

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7540 of 2014

=====

Yogendra Prasad Roy, S/o Late Lakhan Roy, resident of village-Bangraha, P.S.-
Vidyapati Nagar, District- Samastipur

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of General Administration, Bihar, Patna
2. The Principal Secretary, Department of Finance, Bihar, Patna
3. The Accountant General, Bihar, Patna

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Thakur, Advocate

For the Respondent-State: Ms. Kalpana, AC to GA-8

For the Respondent-AG : Mr. Ranjan Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-03-2017

The petitioner has filed the present writ application for direction upon the respondent authorities to make payment of differential amount of unutilized leave salary and gratuity at the revised rate on the basis of recommendation of the 6th Pay Commission, the differential amount of pension by re-fixing the pension of the petitioner taking into consideration 20 years qualifying period of service and the differential amount of salary by re-fixing the salary since January, 2006.



2. It is contended by the learned counsel for the petitioner that the petitioner was appointed in the year 1976 as Deputy Collector and he retired on attaining the age of superannuation on 31st March, 2007. He submitted that pursuant to the recommendation of 6th Pay Commission, the pay of the petitioner ought to have been revised with effect from 1st January, 2006 and his pension ought to have been re-fixed pursuant to his retirement on 31st March, 2007. He submitted that the petitioner is entitled to receive full pension as he has completed more than 20 years of qualifying service, but the respondents are paying him pension on pro-rata basis.

3. *Per contra*, learned counsel for the State submitted that the Government of Bihar decided to extend the benefit of full pension and family pension in lieu of 20 years of service for those employees who retired on or after 01.04.2007. She submitted that since the petitioner retired on 31st March, 2007, he was not entitled to receive full pension on the basis of qualifying service of 20 years. She further contended that the monetary benefit of pension pursuant to 6th Pay Commission Report has also been extended to the employees of the State Government with effect from 01.04.2007 and, hence, petitioner would not be entitled to receive revised pensionary benefits in the light of the recommendations made by



the 6th Pay Commission.

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

5. I find substance in the submission made by the learned counsel for the State.

6. Prior to recommendation of 6th Pay Commission, 50% of average emoluments was regarded as full pension of a retiring Government servant if he had rendered not less than 33 years of qualifying service. In case of less than 33 years of qualifying service, pension had to be calculated proportionately vide Rule 43 of the Bihar Pension Rules, 1950. However, after recommendation of the 6th Pay Commission Report on retirement benefits, the Government of Bihar also resolved to reduce the minimum qualifying service for entitlement of full pension from 33 years to that of 20 years vide resolution dated 23.09.2009. By the aforesaid resolution, it was decided to dispense with 33 years of qualifying service for full pension. It was further resolved that the Government servant who had completed minimum pensionable service of 20 years on 01.01.2006 or thereafter and had retired would be entitled to receive pension at 50 % of the average emoluments received during the past ten months from the last pay drawn whichever is more beneficial to the retiring employee. It was



also resolved that the Government servant who retired between 01.01.2006 to 23.09.2009 rendering less than 33 years of pensionable service would be entitled to receive pension on pro-rata basis.

7. In other words, the recommendation reducing the qualifying service for full pension was made effective only prospectively and the State Government employees who retired in between 01.01.2006 and 22.09.2009 were deprived from the benefits of full pension after completing 20 years of pensionable service.

8. Being aggrieved by the aforesaid Resolutions, the Government employees retired in between 01.01.2006 and 22.09.2009 preferred *C.W.J.C. No. 176 of 2013 (Ram Raksha Ray and Others v. State of Bihar and Other)* challenging the decision whereby the benefits of full pension after completing 20 years of pensionable service was denied to those who had retired between 01.01.2006 and 22.09.2009.

9. After hearing the parties, this Court in the matter of *Ram Raksha Ray and Others (supra)* framed the issue as to whether the benefit of 20 years of service for full pension would be limited to those employees who retired after the date of notification or for such employees who retired between 01.01.2006 and



23.09.2009 when the notification was issued.

10. After discussing the matter at length, the Bench vide its order dated 15.05.2015 held as under:-

“... the Court comes to a considered opinion that the benefit of only 20 years of service for pension would be extended to all such persons who has superannuated on or after 01.04.2007 instead of 23.09.2009, the date of notification. The relevant clause of Resolution No. 137/08 is hereby struck down and the writ applications are allowed in terms of the above”.

11. The order passed by this Court in case of **Ram Raksha Ray and Others** (*supra*) has been accepted by the State Government and, accordingly, a modified resolution was issued vide memo no. 774 dated 27.05.2013 whereby the benefit of full pension has been accorded to the employees who retired on or after 01.04.2007 to 23.09.2009.

12. Similarly, conceding the demand of its employees, the State Government implemented the recommendations of 6th Pay Commission from January, 2006 in principle and the actual monetary benefit has been given from April 1, 2007.

13. Since the petitioner had already retired on



attaining the age of superannuation on 31st March, 2007, there is a day prior to the cut of date, i.e. April, 1, 2007, the benefits of pay revision or revision of pension in the light of recommendations made by 6th Pay Commission cannot be accorded to him.

14. In view of the discussions made above, the writ application is dismissed.

15. There shall be no order as to cost.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.03.2017
Transmission Date	NA

