IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9233 of 2011

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1. Smt.Sudama Devi, Aged About 79 Years, W/O Sri Juman Paswan, R/O Vill.- Hanuman Nagar Chakala, P.S.- Kachara, P.S.- Saur Bazar, Distt.- Saharsa (Bihar) At Present, Resident Of H.N.2-H/53, Bahadurpur Housing Colony, Mahatma Gandhi Nagar, P.S.- Agamkuan, Distt.- Patna-26

.... Petitioner

Versus

1. The State Of Bihar
2. The Director In Chief, Health Services, Government of Bihar, New Secretariat, Patna
3. The Secretary, Health Services, Government of Bihar, New Secretariat, Patna
4. The Deputy Secretary, Health Services, Government of Bihar, New Secretariat, Patna
5. The Regional Director, Health Service, Government of Bihar, Koshi Division, Saharsa
6. The Civil Surgeon –cum- Chief Medical Officer, Saharsa, District Saharsa
7. The Incharge Medical Officer, Health Sub-Centre, Sadar Katiya, P.S.- Sadar Block, P.O.- Kataiya, District Saharsa
8. The District Magistrate, Saharsa District Saharsa
9. The District Treasury Officer, Saharsa District Saharsa
10. The District Provident Fund Officer, Saharsa Distt. Saharsa
11. The Director, Provident Fund, Directorate Provident Fund, Government Of Bihar, Pant Bhawan, Bailey Road, Patna
12. The Accountant General, (A & E), Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner : Mr. NITYANAND MISHRA, ADVOCATE
For the Respondents : Mr. ANJANI KUMAR, AAG 6
MR. SHAILENDRA KR. SINGH, AC TO AAG 6

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL JUDGMENT

Date: 14-01-2015

We have heard Mr. Nityanand Mishra, learned counsel, appearing for the petitioner, and Mr. Anjani Kumar, learned Additional Advocate General, appearing for the State respondents.

2. The controversy, in this writ petition, has arisen following the superannuation of the petitioner on 31.12.1990. The petitioner, while serving as A.N.M., under the Incharge Medical Officer, Sadar Block, Saharsa, was superannuated on 31.12.1990. The petitioner, claiming the said superannuation as illegal, challenged her superannuation by making a writ petition, under Article 226 of the Constitution of India, which gave rise to CWJC No. 3882 of 1991. In the said writ proceeding, the service book, GPF pass book and educational certificates of the petitioner were handed over to the learned Government Counsel. The petitioner, upon disposal of the said writ petition, approached the State respondents for payment of her retiral benefits and, on non-payment of the retiral benefits of the petitioner, the petitioner has filed this writ petition.

4. Mr. Nityanand Mishra, learned Counsel, submits that the original service book, GPF Pass Book and education certificates of the petitioner, which were called for by the learned Government Advocate, in connection with CWJC No. 3882 of 1991, were never returned to respondent No. 6, Civil Surgeon, Saharsa, and, on several occasions, i.e. on 14.05.1996, 10.08.1996, 25.08.2005 and 28.01.2010, respondent No. 6 made correspondence with the office of the learned Advocate General, Bihar, regarding their omission to return the original service book, GPF Pass Book and education certificates of the petitioner stating therein clearly that due to absence of the aforesaid documents, he was unable to pay the retiral dues of the petitioner. It is further submitted by Mr. Mishra, learned Counsel, that when the original documents of the petitioner were not returned to the office of the respondent No. 6, respondent No. 6 informed, vide letter No. 1241, dated 16.04.2011, the Director-in-Chief, Health Services, Bihar, Patna, regarding the factum of omission to return to him the original documents of the petitioner and thereby disabling him to pay to the petitioner her legitimate retiral benefits.

5. Controverting the writ petition, Mr. Anjani Kumar, learned Additional Advocate General, submits, as per the statement made in the counter affidavit filed on behalf of respondent No. 6, that when the service book of the petitioner was not returned by the then learned Government Advocate, a new service book of the petitioner was opened and actions were taken for payment of all her admitted retiral dues. He further submits that the petitioner was paid a sum of Rs. 1,750/- towards her total utilized leave salary, Rs. 31,439/- towards her final payment of GPF amount, Rs. 25,100/- towards her provisional gratuity and Rs. 10,784/- towards the amount of Group Insurance Scheme. Apart from these payments, submits Mr. Kumar, the provisional pension of the petitioner had already been paid to her in cash from time to time. It is the further contention of the learned Additional Advocate General that the petitioner had received, in cash, as pension, Rs. 96,750/- for the period 01.01.1991 to September, 2001, Rs. 5,250/- for October, 2001 to April, 2002, Rs. 18,000/- for the period May, 2002 to April, 2004, Rs. 7500/- for the period May, 2004 to February, 2005, Rs. 1,500/- for the period March, 2005 to April, 2005, Rs. 1500/- for the period May, 2005 to June, 2005, Rs. 750/- each for July, 2005 to August, 2005, and Rs. 52,500/- for the period between September, 2005 and June, 2011. It has been submitted on behalf of the State respondents, that the office of the Accountant General, Bihar, Patna, has been communicated, on 27.07.2011, for fixation of final pension of the petitioner.

6. Learned Counsel for the petitioner has vigorously disputed the statements made in the counter affidavit filed on behalf of the State respondents and submits that the concerned authority was not empowered to pay to the petitioner her pension, amounting more than Rs. 10,000/-, in cash. This apart, submits learned Counsel, without opening service book, no retiral benefits or pension could have been paid to the petitioner and untill 16.04.2011, no service book was opened, as is evident from the correspondence between the respondent No. 6 and the Director-in-Chief, Health Services, Bihar, Patna, no payment of pension has been made to the petitioner.

Though the learned Counsel for the petitioner admits that the petitioner has received some amounts with regard to the post retiral benefits of the petitioner, but strongly denies payment of pension, in cash, for the period from 01.01.1991 to 30.06.2011 and also all other payments made before 2011.

7. Since the issue, raised by the petitioner, is an issue arising out of disputed question of fact, such a disputed question of fact cannot be decided in a writ proceeding under Article 226 of the Constitution of India inasmuch as decision on such an issue would call for recording of evidence, which is not legally tenable in a proceeding of present nature. The remedy of the petitioner, as against the disputed dues, lies in instituting appropriate suit in a civil court of competent jurisdiction.

8. Because of what has been discussed and pointed out above, we do not find that the recourse, under Article 226 of the Constitution of India, is the appropriate remedy in the facts and attending circumstances of the present case.

9. For the foregoing reasons, this writ petition is not admitted and shall accordingly stand disposed of with liberty granted to the petitioner to take recourse to a civil court of competent jurisdiction for redresssal of his grievances.

10. This Court expresses no opinion as to the correctness and veracity of the assertions made by the rival parties. This does not, however, mean, we must hasten to add, that this Court holds that the submissions, made on behalf of the State respondents, are not correct or legally valid.

(I. A. Ansari, J.)

Prabhakar Anand/-

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