

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18682 of 2008

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Shanti Devi, wife of late Shiva Sharan Prasad, Resident of Mohalla-
Mathanpura, P.O-Ramna, P.S.- Sadar, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Department of Industry, Government of Bihar, New Secretariat, Patna.
3. The Director, Department of Industry, Government of Bihar, New Secretariat, Patna.
4. The Director, Rehabilitation Industry Department, Barauni, District-Begusarai.
5. The Managing Director, North Bihar Industrial Development Authorities, Muzaffarpur.
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate.

For the State : Mr. Alok Kumar Rahi, AC to GP-21.

For the Acct.General : Mr. L.P.K. Rajgrihar, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-11-2018

Heard learned counsel for the petitioner; State and Accountant General. Nobody appears on behalf of the erstwhile North Bihar Industrial Development Authority now Bihar Industrial Area Development Authority (hereinafter referred to as the 'Authority')

2. The petitioner has moved the Court for the



following reliefs:

“(I) For issuance of an appropriate writ in the nature of CERTIORARI for quashing the Memo No. 3234 dated 17.10.2017, whereby and whereunder the Respondent no. 3 has been pleased to refuse the grant of family pension to the petitioner.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities to pay the family pension and other admissible amount with statutory as well as penal interest.

(III) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

3. The husband of the petitioner was initially appointed as Steno Typist in the Industry Department of the State of Bihar on 17.07.1967. Subsequently, he was transferred to Patna Industrial Development Authority on 03.01.1974 and on 10.09.1975, to the Authority, from where, while being in service, he passed away on 20.10.1979. The petitioner being widow of the employee, has claimed family pension from the State Government.

4. Learned counsel for the petitioner submitted that first and foremost, the husband of the petitioner being appointed in the service of the State Government, could not have been transferred to the Authority without his consent. He submitted



that the same being done is against the law settled, the husband of the petitioner would be deemed to have remained a Government servant even on the day he passed away while being in service. For such proposition, he relied upon a Division Bench judgment dated 17.05.1973 in CWJC No. 1411 of 1972 in the case of **Sri Brij Bihari Prasad and ors. vs. the State of Bihar and ors.**

5. It was further contended that even the Family Pension Scheme for State Government Employees, 1964, stipulates that family pension will be admissible in case of death while in service, or, after retirement on or after the 1st April, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retiring or superannuation pension and in case of death while in service, the Government Servant should have completed a minimum period of one year of service.

6. Learned counsel submitted that service of the petitioner under the State, being almost seven years, in view of the aforesaid provision, he is entitled to family pension. Learned counsel further submitted that even recently, the Division Bench of this Court in LPA No. 2328 of 2016 in the case of the **State of Bihar and others Vs. Loknath Singh @ Lok Nath Prasad**



Singh and others and its analogous cases, by judgment and order dated 31.08.2017, has held that pension would be payable to similarly situated persons and the entire service, both under the State and the Authority, has to be reckoned for making such payment.

7. Learned counsel submitted that in one of the analogous cases, which has been decided by a common order in LPA No. 2328 of 2016 and CWJC No. 6550 of 2000, all the petitioners in the said writ petition were transferred from State service to another authority by the same order and, thus, the petitioner, being widow of such similarly situated employee, is also entitled to the relief granted by the Court under judgment dated 31.08.2017 passed in LPA No. 2328 of 2016 and its analogous cases.

8. Learned counsel for the State submitted that the husband of the petitioner, though appointed under the State Government, had been transferred to the Authority without completing even seven years of service under the State Government. He submitted that the law, as of now, requires that a person should have completed at least ten years of service under the State Government for being transferred for payment of pension/family pension. Learned counsel submitted that



reliance placed by learned counsel for the petitioner on the judgment in the case of **Sri Brij Bihari Prasad** (supra) is misconceived for the reason that the writ petitioners in the said writ petition had moved the Court challenging their very transfer from Government service to the Bihar State Agriculture Marketing Board and the Court, under such factual background, had interfered holding that without the consent of such persons, the State Government could not transfer them to a service which did not come under the State.

9. Learned counsel submitted that in the present case, the husband of the petitioner, upon his transfer, worked under the Authority for almost six years, would clearly indicate that he had consented to such transfer as he had never raised any dispute or objection before any authority or Court challenging such transfer. Learned counsel submitted that such deemed consent would also be clear from the fact that even the petitioner has been given appointment on compassionate ground under the Authority which indicates that even she is precluded from raising the issue of her husband being wrongly transferred from service under the State Government to service under the Authority.

10. With regard to the contention of learned counsel



for the petitioner on a minimum one year service under the State Government qualifying for payment of family pension, learned counsel for the State submitted that the same is also erroneous for the reason that such provision is only for a State Government employee, who died while being in service of the State. It was submitted that husband of the petitioner having left the State Government service for almost four years and then having died, such provision does not apply in his case.

11. As far as reliance on the judgment passed in a LPA No. 2328 of 2016/ CWJC No. 6550 of 2000, learned counsel for the State submitted that the same is of no help to the petitioner in the present case for the reason that the very foundational facts were different, inasmuch as, all the petitioners before the Court had completed more than ten years of service i.e., the qualifying period for grant of pension as per the amended Rules of the State Government itself. It was submitted that in such background, the Court having held that in terms of the amended Rules of the State Government, once a person is held entitled for grant of pension, the entire service period has to be counted and accordingly, relief has been granted. Learned counsel submitted that even looking from the point of equity, the petitioner having been granted compassionate appointment by the Authority, her



interest and well being is protected as she has got sufficient support.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the writ petition. The husband of the petitioner not having completed even seven years of service under the State Government and thereafter upon his transfer to the Authority not raising any objection with regard to transfer, it is too late in the day for his widow who is petitioner before the Court to take a stand that such transfer should be held null and void and relief granted holding her husband to be in Government service.

13. Further, the order of the Court in the case of **Sri Brij Bihari Prasad** (supra), as has rightly been pointed out by the learned counsel for the State, is with regard to persons who had assailed their order of transfer itself from under State service to the service of another authority, and, thus, the Court had held that such transfer was not permissible without consent. In the present case, at the cost of repetition, once the husband of the petitioner never objected to such transfer, there is a presumption of his deemed consent.

14. Similarly, in the judgment in LPA No. 2328 of



2016/ CWJC No. 6550 of 2000, the very opening paragraph of the judgment reveals that the petitioners had completed about 12 years of service under the State Government, which is more than ten years of service required as qualifying period for grant of pension under the amended Rules and, thus, the Division Bench had proceeded from such foundational fact to hold that once the petitioners have completed more than ten years of service under the State Government, they would be entitled for grant of pension. In view thereof, the petitioner cannot get any relief based on such judgments and orders of the Division Bench.

15. In view of discussions made hereinabove, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

