

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2438 of 2015

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Jai Kishore Prasad Yadav Son of Late Jagdambi Yadav resident of village Muffasile District Munger at present village Chhitmakandpur P.O Rannuchak Makandpur P.S. Akbar Nagar District Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Food and consumer Supply Department of Bihar, Patna.
2. The Managing Director Bihar Food and Civil Supply Department Bihar Patna.
3. The Account General , Bihar., Patna
4. The District Manager, Bihar State Food AND Civil Supply Corporation, Munger.
5. The District Magistrate Munger.
6. The Sub-Divisional officer, Sadar Munger.
7. The treasury Officer, Munger.
8. The Branch Manager, State Bank of India Main Branch Bari Bazar Rajbati Munger.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pravina Kumari, Adv.
For the Respondent/s : Mr. Sandeep Kumar, GP8
For BSFC : Mr. Shailendra Kumar Singh, Adv.
For Accountant General : Mr. Binod Kumar Labh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 09-02-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“That this is an application for mandamus directing the respondents to quash that part of P.P.O. (Annexure 3) by which it has been stated that petitioner’s family will not entitle for family pension, D.A. is not admissible from 1.7.73 to 31.1.1996, and further pay the earn- leave, benefit of second time bound promotion and all consequential benefit with interest and re fix the pension also.”

Learned counsel for the petitioner has submitted that the



decision taken by the authority holding that the wife of the petitioner shall not be entitled for grant of family pension and/or payment of D.A. was not admissible for the period 1.7.1973 to 31.1.1996 and the denial of payment of leave encashment as also second time bound promotion is bad both on fact and in law. In this regard she has submitted that the family pension is a matter of right to a pensioner under the Bihar Pension Rules.

This Court would find it difficult to accept such submission for a simple reason that the petitioner had retired from service of the Government on 30.6.1973 with his period of service recorded in the pension payment order only for the period 11.7.1968 to 30.6.1973.

Let it be noted that the petitioner was earlier employee of the State Government but his services came to an end so far it related to the Government service. Thereafter the petitioner was employee in the Bihar State Food and Civil Supply Corporation and continued in service from 25.7.1973 to 31.5.1996. The decision for making payment of pension on prorata basis for the services rendered by the petitioner while he was working in the State Government was taken under the special scheme as is clearly mentioned in the pension payment order in terms of the Finance Department letter contained in Memo No. 1950 dated 18.2.1972.

That is how the following entries were made in the pension payment order issued by the office of the Accountant General way back in the year 2002 wherein it was mentioned as follows:

“ Special remarks of Accounts Officer

- 1) Family pension is not admissible to the family of those employee who have been merged with Corporation under provision of Finance Deptt. Memo No. 1950 dated 18.2.1972.
- 2) Proportionate pension should not be consolidated to minimum pension under Govt. of Bihar orders from time to time prior to 1.4.1997.
- 3) It may be consolidated to Rs.1275/- pm w.e.f. 1.4.1997.
- 4) No Dearness relief on pension from 1.7.1973 to 31.1.1996 is admissible.

Sd/

Sr. Accounts Officer,
Bihar, Patna”

The crucial question, therefore, would be if the petitioner, who was/is not an illiterate person, was aware of the decision in the year 2001 and in fact had drawn his entire arrears of pensionary relief with the same terms and conditions in the year 2002 when he was paid the entire arrears of his pension from 1.7.1973 onwards to the tune of Rs.1,20,371/-, can he be now allowed to turn around to question the Government decision as



with regard to denying the benefit of family pension or other amount. The delay of almost 13 years is sought to be explained by the learned counsel for the petitioner that the petitioner was filed representation. Such explanation however has to be only noted for its being rejected. Mere filing of representation cannot explain the delay.

The delay apart here was a case of an employee of the Corporation who had accepted the proportionate pension for the services rendered by him only for a period of less than five years i.e. 11.7.1968 to 30.6.1973. If for such pensioner there was no provision of family pension as per the Government decision dated 18.2.1972, this Court would find it difficult to now allow the petitioner to reagitate the whole thing for claiming family pension. The provision of proportionate pension as per the Bihar Pension Rules will definitely have no comparison with the pensioner who retires from the service after completing qualifying period in the year 1972. The qualifying service for a person to earn for a regular was at least of rendering of 25 years of satisfactory service. Thus, only because the matter gets old the petitioner cannot expect the things much less the decision of the Government to also change.

Be that as it may, the petitioner is alive and getting proportionate pension as fixed by the Government and therefore,

this writ application for the relief of family pension must be held to be ill-advised and misconceived.

It is, accordingly, dismissed.

(Mihir Kumar Jha, J)

surendra/-

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