

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8924 of 2016

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Geeta Devi W/o Late Anil Kumar Prasad, resident of village - Bangraha, P.O. Kancha, District – Samastipur. At present residing at Mohalla - Naya Gaon Gali, P.O. Gulzarbagh, P.S. Alamganj, District - Patna

.... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Health & Family Ware, Nirman Bhawan, Govt. of India, New Delhi
2. The Director General, Indian Council of Medical Research (ICMR), V. Ramalingaswamy Bhawan, Ansari Nagar, New Delhi 29
3. The Addl. Director General, Indian Council of Medical Research (ICMR), V. Ramalingaswamy Bhawan, Ansari Nagar, New Delhi 29
4. The Director, Rajendra Memorial Research Institute of Medical Sciences, (ICMR) Agamkuan, Patna
5. The Administrative officer, Rajendra Memorial Research Institute of Medical Sciences, (ICMR) Agamkuan, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Hemant Kumar Karn, Advocate

For the Respondent no.1 : Mr. S.D Sanjay (ADDL. SOC. GEN.)

For the Respondent nos. 2 & 3 : Mr. D.K. Sinha, Sr. Advocate

For the Respondent nos. 4 & 5 : Mr. Gautam Bose, Sr. Advocate
Mr. Ajay Kumar, Advocate
Mr. Vikash Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 18-04-2017

Heard learned Senior Counsel for the petitioner,

learned Additional Solicitor General representing the Union of

India, learned Senior Counsel for Respondent nos. 2 and 3 and the

learned Senior Counsel for Respondent nos. 4 and 5.

2. The widow of Late Anil Kumar Prasad, who is the



petitioner in the present writ application, was the applicant before the Central Administrative Tribunal in O.A. No. 193 of 2014. She prayed for a direction upon the Rajendra Memorial Research Institute of Medical Sciences (RMRIMS), Patna for grant of retiral benefits and family pension which the husband of the petitioner was entitled to. However, the Tribunal dismissed the O.A. application on the ground that since the husband of the petitioner was an employee of the Canteen, which was run by the Canteen Committee and not departmentally, therefore, there was no right to claim retiral benefits or family pension.

3. The writ, therefore, has been filed assailing the order of the Tribunal primarily on the ground that the Tribunal has not been able to appreciate the factual aspect of the matter in true perspective and in fact serious error has been committed by the Tribunal in not only rejecting the O.A. but even in the review application when certain documents, which supported the case of the petitioner, were brought to their notice.

4. Way back in the year 1987 after following due procedure of advertisement, interview etc., husband of the petitioner was appointed in the Canteen being run by the organization, i.e., RMRIMS as Manager-cum-Salesman. He continued in that capacity, but his status changed, as per learned



Senior Counsel for the petitioner, after an office memorandum was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, dated 16th November, 1992. The said office memorandum is Annexure-1 to the writ application. This office memorandum was issued with the object of providing status of Government employees to the employees working in the Departmental Canteen in the backdrop of the decision rendered by the Hon'ble Supreme Court in the case of **M.M.R. Khan and others v. Union of India and others**, reported in **1990 (Supp) Supreme Court Cases 191= AIR 1990 Supreme Court 937**.

5. The case of the petitioner is that the Administrative Officer of the Institute forwarded the application for registration of the Canteen as a Departmental Canteen vide communication dated 16.07.1991. The status thereof and the communication is available at page 33 of the brief. It is also pointed out before the Court that since there was certain confusion with regard to certain aspect of the matter with regard to the Departmental Canteen and the registration thereof, yet another communication or office memorandum dated 20th March, 1997 was issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, a copy of which is at page 27 and part of Annexure-6 to this application. The relevant portion of the said communication is



paragraph 4 of the Office Memorandum, which reads as under:

“On the above analogy, it has now been decided that all canteens which were opened before 1.10.91 but could not be registered by the cut-off date due to various reasons, be allowed to continue to function as before. The employees working in such canteens will also be declared as Government employees w.e.f. 1.10.91 in terms of the instructions issued vide Department.”

6. The above communication in the opinion of the learned Senior Counsel for the petitioner should put to rest with regard to such canteens and the communication. The Office Memorandum dated 20th March, 1997 and the steps taken by the Administrative Officer of the Institute on 16.07.1991 should put to rest in speculation with regard to the status of the Canteen being Departmental Canteen.

7. The respondent-authorities have thereafter even asked for option from the husband of the petitioner and some others for pensionary benefit and the same was submitted to the



authorities on 29.03.1993 and the said application, which is at page 29 to 31 of the brief, has been duly countersigned by the Administrative Officer of the Institute.

8. Not only this, when 6th Pay Revision Committee Recommendations were notified and enforced with regard to the Central Government employees even in the case of the husband of the petitioner, the Administrative Officer in terms of Annexure-4 dated 24.10.2008 revised and notified the pay-scale, which would be available to him. In other words, there are enough telltale signs with regard to the status of the husband of the petitioner.

9. If these documents and evidence are not enough, a reply to the counter affidavit of Respondent nos. 2 and 3 has been served and filed on 17.04.2017, which is part of record now, wherein Annexure-11 dated 02.03.1993 issued under the signature of the Assistant Director has been brought on record. Since this memorandum has significance on the continuing dispute being raised by the respondents, the Court would like to reproduce the said memorandum in toto, which is as under:

“The Rajendra Memorial Research Institute of
Medical Sciences Canteen Staff as on 1/10/91
is now be treated an employees of I.C.M.R.
w.e.f. 1/10/91 vide office Order no. 391/93 dt.



25/2/93 and a copy of the same was endorsed to the Chairman Canteen, Rajendra Memorial Research Institute of Medical Sciences, Patna. The Chairman, Rajendra Memorial Research Institute of Medical Sciences canteen is now requested to hand over the following papers & files to the Administrative Officer, RMRIMS.

1. Establishment of Canteen.
2. Appointment file of Canteen Staffs.
3. Personal files of all Canteen Staffs.
4. Service Books of all Canteen Staffs.
5. Any other papers in related to the personal matters of the canteen staffs.

Further it is clarified that Secretary, RMRIMS Canteen will work as Incharge Canteen.”

10. Submission of the learned Senior Counsel for the petitioner is that the respondents cannot shy away from the official decisions and communications, which are not a matter of denial or dispute as to the status of the Canteen being run in the Institute. Yet another submission, which has been made on the basis of



Annexure-2 dated 21.11.2005 issued under the signature of the Administrative Officer, is that where was the occasion for the Administrative Officer, who has taken the decision on behalf of the Director of the Institute to transfer and place the husband of the petitioner from the post of Manager-cum- Salesman to work in the library of the Institute. If the husband of the petitioner was not an employee of the Institute, the Administrative Officer would have no occasion to issue such notification because if the argument of the respondents that the husband of the petitioner was a creature of the Canteen Committee, all these communications and notifications, which have been talked about in the earlier part of the order, would not have been issued by the Administrative Officer, but would have been issued by the Management of the Canteen Committee. The learned Senior Counsel for the petitioner is further correct in taking the stand that the decision with regard to the status, the grant of pay-scale or accepting application of option for pension etc. could not have been ordered by the Administrative Officer, if the husband of the petitioner was an employee of the Canteen, which was being run independent of the Institute.

11. If all these facts are taken into consideration then the finding, which has been reached by the Members of the Central Administrative Tribunal that the husband of the petitioner was not a



statutory employee of a recognized Canteen, seems to be erroneous and a serious error of facts and law has been committed.

12. Learned Senior Counsels representing Respondent nos. 2 to 5, in unison have argued that the appointment letter of the husband of the petitioner, which has been brought on record with the counter affidavit itself, indicates that the said appointment was made in the year 1987 by the Canteen Committee and as such no further document is required to be looked into with regard to the status of the employment of the husband of the petitioner and that is the primary reason why the Tribunal has held that the husband of the petitioner was not an employee of the Departmental or Statutory Canteen, but the Canteen run by the Canteen Committee of the Institute. It is also urged that a lot of documents, which have now been pressed into service by the petitioner to establish that the husband of the petitioner was an employee of the Statutory Canteen, were not before the Tribunal, therefore, the Tribunal would not have been expected to decide the matter in absence of those documents.

13. Even if this aspect of the matter or submission is accepted to be correct, this Court while taking up the issue on earlier occasion, gave a direction and freedom to the respondents' counsel to file their counter affidavit rebutting the materials, which



have been brought on record and belie the assertion and conclusion, which has been urged by the learned Senior Counsel for the petitioner. The Court observes that an effort has been made on behalf of the respondents not to grant pension to an ex-employee, who was an employee of a statutory Canteen because there are enough documents and communications to support such suggestion and if all read together either in the stand alone position or in unison, only one conclusion can be made that even though the husband of the petitioner was employed by the Canteen Committee in the year 1987 that position stood altered after the office memorandum was issued in the year 1991 by the Central Government and the follow-up steps which have been taken by the Administrative Officer on behalf of the Director of the Institute in various decisions, which have been taken with regard to the status of the husband of the petitioner from time to time.

14. It is a fit case where the order impugned dated 25th March, 2015 passed in O.A. No. 193 of 2014 as well as the order passed in review application, which is R.A. No. 16 of 2015, dated 21st May, 2015, Anneuxre-9 are required to be set aside.

15. Learned Senior Counsel representing the respondents submitted that in the above background and keeping in position that the Tribunal was not given an opportunity to look into



some of the documents and adjudicate, the order should be set aside and remanded back for fresh consideration.

16. The Bench is of the opinion that since the widow, who is petitioner before this Court, does not have a deep pocket where she can litigate against the mighty State, therefore, in the interest of justice, such submission is negated and Court has decided the matter on merits. The respondent-authorities are now directed to ensure payment of pensionary benefits, which was available to the husband of the petitioner and also fix family pension of the petitioner. All this must be done within a period of six weeks from today since the order has been passed in presence of all the counsels.

17. Writ is allowed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.04.2017
Transmission Date	NA

