

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.52 of 2016
Arising out of
Letters Patent Appeal No. 1440 of 2010
Along with
Interlocutory Application No. 1475 of 2016

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1. Brajeshwari Prasad, S/o Late Ishwari Prasad, R/o Naya Tola, Near Mahila Vidhyalaya Mandir School, Lakhisarai, Distt- Lakhisarai, Bihar.
 2. The State of Bihar.

.... Petitioner/s

Versus

1. Lakhisarai Municipality through its Executive Officer.
2. The Executive Officer, Lakhisarai, Municipality, Lakhisarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar, Advocate.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-07-2016

Re.: Interlocutory Application No. 1475 of 2016

The application is for condonation of delay of 04 years 10 months 26 days in filing of the review application.

For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 04 years 10 months 26 days in filing of the review application is condoned.

Interlocutory Application stands disposed off.

Re.: Civil Review No. 52 of 2016

The present review application is to review the order passed by the Division Bench of this Court on 27.01.2011 whereby the order passed by the learned single Bench was set aside and the Letters Patent Appeal was allowed.

The Division Bench has found that the Bihar Municipal Officers and Servants Pension Rules, 1987 (hereinafter referred to as the 'Rules') came into force on 13.11.1987, but the applicant did not exercise his option in terms of such Rules to be governed by the Family Pension Rules, therefore, the applicant continued to be governed by the contributory Provident Fund Scheme.

The argument of learned counsel for the applicant is that other employees of the Municipality, who have also not given option, but they have been granted benefit of family pension. Therefore, the action of the Municipality in treating different set of employees differently amounts to discrimination and cannot be sustained.

We do not find any merit in the argument raised. Rules are categorical that an employee has to submit option within the period prescribed to avail the benefit of family pension. Admittedly, the applicant has not opted for family pension within the time so granted under the statutory rules. Therefore, the applicant cannot be granted benefit of family pension in contravention of the express provisions of the Rules.

In respect of discriminatory treatment meted out to the applicant, we may say that no such foundation was laid before the writ court. But even if some similarly situated employees have been granted

benefit of family pension that will not confer any right in the applicant as there cannot be any parity in the illegality. Reference may be made to judgment of the Supreme Court in the cases of *Chandigarh Administration Vs. Jagjit Singh* reported as (1995) 1 SCC 745 and of *Kulwinder Pal Singh Vs. State of Punjab* reported as AIR 2016 SC 2281.

In view of the said fact, we do not find any error in the order passed by the Division Bench, which may warrant consideration in the present review application. It is accordingly dismissed.

Learned counsel for the applicant points out that the Learned Single Judge ordered that an amount of Rs. 17,215/- be refunded to him by the Municipality, which was sent but was not accepted by the writ petitioner-applicant earlier. It is argued that the said amount be paid to him now.

It is always open to the applicant to seek refund of the amount in terms of the direction of the Court, even if at an earlier stage, he has not accepted the said amount. Therefore, as and when the applicant submits a request for refund of the amount of Rs. 17,251/-, the Municipality shall consider the same in accordance with law.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

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