

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.292 of 2018

In

Civil Writ Jurisdiction Case No.15677 of 2016

Babita Kumari, Wife of Mritunjay Kumar, resident of Mohalla- New Bangali Tola, Samta Path, In front of Chanakya Law College near Mithapur Bus Stand, P.O. GP.O., P.S.- Jakanpur, District- Patna. ..Petitioner/ Appellant

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar.
2. The Principal Secretary, Road Construction Department, Patna.
3. The Chief Engineer, Road Construction Department, Bihar, Patna.
4. The Superintending Engineer, Road Construction Deptt. Bihar, Patna.
5. The Executive Engineer, Ganga Pul Pariyojana Road Construction Deptt. Bihar, Patna.
6. The Joint Secretary, Road Construction Department, Bihar Patna.
7. The Accountant General, Bihar, Patna. ..Respondents/Respondents

Appearance :

For the Appellant : Mr. Dinesh, Advocate
Mr. B. K. Singh, Advocate
For the State : Mr. Raj Ballabh Pd.Yadav Aag11

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 24-07-2018

Heard parties.

This intra court appeal is directed against the order dated 04.01.2018 passed in C.W.J.C. No. 15677 of 2016 by which the writ petition filed by the writ petitioner for a direction for grant of family pension has been dismissed holding that the husband of the petitioner, though was appointed on 22.12.1994 on the post of Accounts Clerk on compassionate ground and died while in service on 26.09.2012, had actually attended the office and worked only for a total period of one year and two months, therefore, he would not be entitled for family pension in view of the statutory provisions.



The husband of the appellant - writ petitioner was appointed on compassionate ground on 22.12.1994 in Road Construction Department as Accounts Clerk. It is stated on behalf of the writ petitioner that while in service, the husband of the appellant died on 26.09.2012 and, as such, the widow has claimed family pension.

The case of the State is that husband of the appellant though having been appointed on 22.12.1994 and died while in service on 26.09.2012, had actually worked for one year and two months, therefore, her widow would not be entitled for family pension as the husband of the appellant himself was not entitled for pension. Learned Single Judge has taken the similar line and passed the order which is under challenge.

Having considered the rival submissions, we find force in the submission raised on behalf of the appellant – writ petitioner. It is apparent from Rule 58 of Bihar Pension Rules, 1950 that for qualifying for pension, the concerned employee should fulfill three conditions:- his service must be under Government and the employment must be substantive and permanent and further the service must be paid by Government. Rule 134 of the aforesaid Pension Rules lays down that a retiring person, for the purpose of grant of pension, should have completed



qualifying service of thirty years or such less time as may for any special class of government servants be prescribed.

Learned counsel for the appellant has submitted that this period has been reduced to ten years of qualifying service. On that, counsel for the State submits that even for the time being it is considered that qualifying period is merely ten years, the petitioner's husband was not even entitled for pension as he has merely attended and worked for one year and two months.

However, in our considered view, this is not required to be gone into as to whether the appellant - writ petitioner's husband was entitled for pension on the ground of period of service or not. It is admitted that he was in government service and was entitled for pension after retirement. The real issue is that he had died while in service on 26.09.2012. Objection has been raised that the writ petitioner though having been appointed on 22.12.1994, had not attended the office for more than one year and two months in the entire period but on that ground some disciplinary proceeding could have been initiated against him and that having not been done even after completion of about 18 years of service, in our view, for consideration of family pension, that cannot be considered for the reason that family pension would be governed by Family Pension Scheme, 1964 enforced by the government and



that was revised by the finance department by Resolution No. PC-1-9-16/87-1853 F. dated 19.4.1990. Revised scheme as laid down in Clause 7 is reproduced as under:-

“7(i). The 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. In case of death while in service, the Government Servant should have completed a minimum period of one year of service.

(ii). Family for purpose of the Scheme will include the following relatives of the officer:-

- (a). wife, in the case of a male officer;
- (b). husband, in the case of a female officer;
- (c). minor sons; and
- (d). unmarried minor daughters”

It is accepted on behalf of the State that it is not a case in which a person has completed only one year of service rather the case is that the employee has completed 18 years of service but has worked only for one year and two months. Thus, it is contended that this provision would not be applicable in the case of the writ petitioner. This limb of argument made on behalf of the State is also noted only to be rejected inasmuch as, even though it is assumed that he has worked merely for one year and two months only during the tenure of 18 years, no disciplinary action was



taken against him and now after his death no such action can be taken.

In our opinion, the view taken by the learned Single Judge is not correct as on that ground also the case of the writ petitioner cannot be thrown out.

In view of the Family Pension Scheme, 1964, it is held that writ petitioner-appellant is entitled for the family pension which should be calculated and the arrears and current pension should be given to the writ petitioner-appellant as grant of pension to the employee and grant of family pension to the widow or dependents as per scheme are entirely different matter. The case of family pension would be covered by Family Pension Scheme, 1964. This exercise should be completed within a period of three months from the date of receipt/production of a copy of this judgment. In the result, the order impugned is set aside. This appeal and the C.W.J.C. No. 15677 of 2016 stand allowed.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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