IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.2264 of 2017
In
Civil Writ Jurisdiction Case No.11290 of 2016

Ramadhar Singh son of late Karo Singh, resident of village + P.O. Karisowa, P.S. Bajirganj, Dist.-Gaya

... ... Petitioner

Versus

1. The State of Bihar through Binay Kumar The Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
2. Binay Kumar, the Principal Secretary, Dept of Public Health Engineering, Bihar, Patna.
3. Dineshwar Pd. Singh, the Engineer-in-Chief-cum-Special Secretary Public Health Engineering Department, Bihar, Patna.
4. Raghav Jee Ram, the Chief Engineer (Mechanical) Public Health Engineering Department, Govt. of Bihar, Patna.
5. Kant Singh, the Zonal Chief Engineer, Patna Zone, Patna, Dept of PHED.
6. Balmiki Mandal, the Superintending Engineer, PHED, Engineering Circle Patna.
7. Nityanand Prasad Singh, the Executive Engineer Public Health Division, Patna, East Patna.
8. Raghvendra Kumar, the Sub-divisional Officer, Public Health Sub Division, Barh, Patna.
9. Bijay Kumar Rafale, the District Account Officer, Patna.
10. Dinanath Prasad, the Treasury Officer, Patna.
11. S. Surresh Kumar, the Accountant General (A & E) Bihar, Patna.

... ... Opposite Parties

Appearance :

For the Petitioner	:	Mr.Siyaram Pandey, Advocate
For the State	:	Mr.S. Raza Ahmad - AAG 5
		Mr. Vishwambhar Prasad, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 03-07-2019

This application has been filed by the petitioner for initiating a contempt proceeding against opposite parties alleging disobedience and non-compliance of the order dated 23.02.2017 passed in CWJC No. 11290 of 2016.

2. It is submitted by the learned counsel for the petitioner that the order passed by this Court has not been fully complied with. The opposite parties have not calculated the entire service period of the petitioner spent in work charged establishment for the purpose of fixation of pension and other retiral benefits.

3. Per contra, learned counsel appearing for the State submitted that though there was some delay in compliance of the order passed by this Court, by now, the order dated 23.02.2017 passed in CWJC No.11290 of 2016 has been fully complied with.

4. A show-cause has also been filed on behalf of opposite party nos. 1 to 7 with an affidavit wherein it has been stated that the petitioner has already been paid the amount of earned leave vide office order no. 124 contained in Memo No.2025 dated 08.10.2012. He has also been paid the amount of group insurance vide office order no. 135 as contained in Memo No. 1889 dated 18.10.2012. He has been allowed first ACP with effect from 01.02.2000 and with effect from 01.01.2009 taking

into account the date of appointment of the petitioner from 01.02.1988 in the work charge establishment upto his date of regularization he has been allowed the second MACP. The deductions made in provident fund account for the period 2007-08 to 2009-12 has already been sent to the office of District Provident Fund Officer vide Letter No.1977 dated 10.11.2016 and vide Letter No355 dated 24.02.2015 the authorization letter with regard to payment of pension, gratuity and modified pension of the petitioner has been sent to the office of Accountant General. The same was returned with objection on 13.03.2015. Thereafter, again vide Memo No.2269 dated 07.09.2017, the true copy of of pension paper with original service book has been sent to the office of Accountant General, Bihar Patna to issue authorization letter with regard to payment of pension, gratuity and modified pension. Whereafter, the office of the Accountant General, Bihar, Patna has issued authorization letter for payment of the pension of the petitioner on 26.09.2017. It has also issued authorization letter for payment of amount of Rs.1,00,450/- on account of gratuity on 26.09.2017.

5. Learned counsel for the petitioner does not dispute the aforesaid averments made in the show-cause filed by the opposite parties.

6. The only grievance of the petitioner is that though the work charged service rendered by the petitioner has been counted for determining qualifying service for grant of pension, the entire period of service rendered in work charged establishment has not been taken into consideration while computing and fixing the pension of the petitioner.

7. It would be relevant to note here that CWJC No.11290 of 2016 was disposed of with other analogous cases on 23.02.2017 with following directions :-

> "10. Since the cases on hand are squarely covered by the judgment in Sheela Devi vs. The State of Bihar (supra), in the light of the discussions made above, I dispose of all the writ petitions in terms of the findings, observations and directions made in the matter of Sheela Devi vs. The State of Bihar (supra)."

8. The case of **Sheela Devi** was heard by a learned Single Judge in CWJC No. 2246 of 2012. The same was disposed of vide order dated 04.09.2012. The operative part of the said order reads as under:-

> "In the above circumstances, it has to be held in terms of the aforesaid decision that the husband of the petitioner was an appointee prior to 1.9.2005 and covered by the GPF Scheme and not

Contributory Pension Scheme. The petitioner would therefore be entitled to family pension on account of death of her husband while still in service.

The writ application is, accordingly, allowed and the respondents are directed to ensure that the family pension and other death-cum-retiral dues including gratuity, leave encashment, group insurance and GPF, applicable in the case of the husband of the petitioner, are paid to the petitioner/competent heir of the deceased within a period of three months from today."

9. The State of Bihar challenged the order passed by the learned Single Judge in Letters Patent Appeal No. 416 of 2013. The said letters patent appeal was dismissed by a Division Bench of this Court vide order dated 15.05.2013. The operative part of the order dated 15.05.2013 reads as under:-

"In conclusion, we are of the opinion that under the Circular dated 31.03.2004, the duration of service rendered in the work charged establishment by the deceased husband of respondent no. 1 before induction in regular establishment has to be added to the total duration of his service making it pensionable entitling the Respondent no. 1 to family pension and other post retiral dues of the deceased. The Appeal is devoid of merit and the order of the Learned Single Judge calls for no interference."

10. The order of Division Bench was challenged before the Supreme Court vide Special Leave to Appeal (Civil) No.29497 of 2013. The Supreme Court vide its order dated 25.09.2013 dismissed the Special Leave Petition.

11. As far as the present proceeding is concerned, the only question for consideration before this Court is as to whether the opposite parties have deliberately and willfully flouted the order passed by this Court.

12. It appears from the order passed by the learned Single Judge in **Sheela Devi** (supra) that the husband of the petitioner was an appointee prior to 01.09.2005 and was covered by GPF Scheme and not Contributory Pension Scheme. Thus, the petitioner was held entitled to family pension on account of death of her husband while still in service and the respondents were directed to ensure that family pension and other retiral death-cum-retiral dues including gratuity, leave encashment, group insurance and GPF, applicable in the case of the husband of the petitioner shall be paid to the petitioner.

13. Upon challenge to the aforestated order passed by the learned Single Judge, the Division Bench while dismissing the intra-court appeal in its order held that under Circular dated 31.03.2004, the duration of service rendered in the work charged

establishment by the deceased husband of respondent no. 1 before induction in regular establishment had to be added to the total duration of his service making it pensionable entitling the respondent to family pension.

14. Thus, there is nothing in the order of the learned Single Judge or the Division Bench on the basis of which it can be held that the Court had directed for calculation of the entire period spent by the deceased employee in the work charged establishment to be added and calculated for the purpose of payment of family pension. On the contrary, the Division Bench has observed in its order that under the circular dated 31.03.2014, the duration of service rendered in the work charged establishment has to be added to the total duration of service so that the service may become pensionable.

15. The order passed by the court in **Sheela Devi** (supra) was to treat the service rendered in work charged employment as qualifying service for pension so that the petitioner of that case may be entitled to family pension and other post retiral dues.

16. The petitioner's writ application was disposed of by this Court in CWJC No.11920 of 2016 in terms of the

findings observations and directions made in the matter of **Sheela Devi** (supra).

17. Since the service rendered by the petitioner in the work charged establishment has been added for the purpose of qualifying service for pension and all the post retiral benefits have been paid to him and he is being paid his regular pension, no case for initiation of a contempt proceeding against the opposite parties is made out.

18. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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