

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 718 of 2000

IN

Civil Writ Jurisdiction Case No. 9413 of 99

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- 1 The State of Bihar
 - 2 The Commissioner and Secretary, Secondary, Primary and Adult Education Department, Vikash Bhawan, Patna
 - 3 The Director (Primary Education), Secondary, Primary and Adult Education Department, Vikash Bhawan, Patna
 - 4 The District Superintendent of Education, Vaishali
 - 5 The Headmaster, Government Middle School, Manpur, Vaishali
- Appellant/s

Versus

- 1 Rajwati Devi, wife of late Gurudeo Prasad Singh, resident of Village – Pateri Bhikhan, PO – Anirudh Belsar, PS and District – Vaishali
 - 2 The Accountant General, Bihar, Birchand Patel Path, Patna
- Respondent/s

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For the Appellant/s : Mr Mayank Pukhaiyar, AC to GA

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 05-05-2015

State is in intra-Court appeal from judgment and order dated 18.02.2000 passed in CWJC No 9413 of 1999 (Rajwati Devi – Versus- State of Bihar & Others). By the said judgment, the learned Single Judge held that as the school was taken over with effect from 01.01.1971 and the husband of the petitioner superannuated in the year, 1974 and was entitled to pension, the widow, with effect from 1981 when the husband died after superannuation, would be entitled to family pension. When the matter was pending before this Court in the intra-Court appeal, similar matters had been referred to Full Bench

and the Full Bench judgment, on the issue in the case of *Geeta Devi & Others –Versus- State of Bihar & Others and analogous cases*, has since been reported in 2014 (4) PLJR 610. In our view, this concludes the controversy.

2 The writ petitioners claim that the school was taken over on 01.01.1971 but that is not very clear because on their own pleading, it was a privately managed school. Under the provisions of the Bihar Non-Government Elementary Schools (Taking Over of Control) Act 1976, private schools had to be notified for take over and such notifications, as the Full Bench has held, would only have been issued after the 1976 Act. Therefore, the position of taken over is not clear.

3 The writ petitioner has filed counter affidavit and a certificate is also there in the writ petition stating that when the writ petitioner's husband superannuated in 1974, he started receiving pension. It is also averred that though it was a private school, it was being managed by the District Board at the time of take over. We would, thus, assume that when the writ petitioner's late husband superannuated in the year 1974, the school had been taken over. If that be the position then the husband of the writ petitioner was entitled to pension and there is no dispute he received the same till 1981 when he died. The widow, who is the writ petitioner, claimed family

pension after 1981. This position has been explained in paragraph 8 of the Full Bench judgment wherein it has been clearly held that those teachers, who worked in a taken over school prior to 1976, were entitled to pension but under the triple benefit scheme, family pension is not provided. There is no dispute that the writ petitioner's husband was receiving pension since 1974 as a teacher in a taken over school. It, therefore, follows, in view of what is said in paragraph 8 of the Full Bench judgment aforesaid, that the wife would not be entitled to family pension.

4 In that view of the matter, the learned Single Judge was in error in holding otherwise. We have no option but to set aside the judgment and order of the learned Single Judge and dismiss the writ petition.

5 This appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

M.E.H./-

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