

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.443 of 2016
IN
Civil Writ Jurisdiction Case No. 11472 of 2011**

- =====
1. Pratima Devi, W/o late Paras Nath Singh
 2. Pashupati Nath Singh, S/o Late Paras Nath Singh, Both are Resident of Mohalla- Hemdara PS Mufassil District Begusarai.

.... Petitioners- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Secondary Education Bihar Patna.
2. The Director, Secondary Education, Govt. of Bihar, Budh Marg, Patna.
3. The Regional Educational Deputy Director, Darbhanga Division, Darbhanga.
4. The District Superintendent of Education Samastipur.
5. The Principal, Govt. Nilmani High school Bhiraha Samastipur.
6. The Accountant General, Bihar, Patna

.... Respondents-Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrendra Kumar Sinha No.-1, Advocate
For the Respondent/s : Mr. Prashant Pratap, G.P.2
Mr. Gyan Shankar, AC to GP-2

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-07-2017

Petitioners are the wife and the son of late Paras Nath Singh, an employee, who was working in the Education Department, have filed this appeal under Clause 10 of the Letters Patent aggrieved by an order dated 14.01.2016 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.11472 of 2011.

It was the case of the petitioners before the Writ Court that the employee retired on 30th November, 1999. Thereafter, he died in June, 2004 and his salary in the revised pay scale was not paid to him



for various periods, the writ petition was filed for payment of salary and its revised pay scale and re-fixation of pension. The learned Writ Court did not go to consider the dispute on merit, but holding that till the employee survived in the year 2004, the writ petition was not filed, the writ petition was filed in the year 2011 without adverting to consider the issue on merit dismissed the writ petition on the ground of delay.

However, while doing so, the learned Writ Court lost sight of the fact that if revision of pay was allowed, petitioner No.1 Pratima Devi, widow of the late employee, would have entitled to revision of her pension and the family pension and other monetary benefits and this was a continuous right available to them every month, at best arrears arising out of the revision could have been dismissed, but the writ petition could not have been dismissed on the ground of delay. To that extent, an error has been committed by the learned Writ Court.

Having held so, normally it would have been appropriate to remand the matter back to the Writ Court to consider the issue on merit, but from the counter affidavit filed by the respondents in these proceedings, we find that the question of revision, according to the respondents, would not arise because promotion granted to the employee with effect from 01.04.1994 was cancelled by the Department vide Annexure-B dated 07.02.2003 to the memo of appeal and if that be the position, for the period from 1993 to the date of retirement on 30th



November, 1999, the question would be as to whether the employee was entitled for revision of pension. This order, Annexure-B dated 07.02.2003 to the memo of appeal, cancelling the promotion is not challenged and, therefore, at this stage now in the light of these facts that have come on record, we see no reason to make any indulgence into the matter, except granting liberty to the appellants herein to challenge Annexure-B dated 07.02.2003 to the memo of appeal, and thereafter claim consequential benefits based on the challenge to be made. As the pensionary benefits are adversely affected and this is a recurring causing of action accruing every month, the writ petition could not have been dismissed on the ground of delay.

With the aforesaid liberty to the appellants, this appeal is allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	

