

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5735 of 2015

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Meena Devi, W/O Late Ram Narayan Roy, R/o Village- Bashi, Post -
Churamanchack P.S- Bhagwanpur, Distt- Begusarai.

.... Petitioner

Versus

1. The of state Bihar through Principal Secretary PHED Repartment ,Patna
2. The principal secretary PHED Deptt Govt of Bihar.
3. The Executive Engineer Patna Lok Swasthya Parmandal, Jamuai.
4. Executive Engineer Lok Swasthya Parmandal, Munger.

.... Respondents

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Appearance :

For the Petitioner : M/s. Amaresh kumar Singh,
Sushil Kumar Roy, Advocates
Kumar Kamal Nayan, Advocates

For the State : A.C. to A.A.G. 15

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 20-08-2016

Heard parties.

Through this writ application, the petitioner seeks quashing of the order contained in the letter dated 17.11.2014 (Annexure 5) by which the petitioner has been communicated that, since the husband of the petitioner, namely, Late Ram Narayan Roy was appointed on 28.11.2006 and he died in harness on 21.10.2008, now under new Contributory Pension Scheme, family pension cannot be allowed to her.

The facts which form the bedrock of the writ petition are as under:-

Husband of the petitioner was initially appointed as daily



wager but his services were taken over in work-charged establishment on the post of “Nalkup Khalasi” on the scale which stands stated in Annexure 1 on 09.09.1982 along with others. This fact is apparent from the service book of the petitioner which has been appended as Annexure 6 with the reply to the counter affidavit. Subsequently, upon the decision taken by the State, his services were again reverted back to the muster-roll. However, some of similarly situated employees approached this Court and, on the basis of direction of this Court, their cases were examined by a three-member Committee in terms of the decision of the Apex Court in the case of **Secretary, State of Karnataka Vs. Uma Devi (3) and others [(2006) 4 SCC 1]** and on the basis of recommendation of the three-member Committee, the service of the husband of the petitioner was regularized vide Annexure 2 dated 06.12.2006.

Now the issue which is being raised for consideration in this writ application is as to whether in view of the Contributory Pension Scheme having already been made effective in the year 2005, the petitioner would be entitled for Family pension or not. The issue is no longer *res integra* inasmuch as a Single Judge Bench of this Court in **Sheela Devi Vs. the State of Bihar & Ors. [2012(4) PLJR 723]** and ,thereafter, a Division Bench of this Court in the **State of Bihar through the Secretary, Department of Public Health Engineering Department, Bihar, Patna Vs. Sheela Devi & Ors. [2013(4)PLJR**



557] passed in L.P.A. No.416 of 2013 preferred against the aforesaid order of the learned Single Judge Bench of this Court, have already considered the same and that has been set at rest. The Division Bench has held in clear terms that absorption of the employee concerned in regular establishment cannot be treated as fresh appointment as he stood excluded as a class under Clause 3 of the circular dated 31.08.2005. Such persons were reinstated/re-inducted and continued to discharge duties where they were earlier working. For better appreciation, the relevant passages from the aforesaid decision rendered by the Division Bench of this Court in **State of Bihar (supra)** are extracted as under:-

“7. We have considered the submissions made on the behalf of the parties and also applied ourselves to the earlier orders of the Court. A finding of fact had been arrived at in the earlier litigations that there was a continuity of relationship between the government and such employees. They were not fresh appointees after 1.9.2005. They stood excluded as a class under clause 3 of the Circular dated 31.8.2005. Such persons were reinstated/re-inducted and continued to discharge duties where they were earlier. We find it difficult to hold that the earlier orders of the Court have to be read down to be confined for the purposes of GPF only. The same set of facts and circumstances cannot be considered and accepted for one purpose and ignored for another. There has to be a composite holistic view of the entire facts and circumstances.

8. The Circular dated 31.3.2004 narrates that on 29.6.1971 by order no.13327 the Government had decided to induct into the regular establishment work charge employees who had continued for ten years and be given benefit of pension also. But the period spent in work charge could not be added for meeting qualifying service of ten years for pension. On 31.3.1976 by order no. 3425 the Government decided that work charge employees brought into regular establishment after 1.4.1971 would be entitled to add service rendered in work charge for meeting ten years eligibility for pensionable service. Even for family pension if the service in regular establishment was less than one year, the period in work charge be added. On 6.3.1978 by order no. 505 the Government further relaxed requirements by providing that such work charge employees brought into regular



establishment after 1.4.1978 or later and did not meet the qualifying requirement for ten years of service (ten years for regular and fifteen years for temporary) after induction into the regular establishment shall be entitled to add the period of service as work charge to make it Pensionable along with Gratuity. Provision was likewise made for family pension also. Such work charge employees inducted in regular establishment were held entitled to benefits of selection grade and time bound promotion by order no.1503 dated 27.3.1987. The Circular dated 31.3.2004 has not been overridden by the Circular dated 31.8.2005. On the contrary, to the best of our understanding, Clause 3 of the latter impliedly protects the benefit of the earlier Circular available to such persons like the husband of Respondent no.1.

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10. That the deceased husband of Respondent no.1 may not have been party to the earlier litigations is inconsequential. The Appellants themselves extended the benefit of the Division Bench order to the deceased by putting his case for consideration before the three men committee. The Appellants cannot simultaneously contend that he is not entitled to the benefit of the earlier orders and yet extend the benefits of the earlier orders to him. Even otherwise, when a question of law is considered by the Court it applies to all similarly situated and it is not a valid defence to contend that its applicability shall be restricted to the parties only. That would only be multiplying litigations burdening the Court unnecessarily. In (2006) 2 SCC 747 (State of Karnataka v. C. Lalitha) it was observed:-

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.....”

It has been recorded by the Division Bench that such decision cannot be confined only to the persons who had approached the Court rather all the similarly situated persons would be entitled for the same otherwise that would only be multiplying the litigations burdening the court unnecessarily.

In the counter affidavit, a resolution no.10710 dated 17.10.2013 has been appended. Learned counsel for the State has

brought attention of this Court towards Clause 4(ii) thereof which states that benefit of such policy would be available to only those employees who are in service at the time of such circular has been issued. Admittedly, the petitioner's husband having died in the year 2008 itself, this circular would not be applicable in his case. Even if it is assumed that circular would be applicable to him then again Clause 5(v) of the Circular speaks in clear terms that such employees would be covered by the old pension scheme and not under new pension scheme.

In above view of the matter, in my considered view, the petitioner would be entitled for the family pension and, for that purpose, services of the petitioner should be calculated from the date of Annexure 1 when he was taken in the work-charged establishment. Further, he would be covered by the old pension scheme and not the new contributory pension scheme.

Accordingly, this writ application stands allowed.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.09.2016
Transmission Date	NA