

Rām Chānder and others v. State of Haryana and others

two spouses who can make a claim. At the same time, it is clear that a claim can be made for maintenance of a child during a proceeding under the Act and the Court can in exercise of powers vested in it by section 26 of the Act pass such interim orders in any proceeding under the Act, from time to time, as it may deem just and proper with respect to the maintenance and education of minor children, consistently with their wishes, wherever possible."

In view of the Division Bench judgment, the minor daughter was entitled to maintenance in an application under section 24 of the Act. I am bound by the said judgment and, therefore, in not granting any maintenance to the minor child the learned District Judge acted illegally and with material irregularity in the exercise of his jurisdiction. Consequently, it is directed that the application filed by the wife under section 24 of claiming maintenance for her minor daughter be decided afresh and the necessary maintenance be granted from the date of application. The Civil Revision is disposed of accordingly. The wife will also be entitled to the costs of this petition which are quantified to be Rs. 500.

P.C.G.

Before : A. L. Bahri, J.

RAM CHANDER AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 10069 of 1988.

July 19, 1989.

Constitution of India, 1950—Arts. 14 and 226—Pension and gratuity—Entitlement—Period of service with Zila Parishad and District Board prior to joining government service—Whether countable towards pension etc. Government allowing similar benefits in earlier cases—Discrimination—Period spent in provincialised service can be counted towards pensionary benefits.

Held, that when the State Government allowed the benefit of provincialised service to Hazari Lal, it will amount to discrimination

if such benefit is not allowed to the petitioners who had rendered service with the Zila Parishads/District Boards prior to 1966. The Stand of the respondents that declining similar relief to the petitioners as they have not approached the Court of law, is not understandable. The State should not force its employees to approach the Court of law for relief which the State can conveniently grant on its own, moreso, when in similar circumstances the State had allowed the relief to one of its employees. Hence the State is directed to allow the relief to the petitioners taking into consideration the entire period of service rendered with Zila Parishad/District Board prior to 1966 in the matter of giving pensionary and gratuity benefits.

(Paras 2, 3, 4).

Writ Petition under Article 226 of the Constitution of India praying that :

- (i) *That the advance notice of motion on the respondents be dispensed with ;*
- (ii) *That the filing of the certified copies of Annexures may kindly be dispensed with ;*
- (iii) *That the costs of the writ petition be awarded in favour of the petitioners.*
- (iv) *That the Writ Petition be accepted, and the petitioners be granted pensionary benefits, i.e. Pension, gratuity etc. by counting their total service rendered in the erstwhile District Boards/Panchayat Samities/Zila Parishads prior to 1st November, 1966; any other writ, order or direction which, this Hon'ble Court may deem just and proper in the circumstances of the case, be issued in favour of the petitioners.*

J. L. Gupta, Sr. Advocate, with T. S. Dhindsa, Advocate, for the Petitioners.

Rameshwar Malik, Advocate, for the A.G. (Haryana.)

JUDGMENT

A.L. Bahri, J. (Oral)

(1) The short question for consideration in this writ petition filed under Article 226 of the Constitution is as to whether the service rendered by the petitioners with Zila Parishads/District Boards, prior to joining the Government service, is to be counted towards giving benefit of pension and gratuity. The details of the previous service rendered by the petitioners are given in para 3 of the writ petition. The dates on which they retired from Government service are also mentioned in this para. The Government took a

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policy decision,—*vide* Annexure P-1 to give such benefit with effect from November 1, 1966 with the condition that the employees would deposit the contribution made by the erstwhile Zila Parishads and Panchayat Samitis towards their provident fund in full with effect from November 1, 1966 or from the date they became members of the provident fund along with the interest thereon. One Hazari Lal approached this Court in a writ petition No. 3995 of 1986 which was decided on January 14, 1987. A direction was given to the State Government to decide his case within a period of three months. The Government allowed the benefit of his entire service even prior to 1966 and released the pension and the gratuity. The petitioners approached for similar relief to the State Government. Their representation was declined,—*vide* order copy Annexure P-4 on the ground that benefit was given to those who had approached the Court of law. Thus, the petitioners have approached this Court in this writ petition filed under Article 226 of the Constitution.

(2) The written statement has been filed on behalf of the Accountant General, Haryana, respondent No. 3, *inter alia* stating that since State Government allowed the benefit to Hazari Lal, the benefit of provincialised service period was given to him. No separate written-statement has been filed on behalf of State of Haryana.

(3) It will amount to discrimination if such benefit is not allowed to the present petitioners who had rendered service with the Zila Parishads/District Boards prior to 1966 as the State Government has allowed the benefit of such service to Hazari Lal who had approached this Court in the writ petition and sought directions. The stand of the respondents in Annexure P-4 declining similar relief to the petitioners as they have not approached the Court of law, is not understandable. They should not force its employees to approach the Court of law for relief which the State can conveniently grant on its own, *moreso*, when in similar circumstances the State had allowed relief to one of its employees.

(4) For the reasons recorded above, this writ petition is allowed with costs. Counsel fee Rs. 500. The State of Haryana is directed to decide the case of the petitioners within three months with the direction to allow relief to the petitioners taking into consideration the entire period of service rendered with the Zila Parishads/District Boards prior to 1966. in the matter of giving pensionary and gratuity benefits on the same terms and conditions on which similar benefits was given to Hazari Lal.

R.N.R.