IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1497 of 2014

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Smt. Raj Rani Devi W/O Late Badri Singh (Retired Assistant Teacher) Resident Of Village - Purainia, P.O. - Rajhut, P.S. - Govindpur, District - Nawada

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Primary Education Department, Govt. Of Bihar, Vikas Bhawan, Patna
2. The Secretary Primary Education Department, Govt. Of Bihar, Vikas Bhawan, Patna
3. The Director, Primary Education, Govt. Of Bihar, Vikas Bhawan, Patna
4. The Director Provident Fund, Govt. Of Bihar, Pant Bhawan, Patna
5. The D.S.E., Gaya/District Program Officer, Gaya
6. The D.S.E., Nawada/District Program Officer, Nawada
7. The District Provident Fund Officer, Nawada
8. The District Treasury Officer, Nawada

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Bankey Bihari Singh, Adv.
For the Respondent/s : Mr. Avnish Nandan Sinha, GP-11

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 09-02-2015

Heard learned counsel for the parties.

While this Court will have no difficulty in holding that if the husband of the petitioner was a pensioner, the wife will definitely be entitled to get family pension and, therefore, since the death of the husband of the petitioner had taken place on 18.8.2013,, there can be no justification in not paying the family pension to the writ petitioner at least from the month of September, 2013.

This Court, therefore, would direct the concerned authority to ensure that the family pension of the petitioner must be paid, if not already paid, both arrear and current, within a period of three months from the date of receipt/production of a copy of this order.

As with regard to the claim of leave encashment, the husband of the petitioner had retired in the year 1998 and it does not stand to reason that if the husband of the petitioner had not raised this issue till his death in the year 2013, how could the petitioner raise the same issue.

The cause of action of payment of leave encashment being of the year 1998, while this Court is not inclined to issue any direction to the respondents but, then, a verification should be made as to the husband of the petitioner was entitled to such leave encashment on the ground of any leave balance on the date of retirement and whether such amount was paid to him at the time of settlement of the retirement benefit. If on consideration on this aspect, it is found that the husband of the petitioner was not paid the due amount of leave encashment, action must be taken to ensure that whatever amount is admissible and payable on the head of leave encashment, that also must be paid to the petitioner within a period of three months from the date of receipt of this order.

It is, however, made clear that if on this head of leave encashment, no amount is found payable on account of either leave being not due in the account of the husband of the petitioner or such payment already made, the respondent shall simply communicate this part of the decision to the petitioner within the same period of three months.

As with regard to claim of payment of dues of provident fund for the period 1.1.1971 to 31.3.1973, this Court must hold that the government is under liability in the case of the petitioner to pay all such amount of arrear. The reason for the same is quite obvious because the petitioner was appointed in a school which was governed by the Zila Parishad. In all these district level, the government was not deducting the amount of provident fund and in fact when the school was continued to have been taken-over in the year 1976, in view of the Taking Over Act with effect from 3.11.1971, that did not mean that the liability of payment of Provident Fund was also undertaken by the Government on such decision. Taking-over being now at least 40 to 45 years old, the Government cannot now be made liable for payment of G.P.F. The petitioner in fact can only seek his amount of provident fund from his erstwhile employer i.e. District Board who may have deducted such amount. Therefore, this Court would reject the prayer for grant of amount of arrear of G.P.F. for the period 7.11.1973.

Nothing said in the order will stand in the way of the petitioner to approach the authority of the District Board to satisfy that the amount of G.P.F. was deducted from the salary of the petitioner and was retained by the District Board and if the authority of the District Board explains to the petitioner that such amount was already transferred to the State Government in the year 1976 or thereafter, the petitioner may approach the competent authority of the State Government for release of the amount. If there is no such proof of GPF amount being retained by the Government, the issue then will be only between the petitioner and the District Board.

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

(Mihir Kumar Jha, J)

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