

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1308 of 2016

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Most. Meena Devi Wife of Late Ganesh Prasad Chaudhary @ Ganesh Chaudhary,
resident of Village + P.O. Balbhadrapur, P.S. - Birpur, Via - Balua Bazar, District -
Supaul.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Public Health Engineering Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The Chief Engineer (Mechanical) Department of Public Health Engineering, Govt. of Bihar, Patna.
5. The Zonal Chief Engineers, Purnea Zone, Purnea.
6. The Superintending Engineer, Public Health Engineering Circle, Purnea.
7. The Executive Engineer, Public Health Division, Araria.
8. The Sub-Divisional Officer-cum-Assistant Engineer, Public Health Engineering, Sub-Division, Araria.
9. The District Magistrate, Araria.
10. The District Provident Fund Officer, Araria.
11. The Treasury Officer, Araria.
12. The Accountant General (A & E), Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siyaram Pandey, Advocate
For the State : Ms. Divya Verma, AC to AAG-3
For the Accountant General: Ms. Namrata Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 19-08-2017



Heard learned counsel for the petitioner and learned counsel for the State.

2. This writ petition has been filed by the petitioner for issuance of a direction to the respondent authorities to pay death-cum-retiral benefits to her including family pension, amount of gratuity, leave encashment, arrears of salary and arrear of pension by counting the total length of service of her deceased husband spent on work charged establishment till his death.

3. Learned counsel for the petitioner has submitted that the husband of the petitioner was initially appointed on muster roll basis as a daily wage employee on 01.01.1982 in Public Health Engineering Division, Araria under Public Health Engineering Circle, Purnea. He was absorbed in work charged establishment on 25.01.1988 on the post of Nalkoop Khalasi under Public Health Engineering Division, Araria. However, he was illegally reverted from the work charged establishment to the status of a daily wage employee with effect from 01.06.2002 vide order dated 30.08.2002. He has submitted that he continuously worked since 01.06.2002 till 20.06.2014 as a daily wage employee and, later on, vide order dated 23.06.2014, he was again absorbed on the post of Nalkoop Khalasi in the work charged establishment. He has submitted that the husband of the petitioner died in harness on 04.06.2015 and, since then, the petitioner is



running from pillar to post to get the total amount of death-cum-retiral benefits of her husband. He has submitted that though the respondents have treated the service of the deceased employee to be pensionable, the petitioner has been paid the minimum family pension and other retirement benefits have also been calculated erroneously by the respondents. He has submitted that the total qualifying service of the deceased employee entitling the petitioner to receive family pension would be of 27 years, 4 months and 8 days and the petitioner would be entitled to receive the benefits of death-cum-retirement benefits on the basis of calculation of total period and not the period for which she is being paid the minimum family pension and other retiral dues. In this regard, he has placed reliance on a decision of this Court passed in the matter of ***Sheela Devi vs. the State of Bihar and Ors [CWJC NO.2246 of 2012]***.

4. On the other hand, learned counsel for the State has submitted that the husband of the petitioner late Ganesh Prasad Chaudhary was appointed in the work charged establishment on 26.01.1988. Since the appointment of the husband of the petitioner was not made against a vacant and sanctioned post, he was reverted as a daily wage employee in the year 2002. He never objected to such reversion and worked as a daily wager till 22.06.2014. She has submitted that as several other employees were reverted like the



husband of the petitioner from work charged establishment. They had filed several writ petitions before this Court challenging the order of reversion vide CWJC No. 7359 of 2002 and other batch cases. The matter was taken by a Division Bench of this Court and final order was passed on 13.07.2006 whereby a three-man committee was constituted in the light of judgment of Constitution Bench of Supreme Court in the matter of *Secretary, State of Karnataka vs. Uma Devi [(2006) 4 SCC 1]* to consider the claim of the employees who were reverted from work charged establishment. The case of the petitioner was never recommended by the three-man committee for appointment in regular establishment. She has contended that subsequently, the State Government took a decision to absorb the husband of the petitioner in regular establishment vide office order no. 26, dated 23.06.2014 in the light of resolution no. 10710, dated 17.10.2013 issued by the Finance Department, Government of Bihar and, accordingly, the petitioner has been paid death-cum-retirement benefit as per Government Circular applicable to her and the work charged period has been counted in accordance with Government Resolution for the purpose of pension. She has submitted that the decision of this Court on which reliance has been placed by the learned counsel for the petitioner would be of no help to the petitioner as by the said order it has not been directed that the daily wage period of an employee



should also be counted for the purpose of pension.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, there is no dispute to the fact that the husband of the petitioner was initially appointed in work charged establishment on 25.01.1988. Subsequently, he was reverted from work charged establishment on 01.06.2002. There is also no dispute to the fact that he worked from 01.06.2002 till 22.06.2014 as a daily wage employee and was taken in regular establishment on 23.06.2014 and after serving for a short period, he died in harness on 04.06.2015.

7. In the case of **Sheela Devi** (Supra) relied upon by the learned counsel for the petitioner, the petitioner was a widow of the deceased employee, who was in work charged establishment for a long period and was regularized in regular establishment in 2006 and died in 2009. The widow was denied family pension on the ground that her late husband had been regularized in the regular establishment in 2006 after the cut off date for change of pension scheme as on 01.09.2005, the State Government took a decision for the employees, who had been recruited after 01.09.2005 whereby the pension scheme under general provident fund was replaced by contributory provident fund. In that case, the widow filed the writ petition claiming that the State was bound to take into account the services, as rendered by her



late husband in the work charged establishment where he was being paid regular salary and general provident fund deductions were being made from his salary.

8. In the back ground of the facts of that case, this Court in ***Sheela Devi*** (Supra) held that for the purpose of making service pensionable, the period spent under work charged establishment had to be taken into account and that being so, the deceased employee would be deemed to an employee prior to cut off date 01.09.2005 and would be covered under the pension scheme prevalent before the cut off date i.e. 01.09.2005.

9. So far as the case of the petitioner is concerned, there is no dispute to the fact that the petitioner is not getting family pension or the State is denying to pay her family pension. Here, the grievance of the petitioner is that the entire period of 27 years, 4 months and 8 days with effect from 25.01.1988 till the death of the husband of the petitioner has not been calculated for the purpose of payment of family pension and other retiral dues.

10. In the background of the facts stated above, I am of the opinion that the case of the petitioner is quite different from that of ***Sheela Devi*** (Supra). The husband of the petitioner, without any complain, continued to work as a daily wage employee with effect from 01.06.2002 till 22.06.2014. As such, I see no illegality in the action of



the respondents whereby they have granted the petitioner death-cum-retirement benefits in the light of resolution no. 10710, dated 17.10.2013 issued by the Finance Department, Government of Bihar and have not calculated the entire period spent on duty by the husband of the petitioner including the period when he was a daily wager for the purpose of pension.

11. In that view of the matter, I see no merit in this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.08.2017
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