

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4736 of 2015

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Nageshwar Prasad Yadav Son of Sri Yatwari Yadav Resident of Village - Musapur,
P.S.- Barbigha, District - Sheikpura

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Welfare,
Government of Bihar, Patna
2. The Registrar (Co-Operative Societies), Bihar, Patna
3. The District Magistrate, Jamui
4. The Block Development Officer, Chakai, Jamui
5. The Managing Director, Munger & Jamui Central Co operative Bank Ltd.,
Munger
6. The Treasury Officer, Jamui
7. The Accountant General, Bihar, Bir Chand Patel Path, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar, Adv.

For the Respondent/s : Mr. Rajiv Kumar, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 30-06-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads

as follows:-

- "1(i) *For commanding the respondents to pay pension to
the petitioner after calculating the past services of the
petitioner from 14.02.1979.*
- (ii) *For commanding the respondents to pay full gratuity
amount minus which has been paid to the petitioner.*
- (iii) *For commanding the respondents to pay earn leave
salary to the petitioner of 300 days in stead of 241
days.*
- (iv) *For commanding the respondents to grant
commutation of pension amount*

- (v) *For commanding the respondents to pay interest on all pensionary benefits from the date of due till date of payment."*

3. Learned counsel for the petitioner has submitted that the petitioner was earlier working as PACS Manager for a period of more than 24 years and, therefore, when he has retired from service on 31.12.2012, he would be not only entitled for payment of pension and gratuity as a government servant but also be entitled for reckoning his services for the period he had worked as a PACS Manager. Proceeding further, he has submitted that even the State Government has sanctioned the pension and the office of the Accountant General has authorized the same, a qualifying service of the petitioner has not been taken for the period of service rendered by him as PACS Manager. Learned counsel for the petitioner has also submitted that even when the authorization of pension has been made, that amount also has not been paid to the petitioner and, as such, the petitioner will be entitled for payment of interest over the arrear of pension and other retirement benefit.

4. In this case, a counter affidavit has been filed by the office of the Accountant General enclosing authorization of pension order dated 24.6.2015 whereby and whereunder he has been authorized to draw pension of Rs. 3,500/- per month with effect from 1.1.2013. The petitioner has also been sanctioned the amount of

gratuity to the tune of Rs. 1,08,360/- out of which learned counsel for the petitioner informs this Court that the petitioner has already been paid the amount of Rs. 1,07,360/-.

5. The fact that the petitioner has been given pension and gratuity will definitely go to show that he has been found to be entitled to receive his retirement benefit as a government servant. The question only will be for what period he would be entitled to get such pension? The answer to that has to be again found from the order of absorption of the petitioner dated 15.3.2003, wherein, it was absolutely made clear that the petitioner was appointed in government service pursuant to a direction of the Apex Court in the order dated 20.8.1998 in Civil Appeal No. 7357 of 1996. The moment the petitioner has been appointed in service, there would be hardly any scope for counting the previous services. The petitioner in fact was working as a PACS Manager in the Cooperative Society and his appointment in the government has been made on Class-3 post of Clerk. Therefore, as per the term of an order of appointment and in keeping with the provision of Rule 59 of the Bihar Pension Rule, the petitioner will not be entitled to count any earlier period of service.

6. The overemphasized reliance place by the learned counsel for the petitioner on the government resolution dated 26.2.2004 will also be of no help and avail. As a matter of fact in such



resolution the State Government in keeping with the observation of the Apex Court of framing appropriate condition for absorption after holding recruitment test and examination and laying down the provision for consideration of the past service, seniority and pension has taken a conscious decision that such of the PACS Manager who would not complete tenure period during the minimum period of ten years of appointment as a Clerk will be at least granted the benefit of minimum pension by counting their service for the period of ten years. That is all that has been stated in the government resolution as with regard to pension. The other clause with regard to grant of seniority where it had provided that for every five years of completed service as a PACS Manager, seniority of one year will be given can never be made applicable for computing the length of service for the purpose of pension. Grant of seniority could have benefited the petitioner in the matter of fixation of pay-scale or some other allied benefits but so far the pensionary benefit is concerned, that being governed by the statutory rules, namely, Bihar Pension Rules, the petitioner cannot get any advantage on this score.

7. As a matter of fact, had this government resolution dated 26.2.2004 not be there, probably the petitioner, on account of his completion of service of less than ten years as a clerk in the government service beginning from 15.3.2003 and retiring on

31.12.2012, could not have been entitled for even grant of pension and gratuity. In fact, it is paragraph no.3 of the aforesaid government resolution dated 26.2.2004 by virtue of which the petitioner has given the benefits of pension.

8. Considering all these aspects, this Court does not find any flaw in the decision of the government and the Accountant General in allowing pension and gratuity to the petitioner only by taking into account the actual service rendered by him after his appointment on the post of Clerk in the year 2003.

9. The grievance of the petitioner that such payment of pension ought to have been sanctioned at least in the year 2013 seems to be bonafide particularly when the petitioner's gratuity was paid immediately after his retirement. There is already a provision in the Pension Rules that if for any reason the person cannot be paid his full and final pension on account of awaited sanction of the government and authorization by the Accountant General, his 90% of provisional pension has to be paid. The petitioner when he was paid the amount of gratuity following the aforesaid government decision, he ought to have been also paid also the amount of provisional pension. That having been not done and the respondents have come out with the authorization order of pension and gratuity of the petitioner only during pendency of this writ application, this Court will hold the

petitioner entitled for amount of 5% interest as prescribed in the government circular on the arrear of pension.

10. This Court, therefore must direct the Treasury Officer, Madhepura to ensure that the monthly payment of pension of the petitioner from the month of June, 2015 is started forthwith and the arrear of pension of the petitioner from January, 2013 to May, 2015 also must be paid to him within a period of three months with interest at the rate of 5% as indicated above.

11. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 30th June 2015
N.A.F.R./Rishi/-

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