

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 731 of 2008

IN

Civil Writ Jurisdiction Case No 1443 of 2003

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Smt Dhanbarta Kuer, aged about 65 years, wife of late Yudheshwar Tiwary,
resident of Village – Kudaria, PO – Jamodi, PS – Tarari, District – Bhojpur (Ara),
Bihar

.... Appellant/s

Versus

- 1 The State of Bihar through the Secretary –cum- Commissioner, Department of
Secondary Education, Bihar, Patna,
- 2 The Chief Secretary, Government of Bihar, Patna
- 3 The Secretary –cum- Commissioner, Department of Secondary Education,
Bihar, Patna
- 4 The Director, Department of Secondary Education, Bihar, Patna
- 5 The Regional Deputy Education Director, Patna Division, Patna
- 6 The District Magistrate –cum- Collector, Rohtas (Sasaram)
- 7 The District Education Officer, Rohtas (Sasaram)
- 8 The Head Master, High School Garh – Nokha, Rohtas, 802 215
- 9 The Treasury Officer, Bhojpur (Ara)
- 10 The Secretary –cum- Commissioner, Department of Finance, Bihar, Patna
- 11 The Accountant General, Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Harendra Pratap Singh & Ms Priyanka Singh, Advs

For the State : Mr Kinkar Kumar, SC 27 with
Mr Manoj Kumar, AC to SC 27

For Accountant General : Mr J P Karn, Sr Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 23-09-2015

This appeal by the writ petitioner is from judgment and order
dated 20.08.2008 passed in CWJC No 1443 of 2003 (*Smt Dhanbarta
Kuer –Versus- The State of Bihar & Others*). The writ petition, filed

by her, praying family pension in respect of service rendered by her late husband as an Assistant Teacher in a Non-Government School, was rejected by the learned Single Judge. Hence, this appeal.

2 We have heard the learned counsel for the appellant and learned counsel for the State and we find no reason to interfere with the order of the learned Single Judge.

3 The late husband of the appellant was an Assistant Teacher in a Non-Government School. He retired on 30.06.1980 and subsequently on 02.10.1980, the School was nationalized. The husband of the appellant retired, undisputedly, having attained the age of 62 years and not 58 years. He died on 20.04.1992. He had been receiving fixed pension of Rs 75/- per month at the time of his death. Learned counsel for the appellant submits that as per the decision of the State Government taken in the year 1986, the appellant was entitled to revised family pension. He further submitted that the pension to the late husband fixed at Rs 75/- per month was also liable to be revised. It is for these two reliefs that the writ petition was filed in the year, 2003.

4 At first, few facts that we would like to notice is that the late husband of the appellant superannuated on 30.06.1980 and died on 20.04.1992 receiving only Rs 75/- as fixed pension. He never raised any grievance before any Court and/or appropriate authority.

Then from 1992 to 1999, the appellant did not move any authority before 1999. Ultimately, the writ petition filed in the year 2003 has been dismissed by the learned Single Judge. These facts, apart from others that we would notice, persuade us not to interfere in this appeal.

5 The question as to what would be the entitlement of the late husband of the writ petitioner-appellant is no more open to question. This has been set at rest by the judgment of this Court since reported in the case of *Jai Prakash Dubey –Versus- State of Bihar & Others, 1986 PLJR 100*. We may usefully quote relevant parts of the said judgment :

“5. Therefore, the persons who retired between 01.01.1979 to 01.10.1980 at the age of 62 and had opted to continue till that age and did not desire to retire at the age of 58, are to get pensionary benefit as obtainable in the year 1962, known as “Triple benefit” with a fixed pension of Rs 75/-. The petitioner falls in this class and is being paid the pension at the rate of Rs 75/- per month. In short, the contention of the petitioner is that every body retiring between the period 01.04.1978 till November 1980 should also be entitled to regular pension whether they retired at the age of 58 years or 62 years or at any age in between.

8. Having heard the learned counsel, I find considerable force in the argument of the learned Advocate General. The petitioner is bound by his option. He chose to serve till the age of 62 years and to take the triple benefit under Government scheme of 1962.

He cannot complain that he should be paid the same pensionary benefit like those who opted to retire at the age of 58 years, nor can he complain any discrimination with respect to that class of persons who did not opt to retire at the age of 58 years but were per force retired by statutory interference.
... ”

6 This judgment, in no uncertainty, holds that in a class, similar to that of the appellant's late husband, the entitlement was, fixed pension at the rate of Rs 75/- per month under the triple benefit scheme. Under the triple benefit scheme, we would note, that there is no provision for family pension.

7 Learned counsel for the appellant then points out that provision for family pension came by virtue of Government decision in the year, 1986. In our view, that Circular is not applicable at all inasmuch as by then, appellant's late husband had already superannuated on 30.06.1980. The Circular does not extend the benefit to employees who had already retired.

8 Learned counsel then further submits that in view of the observations of this Court in the judgment aforesaid, specially paragraph-10 thereof, relief must be granted to the appellant. In other words, what is said is that the said observations deprecated the fixed pension of Rs 75/- and directed that there should be revision thereof on humanitarian considerations. To us, this is a belated prayer. Late husband of the appellant, notwithstanding this judgment being of the

year 1985, did not move this Court till his death in the year, 1992. Even the writ petitioner-appellant did not take up this matter in the year 1999 or thereafter, which is being urged for the first time in this appeal which was filed in the year, 2008. The relief prayed for, is highly belated.

9 For the reasons mentioned above, we are unable to interfere in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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