed that he had become a regular employee of the Housing Board and was covered under the provisions of the M.P. Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1977. Learned counsel submitted that pension/family pension was payable to such an employee/ his family under Regulation 5(d) of the M.P. Griha Nirman Mandal Regulations, 1998 and there was no justification for reversing the judgment dated 06th September, 2018, passed by the learned Single Judge in favour of the appellant. Lastly, it was contended that the impugned judgment runs contrary to the principles of law laid down in *Prem Singh v. State of Uttar Pradesh and Others*².
- C 5. Opposing the aforesaid submission, Mr. R.C. Mishra, learned Senior Advocate appearing for the respondent No.1 – Housing Board and its officers arrayed as respondents No. 2 to 5 and Mr. Saurabh Mishra, learned Additional Advocate General for the respondent No.6 – State of Madhya Pradesh supported the impugned judgment and asserted
- D that the appellant's husband had not been regularized till the date of his demise and had remained a work charged employee. Alluding to the very same office order dated 28th October, 1997, relied on by learned counsel for the appellant, it was sought to be clarified that by virtue of the said order, Late Munna Lal Burman and other similarly placed daily wage Muster Roll employees working in the respondent No. 1 – Housing Board for the period between 26th May, 1974 and 30th June, 1981, had been appointed in the work charged establishment and in accordance with the terms and conditions of their appointment, M.P Work Charged and Contingency Paid Employees Recruitment and Service Rules was made applicable to such employees. Explaining that the work charged establishment where the deceased was appointed, was a non-pensionable establishment of the respondent No. 1 – Housing Board and he could have opted for the National Pension Scheme³ in terms of the order dated 02nd July, 2015 which he didn't, it was stated that the appellant is not entitled to receive family pension and the judgment in the case of *Prem Singh (supra)* had no application to the facts of the instant case.
- G 6. We have considered the submissions advanced by learned counsel for the parties and perused the records including the relevant rules and regulations. The only issue that arises for our consideration in

²(2019)10 SCC 516

H ³For short 'NPS'

the instant appeal is as to whether the deceased husband of the appellant was a regular employee of the respondent No. 1 – Housing Board and if not, would the appellant still be entitled to receive family pension if the deceased had remained a work charged employee in the establishment of the respondent No. 1- Housing Board till the date of his demise.

7. The respondent No.1 - Housing Board is a statutory and an autonomous body established under the Madhya Pradesh Housing & Infrastructure Development Board (Amendment) Act, 1972⁴ for implementation of housing schemes meant for the weaker sections/lower income groups of society on a ‘no profit no loss basis’. Being a statutory and an autonomous body, the Housing Board forms its own rules and policies that govern the service conditions of its employees. The rules laid down by the State Government for its employees are not automatically applicable to the employees of the Housing Board unless specifically adopted by the Board. The same is demonstrable from a perusal of Sections 14, 15 and 17 of the Housing Board Act (that deal with appointment of officers and servants of the Board; lay down conditions of service of officers and servants and empowers the Board to make service regulations in respect of its officers and servants) and on examining the M.P. Civil Services (Pension) Rules, 1976. Rule 2(ii) of the aforesaid Rules clearly provides that the said rules shall not apply to five categories of persons with ‘*persons in a work-charged establishment*’ mentioned specifically in category (a) of the said Rule. Neither is there any provision made for grant of pension to work charged employees in the M.P. Griha Nirman Mandal Regulations, 1998 or in the Madhya Pradesh Housing and Infrastructure Development Board (Conduct of Business and Delegation of Powers) Regulation, 2015.

8. Being alive to the fact that there were no rules in place to regulate/govern the service conditions of employees working in the work charged establishments of the respondent No. 1 – Housing Board, the Board of Directors of the Housing Board had taken a conscious decision in its Meeting No. 229, held on 06th April, 2015, to adopt the following rules:

- i. Madhya Pradesh Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1975 (Excluding Rule 4 to 8);

⁴ For short ‘the Housing Board Act’

A

B

C

D

E

F

G

H

- A ii. Madhya Pradesh Work Charged and Contingency Paid Employees Leave Rules, 1977; and
iii. Work Charged and Contingency Paid Employees Gratuity Benefit Rules, 1962.
- B 9. For ready reference, the relevant abstract of the decision of the Board of Directors of the Housing Board held on 06th April, 2015, is extracted below:
- “2. There is no rule or regulation framed or prescribed in relation to the regulation of services of said work charged employees in the Board. Due to non-determination of separate conditions of service, difficulties arise in regulating their services.
- C 3. Therefore in order to regulate the services of work charged personnel working in the Board adopting of the following rules notified by the Government it is proposed –
- D (i) Model Rule “Madhya Pradesh ----- Department Work-charged and Contingency Paid Employees (Recruitment and Conditions of Service) Rules, 1975” (all rules except rule no. 4 to 8) made through Circular ‘no. D-34/444/1(three)/VOK/75 Bhopal dated 29.09.1975 of General Administration Department of Government of Madhya Pradesh. (Appendix-1)
- E (ii) “M.P. Work-Charged and Contingency Paid Employees Leave Rules, 1972”. (Appendix-2)
(iii) “Work-Charged Staff and Contingency Paid Staff (Gratuity Benefits) Rules, 1962”. (Appendix-3)
- F 4. Work charged personnels working in the Board do not get the benefit of pension, while in other works department employees of Work-Charged establishment are getting pension under Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules, 1979. At present the said rules are not relevant to the employees of the Board. M.P. Daily Wage Employee (Condition of Rule), Rule 2013 (Appendix -4) has been adopted for the daily wage employees of the Board by which they have been brought within purview of National Pension Scheme regulated by PFRDA. For work charged employees also pension is proposed under PFRDA brief description of which is as follows:
- G H

(1) The National Pension Scheme initiated by PFRDA, which has been implemented in the State of Madhya Pradesh, with effect from 1st May, 2009 for the domiciles of Madhya Pradesh, A

(2) The employee can opt to be a member under National Pension Scheme and can avail the benefit of pension.

(3) In case of an option given by the employee under sub-rule (2) above, a contribution equivalent to ten percent shall be deducted from his wages and the Government shall also contribute the equivalent amount and shall deposit it in the permanent account of the employee and the consolidated amount and permissible interest thereon shall be paid on his superannuation.” B

10. It is clear from the above that the Madhya Pradesh (Work-Charged and Contingency Paid Employees) Pension Rules, 1979 had not been adopted by the respondent No. 1 – Housing Board and the M.P. Civil Services (Pension) Rules, 1976 did not cover the workers working in work charged establishments of the Housing Board. The M.P. Work-charged and Contingency Paid Employees Pension Rules, 1979 was also not made applicable to the work charged employees of the respondent No. 1 – Housing Board either in terms of the M.P. Griha Nirman Mandal Regulations, 1998 or under the Madhya Pradesh Housing and Infrastructure Development Board (Conduct of Business and Delegation of Powers) Regulation, 2015. Observing that the M.P. Daily Wage Employee (Condition of Rule), Rule 2013 had been adopted for the daily wage employees of the Housing Board thereby bringing them within the fold of the NPS, a decision was taken to extend the very same Scheme to work charged employees as well. D

11. Pursuant to the aforesaid decision taken by the Board of Directors of the respondent No. 1 – Housing Board, an order dated 02nd July, 2015 was issued to regulate the services of the work charged employees by adopting the relevant rules of the State Government as mentioned above and bringing them within the purview of the NPS managed by the Pension Fund Regulatory and Development Authority⁵. Para 8 of the order dated 2nd July, 2015 is relevant and reproduced herein below for ready reference: F

“8. National Pension Scheme, launched by P.F.R.D.A, has been made applicable to Madhya Pradesh, which is effective for the G

⁵ For short ‘PFDRA’ H

- A domiciles of Madhya Pradesh from 1 May 2009. Pension under the National Pension Scheme, regulated by P.F.R.D.A, shall be payable to Work-charged Employees of the Board as under, a brief description of which is as follows:-
- B 1) The employee may opt for becoming member of National Pension Scheme and avail the benefit of pension.
- C 2) In case of option given by an employee under the aforesaid Sub-Rule(1), contribution equal to 10% shall be deducted from his wages/salary, and an equal amount of contribution shall be made by the Board, and deposited in his permanent Account and the consolidated amount along with the permissible interest shall be payable to him upon his superannuation. The contribution to the pension shall be payable under Account Head-54.”
- D 12. In the course of arguments advanced before us on 19th September, 2020, we had specifically enquired from learned counsel for the respondents as to whether the aforesaid Office Order was brought to the notice of the employees of the work charged establishments of the respondent No. 1 – Housing Board to enable them to exercise their option of becoming members of the NPS and whether the said employees including the deceased husband of the appellant had applied for availing of the benefit under the NPS. In response thereto, an affidavit dated
- E 15th September, 2022 has been filed on behalf of the respondent no. 1 – Housing Board stating *inter alia* that the contents of the order dated 2nd July, 2015, providing for an option under the NPS to the work charged employees of the Housing Board was duly brought to the notice of all concerned, in accordance with the directions issued at serial No.12 of
- F the endorsement at the foot of the said order that required the same to be displayed on the notice board. The affidavit further states that in response to the aforesaid order calling for requisite options from all the work charged employees of the Housing Board, out of 48 such employees, only 16 had opted to avail the benefit of NPS. Clause 8 of the said order clearly provides that if an employee wants to opt for pension, he can do so by giving his option and thereafter, 10% of his payable salary will be deducted on a monthly basis from his account and the respondent No. 1 – Housing Board will match the said amount by contributing its share on a monthly basis. Thus, the only option that was made available to the work charged employees of the respondent No. 1 – Housing Board was to exercise the option mentioned in para 8 of the

order dated 02nd July, 2015, namely, the NPS. However, as per the records, during his life time, the appellant's husband did not opt for the said Scheme. A

13. As for the decision in the case of *Prem Singh (supra)* cited on behalf of the appellant, the question raised in the said matter related to the validity of Rule 3(8) of the Uttar Pradesh Retirement Benefits Rules, 1961 and Regulation 370 of the Civil Services Regulations of Uttar Pradesh. In a backdrop where this Court had earlier affirmed the decision of the High Court of Punjab and Haryana in the case of *Kesar Chand v. State of Punjab*⁶, in relation to *pari materia* provisions enacted in the State of Punjab which excluded computation of the period of work charged services from qualifying service for grant of pension, a three Judge Bench of this Court examined several decisions on this aspect and on perusing the Note appended to Rule 3(8) of the Uttar Pradesh Retirement Benefits Rules, 1961 and Regulation 370 of the Civil Services Regulations, held that since the service of the appellant in the said case had been regularized on a vacant post, Rule 3(8) of the U.P. Retirement Benefits Rules, 1961 ought to be read down in respect of the services rendered by him even prior to his regularization and the period spent in the capacity of a charged employee/contingency paid fund employee or non-pensionable establishment employee ought to be counted towards the qualifying service for extending the benefit of pension to such employees. C

14. The fact situation in the case in hand is entirely different. The deceased husband of the appellant had remained a work charged employee till the date of his demise on 26th April, 2016. His services had not been regularized. The Office Order dated 29th October, 1997 relied on by the appellant to urge that the services of the deceased husband of the appellant had been regularized, is being misread as can be discerned from the first para of the said order which states that daily wages Muster Roll employees working between 26th May, 1974 to 30th June, 1981 and named therein were being appointed in work charged establishments and further, that the M.P. Work Charged and Contingency Paid Employees Recruitment and Service Rules, 1977 was made applicable to them. We have noticed above that the aforesaid rules were never adopted by the respondent No. 1 – Housing Board or extended to its work charged employees. Being cognizant of the vacuum relating to the F

⁶1988 SCC OnLine P&H 338 G

- A service conditions of the employees working in its work charged establishments, the Board of Directors of the respondent No. 1 – Housing Board had deliberated over the matter and decided on 6th April, 2015 to extend the benefit of pension to the said employees by bringing them within the purview of the NPS and they were given an option to become a member of the said Scheme so as to avail the benefit of pension. As her deceased husband had elected not to opt for the said Scheme, the appellant cannot claim entitlement to payment of family pension on his demise.

15. We therefore hold that the deceased husband of the appellant

- C was not a regular employee of the respondent No.1 – Housing Board.
- C He had remained a work charged employee in the establishment of the Housing Board till the date of his demise. Even while serving in the said capacity, the appellant's deceased husband could have opted for pension under the NPS that was made available to the work charged employees of the respondent No.1 – Housing Board in terms of the order dated
- D 02nd July, 2015. But he did not opt for the said Scheme. The appellant is, therefore, not entitled to receive family pension from the respondent No. 1 – Housing Board.

16. As a result of the aforesaid discussion, we do not find any

- E reason to interfere with the impugned judgment, which is upheld. The present appeal is, accordingly, dismissed while leaving the parties to bear their own expenses.

Bibhuti Bhushan Bose
(Assisted by : Rakhi, LCRA)

Appeal dismissed.