

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.312 of 2014

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Basudeo Narain Singh @ Basudeo Prasad Singh, aged about 80 years S/o Late Hari Prasad Singh Village Sonapai, P.O. Jamui, P.S. and District Jamui, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the Secretary cum Commissioner, Department of Primary Education, Bihar, Patna (Respondent No. 3).
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary cum Commissioner, Department of Primary Education, Bihar, Patna.
4. The Director, Primary Education, Bihar, Patna.
5. The District Magistrate-cum-Collector, Munger
6. The District Education Officer, Munger.
7. The District Superintendent of Education, Munger.
8. The Block Education Extension Officer, Hawely Kharagpur, Munger.
9. The Head Master, Middle School, Muzaffarganj, P.S. Haweli Kharagpur, Munger.
10. The Treasury Officer, Munger and Sub Treasury Officer, Jamui.
11. The Secretary cum Commissioner, Department of Finance, Bihar, Patna.
12. The Accountant General, Bihar, Patna.

.... Respondents/Opposite Parties

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with

Civil Review No.313 of 2014

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Smt. Humaira Khatoon, aged about 75 years W/o Late Md. Ghulam Nabi Ansari Resident of Mohalla Titaiganj, P.O. Tekari, P.S. Tekari, District Gaya, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the Secretary cum Commissioner, Department of Primary Education, Bihar, Patna (Respondent No. 3).
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary cum Commissioner, Department of Primary Education, Bihar, Patna.
4. The Director, Primary Education, Bihar, Patna.
5. The District Magistrate cum Collector, Gaya.
6. The District Education Officer, Gaya.
7. The District Superintendent of Education, Gaya.
8. The Sub Inspector of School, Gaya.
9. The Head master, B.M.C. Welfare Maktab Titaiganj, Tekari, Gaya.
10. The Secretary cum Commissioner, Department of Finance, Bihar, Patna.
11. The Treasury Officer, Gaya.
12. The Accountant General, Bihar, Patna.

.... Respondents/Opposite Parties

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with

Civil Review No.15 of 2015

IN

LPA 377 of 2006

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Geeta Devi Wife of Ram Subhag Singh, Resident of Village- Bishunpur
Chak Pahar, P.S.- Sahebganj, District- Muzaffarpur (Bihar)

.... Petitioner

Versus

1. The State of Bihar
2. The Director, Primary Education, Primary, Secondary @ Adult Education
Department, Government of Bihar, Vikash Bhawan, New Secretariat, Patna
3. The District Superintendent of Education (Now District Programme
Officer), Muzaffarpur, District- Muzaffarpur (Bihar)
4. The Treasury Officer, Muzaffarpur, District- Muzaffarpur (Bihar)
5. The Accountant General, Bihar, Mahalekhakar Bhawan, Bir Chand Patel
Marg, Patna(Bihar)

.... Respondents/Opposite Parties

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Appearance :

(In C. REV. No.312 of 2014)

For the Petitioner/s : Mr. Harendra Pratap Singh with Ms. Priyanka
Singh, Advocates

For the State : Mr. Shyam Kishore Sharma, G.A.1 with
Mr. Mayank Rukhaiyar, AC to G.A.1

For Accountant General : Mr. L.P.K. Rajgrihar, Standing Counsel
(In C. REV. No.313 of 2014)

For the Petitioner/s : Mr. Harendra Pratap Singh with Ms. Priyanka
Singh, Advocates

(In C. REV. No.15 of 2015)

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate with
M/S Mayanand Jha & Raj Narain Mishra,
Advocates

For the State : Mr. Mayank Rukhaiyar, AC to G.A.1

For Accountant General : Mr. Sanjay Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

**HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

6 08-03-2016 Heard learned counsels for the petitioners and learned
counsel for the State.

All the three review applications have been filed for
review of the judgment and order dated 8.9.2014 passed in LPA

No. 377 of 2006, CWJC No. 2339 of 2003, CWJC No. 3680 of 2003 and CWJC No. 9776 of 2004. Out of four writ applications three review applications have been filed.

The petitioner Geeta Devi had, in fact, challenged the said judgment and order by filing SLA(C) No. 31050 of 2014 before the Supreme Court, which was dismissed as withdrawn with liberty to file a review petition before this Court on the statement of learned counsel for the petitioner therein that certain issues were pressed before this Court but they were not adjudicated upon by the High Court.

The matters were argued before the Full Bench stating that the husbands of the writ petitioners were Assistant Teachers in non-Government Middle Schools and on retirement from service the concerned teachers received pension from the State Government and on the death of such retired teachers, their wives were entitled to family pension as a matter of course. In one of the cases the concerned teacher died in harness prior to 1.4.1976 and the wife of such teacher had claimed that since her husband had retired from service as such she would be entitled to family pension.

Upon a consideration of the case of the petitioners and the provisions of Bihar Non-government Elementary Schools (Taking Over of Control) Act, 1976 the Full Bench ultimately came to the conclusion that at the relevant time the triple benefit



scheme was prevalent and each teacher was member of the triple benefit scheme and had been paid benefit of provident fund, insurance and pension under the said scheme which did not extend the benefit of family pension and therefore the writ petitioners were not entitled to the family pension under the said scheme. The Court was accordingly of the view that the claim of the family pension made by the petitioners was not sustainable. It was further held that the judgment of the Division Bench in the matter of Most. Punam Kuer vs. State of Bihar : 2011(3) PLJR 341 in so far as the claim that a teacher in the taken over school on and from the date the school was taken over would be governed by the conditions of service applicable to the employees of the State Government was contrary to sub-Section (2) of Section 4 of the Bihar Act 3C of 1976 and the said judgment does not lay down the correct law and was overruled. The Full Bench further held upon consideration of the judgments of Division Benches in the case of Sona Devi vs. State of Bihar: 1998(1) PLJR 668 and State of Bihar vs. Arya Devi: 2001(2) PLJR 212 that there was no reason to disagree with the view expressed in the matters and therefore all the LPA and three writ petitions were dismissed.

Learned counsels for the petitioners have sought to point out that the Full Bench judgment was delivered upon misapprehension of certain facts. It is submitted that the husbands of the petitioners in two of the writ petitions, namely, CWJC No.



2339 of 2003, out of which LPA No. 377 of 2006 arose, and CWJC No. 9776 of 2004, were not Assistant Teachers in non-Government Middle Schools rather they were Assistant Teachers in schools which prior to nationalization were under the control of District Board, Muzaffarpur and the School in Tekari, Gaya, was functional under the Expansion and Improvement Scheme and both these schools would be deemed to have been taken over with effect from 1.1.1971 by virtue of Section 3(1) of the Taking over Act and were not dependent upon any notification being issued by the State Government in that regard. With regard to the petitioner Basudeo Narain Singh it is also submitted by learned counsel for the petitioner that admittedly even in the counter affidavit filed in the said case the stand was that the school was Government aided prior to takeover of the said school with effect from 1.1.1971 and thus the statement in the order of the Full Bench that there was nothing on the record to show that the school was taken over with effect from 1.1.1971 is not correct.

It is submitted by learned counsels for the petitioners that once the basic foundation of the case itself was wrong then the conclusion arrived at by the judgment and order dated 8.9.2014 of the Full Bench cannot be held to be correct for the said sole reason and the judgment requires to be reviewed.

Learned counsel for the State, on the other hand, submits that even if the said fact of the schools having been taken over



with effect from 1.1.1971 is not disputed and the earlier order wrongly considered the fact on the point but the crux of the Full Bench decision is not affected by the same as it was applicable to even such schools which were taken over at the relevant time under the provisions of Section 4(2) of the Act wherein although they became servants of the State Government but they continued to hold the post by the same tenure, at the same remuneration and on the same terms and conditions of the service as they would have held prior to taking over of the said schools and they would continue to do so unless and until such tenure, remuneration, terms and conditions of service were duly altered by the State Government. It is submitted that the petitioners were not able to show before the Full Bench that their tenure, remuneration, terms and conditions were altered at any time until the 1976 decision to grant the teachers of such taken over schools the benefit of family pension, which with regard to the State Government employees had been introduced with effect from 1964 but with regard to the teachers of such taken over schools were brought into force under the 1976 scheme. It is thus submitted that the basic position and the propositions on which the judgment was based would not change and as such no review of the order would be required as the said fact has not been disputed by the petitioners.

We have considered the submissions of learned counsels for the parties and find force in the submission of learned counsel



for the State. It is true that the Full Bench had proceeded on the basis that the schools in question were non-Government Middle schools and that they had to be taken over by specific notification, which the petitioners were unable to show before this Court that such school was taken over on 1.1.1971. But the final conclusion was also based on Section 4(2) of the Act and the petitioners are unable to show before us as to how the terms and conditions applicable to the State Government employees became automatically applicable to them and how such a view taken by the Full Bench can be challenged in review application before us considering the fact that it is not an appeal that they are arguing before us. The view taken by the Full Bench on the provisions of law, namely, Section 4(2) of 1976 Act cannot be stated to suffer from any error of law apparent on the record and is in fact supported by two earlier Division Bench decisions.

So far as the petitioner Basudeo Narain Singh in Civil Review No. 312 of 2014 is concerned, he had in his writ petition claimed for revision of family pension on different dates in respect of Rs.200/- per month which he was receiving but it does not appear that any argument for such grant of revision had been raised before the Full Bench by learned counsel for this petitioner. In the civil review application an entirely different case is sought to be made out by the said petitioner and learned counsel for the petitioner also submits that he is not seeking any revision on the

basis of invalid pension which is admitted by him that he would not be entitled to on the basis of Education Department Circular No. 3431 dated 4.9.1964.

Thus, in the light of the aforesaid discussions, we do not find any ground for review of the judgment and order dated 8.9.2014. The review applications are, accordingly, dismissed.

(Ramesh Kumar Datta, J)

(Ashwani Kumar Singh, J)

spal/-

(Sudhir Singh, J)

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