IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16620 of 2016
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Ramjee Prasad, Son of Late Babu Lal, resident of Mohalla - Chak Husain, P.O. + P.S. Khusrupur, District Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna
3. The District Education Officer, Patna
4. The District Programme Officer (Establishment) , Patna
5. The Headmaster, Dayanand Boys Middle School, Khusrupur, District Patna
6. The Accountant General, Bihar, Patna
7. The Treasury Officer,Patna.
8. Branch Manager, State Bank of India, Khushrupur, Patna.

... ... Respondent/s
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Appearance :
For the Petitioner/s : Mrs. Pravina Kumari, Advocate
For the State : Mr. Prabhakar Jha, GP-27
Mr. Mukund Mohan Jha, AC to GP-27
For the Respondent No.6: Mrs. Nivedita Nirvikar, Advocate
Mr. Kriti Suman, Advocate
For the S.B.I. : Mr. Kaushlendra Kumar, Advocate
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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
Date : 17-07-2019

Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for the Accountant General, Bihar, Patna and learned counsel appearing on behalf of the State Bank of India.

The petitioner was initially appointed as Assistant Teacher on 02.08.1950 in Dayanand Boys Middle School, Khusrupur under Anchal- Khusrupur, District- Patna and retired on 30.09.1991 from the same school from the post of Assistant Teacher.

Petitioner prays for the following reliefs :

> *"i. To revise the pension in view of different pension revision being effected time to time and pay the arrears of the difference of amount with interest as till today petitioner is getting the pension less than minimum pension fixed by the respondent State.*
>
> *ii. To enhance the pension on the basis of possesses 80, 85 years age in view of Government Policy decision and pay the arrears of the same from the date of entitlement.*
>
> *iii. To add the name of wife of petitioner and sanction family pension in her favour also as the same could not be done at the time of issuance of pension.*
>
> *iv. Any other relief/relieves for which the petitioner is found entitled to in the facts and circumstances of the case."*

From the pleadings on record, it transpired that now the remaining grievance of the petitioner is restricted to addition of the name of his wife, who should be held entitled to family pension after his death and further, the minimum pension amount fixed by the State Government being Rs. 3500/-, barring a small period, there is no payment of Dearness Allowance (D.A.) on the same.

A supplementary counter affidavit has been filed by the respondent no. 4, The District Programme Officer (Establishment), Patna. In the second supplementary counter affidavit filed by respondent no. 4, it has been submitted that the pay scale of the petitioner has been revised as per 4th Pay Revision Committee recommended with effect from 01.01.1986. So far as the revision of pension in terms of 5th, 6th and 7th Pay Revision is concerned, it has to be dealt with by the pension disbursing bank as well as office of the Accountant General, Bihar, Patna.

A counter affidavit filed by the Accountant General wherein it has been submitted that the petitioner is entitled to retiral benefits only under the Triple Benefit Scheme (TBS) i.e. service of 62 years in place of 58 years, pension or DCRG and amount of GPF or CPF. Since the petitioner retired under the TBS scheme, he is not entitled to the benefit as claimed for in the writ application. Since the petitioner was given benefit of 4th Pay Revision Committee and this pension has already been revised accordingly, it has been submitted by the counsel for the petitioner that all the retiral benefits including sanction of family pension due to a retired employee should also be extended to the petitioner.

In compliance of the order dated 12.09.2018, respondent no. 4 has filed 3rd supplementary counter affidavit stating therein that in response to queries made by the Hon'ble Court regarding entitlement of the wife of the petitioner to get family pension under the Triple Benefit Scheme (TBS) is concerned, it would be evident from perusal of Annexure-A to the counter affidavit of the Accountant General, Bihar that the Education Department vide Notification No. 3431 dated 04.09.1964 had made provision for the Bihar Non-Govt. School Employees' Provident Fund Insurance- Pension (Triple Benefit Scheme) w.e.f. 01.04.1962, prior to that they were simply entitled to get the contributory provident fund and it was provided that the employee retiring on or after 01.04.1962 will be eligible for the pension or gratuity under the scheme. It would be evident from the said notification that there was no mentioning of family pension and as such, there was no provision for grant of any family pension.

Learned counsel for the respondent no. 4 has submitted that provision of family pension was introduced in respect of such employees w.e.f. 01.04.1983 with certain condition vide letter no. 68 dated 06.06.1983/ 29.06.1988, whereby it was resolved to grant G.P.F., Pension (including family pension) and gratuity like Government employees in place of TBS to the teachers of non-government, aided as well as primary and middle schools run by the minority communities.

It is further stated that it was provided therein that the teachers appointed on or after 01.04.1983 shall be ipso facto covered under the said scheme whereas, teachers appointed prior to the said date, shall have to file option, as to under which scheme they remain and the same shall be entered into their service-book and after submission of option, the same shall not be changed and it is further provided that those who want to remain in TBS, they shall be retired at the age of 62 years in place of 58 years. As per record/service-book, the petitioner retired at the age of 62 years and as such, he was under the TBS Scheme and, therefore, in his case, there is no provision for grant of family pension to his wife.

So far as the communication of the answering respondent made to the Accountant General, Bihar vide Annexure-D to the counter affidavit dated 12.04.2017 is concerned, it is submitted by the learned counsel for the respondent no. 4 that the said communication was made in view of recommendation sent by the In-Charge Principal, Dayanand Boys Middle School, Khusrupur, Patna for revision of pension of the petitioner as well as inclusion of name of his wife in the PPO and, accordingly, application of the petitioner along with all enclosures were forwarded to the office of the Accountant General, Bihar, but subsequently, it was detected that since the petitioner retired under the Triple Benefit Scheme (TBS) and, therefore, payment of family pension is not applicable in this case and, accordingly, the office of the Accountant General, Bihar was requested only to revise the pension of the petitioner vide letter no. 2321 dated 10.08.2018, as contained in Annexure-B of the second supplementary counter affidavit filed on behalf of respondent no. 4.

In compliance of the order dated 12.09.2018, the State Bank of India (respondent no. 8) filed the 5th counter affidavit stating therein that 5th CPC was introduced and implemented vide the Government Notification 820 of 2009. The petitioner had been getting the basic pension Rs. 260/- i.e. Rs. 160/- and Rs. 100/- towards the allowance under Triple Benefit Scheme which was increased to Rs. 1375/- i.e. Rs.

1275/- basic pension + Rs. 100/- towards the allowance under 5th CPC. In addition to above, under 5th CPPC, he was also getting Rs. 638/- i.e. 50 % of his basic pension of Rs. 1275/-, which was merged in the basic pension. After introduction of the 6th CPC, the basic pension payable to the petitioner in terms of Clause – 2(iii) of the notification, on calculation, was ascertained to be less than Rs. 3500/- and so his basic consolidated pension was fixed at Rs. 3500/- in terms of Clause 2 (vi) of the notification.

Learned counsel for the State Bank of India further submitted that while fixing his consolidated pension, the pensioner, in terms of Clause – 2(x) of the notification, was not entitled to get the dearness allowance as the DA had been merged with minimum basic pension of Rs. 3500/- and so it has been reduced to zero – zero in the subsequent months. However, in terms of Clause – 4, the petitioner was entitled to get his arrears in three stages which have been paid to him as Rs. 6903/- on 21st June, 2010, Rs. 18,409/- on 27th August, 2010 and Rs. 20,711/- on 21st July, 2011 @ 15 %, 40 % and 45 % respectively.

In this way, the minimum basic pension of the petitioner was fixed at Rs. 3500/- under the 6th CPC, after merging with dearness allowance. It is further submitted by the learned counsel for the State Bank of India that the basic pension which the petitioner was getting Rs. 1275/- corresponds to the basic pension Rs. 3500/- without dearness allowance will be evident from Annexure-1 of the Scheme.

It is further submitted by learned counsel for the State Bank of India that the petitioner has also been getting the minimum basic pension of Rs. 9000/- under the 7th CPC without D.A. The payment of arrears under 7th CPC has also been paid to him.

Learned counsel for the respondent no. 8 further submitted that the petitioner was being paid revised basic of Rs. 1275/- (the minimum pension basis under 5th Pay Revision + medical allowance Rs. 100/- since migration of his pension which was revised to Rs. 3500/- w.e.f. 1st April, 2007 as minimum payable basic pension under the 6th Pay Revision and subsequently, it has been revised by system to Rs. 9000/- as minimum payable basic pension under the 7th Pay Revision and the medical allowance has been revised to Rs. 200/- w.e.f. 1st August, 2014 and Rs. 1,000/- on 20th October, 2017.

Having heard learned counsel for the parties and after going through the materials available on record, on

30.08.1980, the Education Department issued notification in continuation of the notification dated 04.09.1964 and 29.11.1978. In the resolution dated 30.08.1980, it was declared that the State Government has decided to grant the benefit of the General Provident Fund, pension (family pension) and gratuity to the teachers and non-teaching employees of the recognized school like the State Government employees w.e.f. 01.04.1978 and in order to give effect to the benefit of Bihar Pension Rules, Rules- 58, 60 and 79 of the Bihar Pension Rules have been relaxed. This benefit was available to all teachers and non-teaching employees, who opted for such benefit by accepting the reduced age of 58 instead of 62 years and also to all teachers appointed after 10.04.1978. But in the present case, the petitioner had retired at the age of 62 years and as such he was under the TBS Scheme and, therefore, in his case, there is no provision of grant of family pension to his wife. Regarding the non-payment of dearness allowance, the counter affidavit filed by the State Bank of India explained that there is minimum interest and the pension has been paid to the petitioner and, therefore, the dearness allowance is merged in his minimum basic pension.

In the result, this Court does not find any merit in the present writ application and the same is, accordingly, dismissed..

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
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