IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7873 of 2016
Along with
Interlocutory Application No. 243 of 2018

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Brahmeshwar Nath Tiwary S/o Late Ramashray Tiwary, R/o C/o Devendra Duvey, Jai Gurudeo Bhawan, Machhali Gali, New Jakkanpur, Patna-1.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Agriculture, New Secretariat, Government of Bihar, Patna.
2. The Joint Secretary, Agriculture New Secretariat, Bihar, Patna.
3. The Director Agriculture Directorate of Agriculture, New Secretariat, Government of Bihar, Patna.
4. The Director (Administration)-cum-Additional Secretary, Directorate of Agriculture, Bihar, Patna.
5. The Joint Director (Administration), Directorate of Agriculture, Bihar, Patna.
6. The Deputy Director (Administration), Directorate, of Agriculture, Bihar, Patna.
7. The District P.F. Officer, Ara.
8. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma, Advocate
For the State	:	Mr. Sita Ram Yadav, G.P. 16
For the Accountant General	:	Mr. Raghwanand, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 30-03-2018

Heard learned counsel for the petitioner; State and Accountant General.

Re.: Interlocutory Application No. 243 of 2018

2. The petitioner has moved the Court for the following reliefs:

> *"That this is an application for issuance of an appropriate writ/writs, order/orders, direction/directions, in the nature of mandamus, for commanding and directing to the respondent authorities to pay to the petitioner compound interest on delayed payment of P.F. from due date till the date of its payment calculating interest upto*

dated and to furnish a copy of calculation chart of payment of P.F. amount. And further prayer for a direction to the respondents to grant pro-rata pension to the petitioner in lieu of the service rendered by him in the Agriculture Department i.e. for the period of 12 years 8 month and 07 days along with its arrears and for the others necessary relief/reliefs for which the petitioner is entitled to in accordance with law."

3. Since during the pendency of the writ application, the respondent no. 3 has passed a detailed order holding the petitioner not entitled to payment of any pension, he has filed Interlocutory Application No. 243 of 2018, seeking amendment of the writ application for quashing of the said order. As the amendment sought is in continuation of the original relief sought, the Court finds it appropriate to allow the prayer. Accordingly, the relief seeking quashing of order contained in Memo No. 1178 dated 26.12.2017 issued by the respondent no. 3, shall form part of the relief sought in the main writ application.

4. Interlocutory Application No. 243 of 2018 stands disposed off.

<u>Re.: Civil Writ Jurisdiction Case No. 7873 of 2016</u>

5. The petitioner was initially appointed in the Agriculture Department on 08.04.1964 and thereafter was transferred to various places. He was selected on 03.12.1976 as a Manager in Bhojpur Rohtas Gramin Bank (hereinafter referred to as the 'Bank').

He was relieved by the Director Agriculture on 15.12.1976 and joined the post of Manager in the Bank on 18.12.1976. When he was not paid his Provident Fund for the period he had served under the Agriculture Department, he moved before the Hon'ble Lokayukta, Bihar in Case No. 2 of 2003. However, on 16.01.2004, he was paid his Provident Fund. Ultimately, the petitioner superannuated from the service of the Bank on 28.02.2004. The petitioner filed a representation before the Director, Agriculture on 03.07.2009 for grant of pro-rata pension for the period of service rendered in the Agriculture Department. When no action was taken by the respondents, he approached the Court in the present writ application.

6. Learned counsel for the petitioner submitted that since he has served under the State in the Agriculture Department for more than 12 years 8 months, he is entitled to payment of pro-rata pension for such period by the State. It was submitted that the petitioner was relieved by the concerned Department for joining in the Bank and, thus, such service has to be counted for the purpose of payment of pension, though on a pro-rata basis. Learned counsel submitted that even the Provident Fund, which was credited into the account of the petitioner for the period he worked under the State was not paid to him after joining the service of the Bank and the payment made on 16.01.2004 was without calculating any interest. Learned

counsel submitted that the Courts have held that service under the State followed by appointment in a Government undertaking, such service has to be taken into consideration for the purposes of pro-rata pension and other terminal benefits. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in the case of **Praduman Kumar Jain v. Union of India** reported as **1994 Supp(2) SCC 548**.

7. Learned counsel for the State submitted that as far as the claim of payment of interest on the Provident Fund dues is concerned, the same is misconceived for the reason that he admits that Rs. 18,058/- was paid to him on 16.01.2004. He submitted that mere perusal of Annexure-3, which is copy of letter by the District Provident Fund Officer, Bhojpur, Ara bearing Memo No. 1099 dated 13.09.2004, copy of which is Annexure-3 to the writ application, it is obvious that the amount of Rs. 18,058/- was the total amount of Provident Fund payable to the petitioner with up-to-date interest till 15.12.2003. It was submitted that whatever was to be paid has been paid to the petitioner with the up-to-date statutory interest and nothing further remains to be paid on account of Provident Fund. With regard to the issue of pro-rata pension, learned counsel submitted that such prayer is equally misconceived for the reason that the payment of pensionary benefits is governed by the decisions of the State

Government communicated under various circulars/ notifications. It was submitted that such resolutions/circulars/notifications of the State Government stand incorporated in the Bihar Pension Rules, 1950. It was submitted that in this connection, the resolution contained in Memo No. 15445 dated 05.12.1962; Resolution contained in Memo No. 1950 dated 18.02.1974 as well as Resolution contained in Memo No. 5190 dated 30.04.1976, which is governing the field, explicitly stipulate that in such cases, no pensionary benefits is payable to the person concerned and, thus, rightly the decision contained in Memo No. 1178 dated 26.12.2017 has been taken holding that the claim for pensionary benefits of the petitioner against the State cannot be accepted.

8. Having considered the rival contentions, the Court does not find any merit in the writ application. With regard to claim for payment of Provident Fund with interest, from the pleadings brought on record by the petitioner himself in the writ application, it is obvious that he was paid an amount of Rs. 18,058/- on 16.01.2004 with up-to-date interest till 15.12.2003, which is in consonance with the relevant statutory provisions relating to payment of interest on Provident Fund. Thus, the prayer of the petitioner in this regard cannot be sustained. In view of the issue of pro-rata pension by the State for the period the petitioner has been under the Agriculture

Department, in view of the resolutions/circulars/notifications of the State Government, especially the aforesaid two provisions which have been referred by learned counsel for the State, the petitioner cannot have a claim for payment of retiral benefits for the period spent under the service of the State. The notification dated 05.12.1962 stipulates that pensionary benefits would be payable only to those persons who have been transferred from Government service to autonomous bodies in public interest and such transfer is to Government or semi Government Unit and not private institutions. In any other case, the same has been held to be not payable. The notification dated 18.02.1974 also speaks of pensoinary benefits to persons whose service has been absorbed in Public Sector Undertakings. Likewise, notification dated 30.04.1976 clarifying that in case where Government servant has been selected for appointment by autonomous units, including Public Sector Undertakings on the basis of his application, such transfer shall not be in the category of transfer made in public interest and for the period spent under the State, no terminal benefits would be admissible. The said specific provision in the notification of the State Government leaves no doubt or ambiguity or confusion. It is an admitted position that the petitioner, pursuant to an advertisement, had himself voluntarily applied for the post under the

Bank and thereafter was selected and also joined. The fact that he was relieved by the Department is of no help to the petitioner for the reason that even otherwise, it is required that whenever a person joins under any service, especially those under the State or Public Sector Undertaking, he has to be relieved of his duties and charge before he joins on his post in the other organization. This also serves a very practical purpose i.e., a person cannot be allowed to hold two posts under two separate identity i.e., the State Government on the one hand and any Public Sector Undertaking or Unit on the other hand, which would mean that he holds lien on two posts simultaneously under two different organizations which would also sustain his claim for payment from both the institutions. However, that is not of great significance when it is clear, apparent and admitted that the petitioner was not transferred by the State to the Bank and he was also not absorbed in the service of the Bank and his service under the Bank was entirely a fresh transaction being a fresh appointment pursuant to advertisement and selection process undertaken by the Bank and as per his choice and desire.

9. With regard to the decision relied upon by learned counsel for the petitioner in the case of **Praduman Kumar Jain** (supra), the Court has no hesitation to record that the basic foundational facts of the said case before the Hon’ble Supreme

Court were different from that of the present petitioner. In the case before the Hon'ble Supreme Court, the person had worked under the Central Government for about 13 years and had resigned and thereafter he joined a Central Government Undertaking and the Central Government had refused to pay him pro-rata pension on the ground that his service was not confirmed and the Court held that mere non-confirmation would not come in the way as the appointment was substantive and on the basis of the requisite length of qualifying service, he was held entitled to payment of pro-rata pension and other terminal benefits for the service under the Government. In the present case, there is no such similarity and in fact, in the present case, the petitioner had never resigned and on his own volition opted for service of the Bank after applying for the same and taking part in a due selection process and then being selected and appointed and finally joining the Bank service.

10. Taking an overall view, the Court finds no ground to interfere in the matter and accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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