IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16153 of 2010

GADADHAR PANDEY S/o Late Sheetal Pandey, R/o village- Madahpur Chawk, P.O.- Kharauna (Via Pitahi) P.S.- Muzaffarpur Sadar, Distt.- Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary Department of Industries, Government of Bihar, Patna.
3. The Special Secretary Department of Industries, Government of Bihar, Patna.
4. The Director of Industries, New Secretariat, Patna.

… … … Respondents

Appearance :

For the Petitioner/s : M/s Shekhar Singh and Sumit Kumar, Advs.

For the Respondent/s : Mr. Rakesh Kumar Srivastava, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 13-02-2019

<u>Ref:-I.A. No. 4604 of 2018</u>

I.A. No. 4604 of 2018 has been filed to amend the relief and the pleading mentioned in the interlocutory application.

2. Looking to the facts and relief mentioned in the interlocutory application, I.A. No. 4604 of 2018 is allowed and it will be treated to be a part of the main writ application.

3. In the present case, issue has to be decided about reckoning the past period of service rendered in NGO before take over by the State Government for the purposes of retirement benefit.

4. Before narrating the fact with respect to the present case, it is necessary to deliberate the peripheral fact for arriving to the proper juncture on entitlement of the petitioner for pensionary benefit.

5. The Government of India had constituted the Rural Industries Planning Committee, vide Planning Commission letter no. V.S.I.-8(6)/61, which recommended the programme for intensive development of small scale industries in the rural area and small town so as to create, maintain and expand the non-government employment and in order to achieve the avowed object for fast growth of employment, for that, 47 Rural Industries Projects were taken up for implementation of the programme. Initially, in the State of Bihar, Gram Nirman Mandal, Sheikhodeora (Nawada) and Bihar Khadi Gramoudyog Sangh, Pusa were entrusted with the formulation and implementation of the programme. The projects were centrally sponsored scheme and nucleus funds amounting to Rs.20,00,000/- (twenty lacs) for each project was made available by the Government of India for the period of 1962-63 to 1965-66 of Third Five Year Plan and a specified an amount for each project was required to be kept in reserve to meet the expenditure on strengthening of staff for managing increased volume of works at the Directorate Headquarter and for subsequent allocation according to the need.

6. The State Government with the approval of Government of India decided to entrust wholly the execution of these two projects to the aforementioned two Non-Official Organisations and the State Government had sanctioned and provided grant-in-aid. The State Government laid down the guideline for utilisation of grant-in-aid by the Non-Official Organisation in the letter dated 02.12.1967 by the Under Secretary, Government of Bihar in the Department of Industries and Mines to the Accountant General of Bihar.

7. The Government of India had approved the proposal of the State Government for setting up the Rural Industries Projects to cover the District of Muzaffarpur, Darbhanga and Gaya in the Fifth Five Year Plan and the approval was communicated by the Under Secretary to the Government of India to the Secretary of Government of Bihar in the Industries and Technical Education Department by letter dated 02.07.1973 in which it was clarified that the approval was subject to the terms and conditions contained in the letter dated 25.03.1971 which was acceptable to the State Government and further condition was imposed that the State Government had to implement these projects by the Organisation headed by Jai Prakash Narayan.

8. In the Government of India's letter no. 25.03.1971, it was provided, the Central Government would provide financial assistance for the programme to set up fifty new industries projects during the Five Year Plan for a period of five years only, after that the State Government will have to run the project on its own strength and that the Central Government would take up new series of the project in the subsequent Five Year Plan. The central assistance to the State Government in regard to projects will be limited to the entire costs of establishment particularly staff for service, research, extension, pilot project, demonstration and also loan for a period of five years from 1974 and at the end of year 1979, the central assistance for project in the second series will be withdrawn and the State Government will have to run the project of their own.

9. In view of the aforesaid facts, the State Government taking note of the aforesaid view, communicated by the Government of India vide letter dated 02.07.1973, decided that the Rural Industries Project would be executed by the Muzaffarpur Development Authority and vide letter dated 8/01/1974 the sanction was accordingly accorded by the State Government for the period from 01.09.1973 to 31.03.1979.

10. The petitioner was appointed as Typist in the pay scale sanctioned by the State Government which was advertised and the petitioner was selected following due process of recruitment having in possession of requisite qualification prescribed by the State Government. It will be relevant that the District Industries Centre where the petitioner was working, was a Non-Government Agency created under the direction of the State of Bihar, was fully under the control of the State Government and the District Industries Centres were executing the government projects and were performing the governmental function through Non-Government Organisations. The Government, later on, had taken over the management of Non-Government Organisation, except employees, thereby the Government refused to take over the services of the employees including the petitioner.

11. It will be relevant that the Central as well as State Government was running its projects through Khadi Gramoudyog Sangh Darbhanga, the said Khadi Gramoudyog Sangh Darbhanga was taken over including the services of those officers and employees who were in the said Non-Official Organisation for execution of work of Rural Industry Project vis-a-vis the District Industry Centre, Darbhanga, but the services of this petitioner working at Muzaffarpur were not taken over including the employees working in the District Industries Centre at Gaya. It will be relevant to mention that a District Industry Centre was established to execute the programme sponsored by the Central Government bearing 50% of expenditure and remaining was to be borne by the State Government and in the year 1992-93, the State Government was informed by the Government of India about the withdrawal of the central assistance for the District Industry Centre, now it became responsibility and liability of the State Government to continue the District Industry Centre programme from the year 1994-95 and the State Government decided to change the pattern of the management of District Industries Centres, Muzaffarpur and Gaya. The industry was taken over, vide order dated 28.02.1994 when the employees of Muzaffarpur and Gaya who were working in the Non-Government Organisations sponsored by the Central Government and later on the State Government were not taken over, they approached this Court in C.W.J.C. No.3712 of 1994 in Dr. Anurudh Prasad and others, in that case, the plea was taken that the Government has only taken over the work which was assigned to the non-official organisation not the assets of organisation acquired by their own fund and those petitioners cannot raise any grievance against the State Government, at best, they may raise grievance with the Non-Government Organisation. They were wrongly claiming their absorption in the services of the State of Bihar. The Court, after due consideration, has given following findings which runs as follows:-

> *"It is not the stand of the State Government that the sanctioned posts have been abolished and it is evident from perusal of Annexure '11' series that the reasons, assigned for not taking over the services of the petitioners that there are more than plenty trained staff is factually incorrect as large number of posts are vacant in other District Industries Centres which are being run directly by the State Government. It is also not the case of the State Government nor is it so mentioned in the impugned order that the petitioners were illegally appointed or they have been found unsuitable for continuity on the posts in the District Industries Centres in question, the management of which has been taken over by the State Government. The petitioners had admittedly been appointed to work in the District Industries Centres for execution of the projects assigned by the State Government.*
>
> *The action of the State Government in refusing to take over the services of the petitioners*

has resulted in serious miscarriage of justice and prejudice to the petitioners as the petitioners cannot seek employment elsewhere as no such provision has been made by the State Government although funds were being provided by the State Government for payment of their salary."

12. After due discussion, the Court directed the Government of Bihar to absorb the services of the petitioner and they will continue to serve till their death. Now the question in the present case which has been raised about reckoning the past period of service to be taken into consideration for entitlement of pensionary benefit, for that, the petitioner approached to this Court vide C.W.J.C. No.13031 of 2003 (Shashi Kumar Sharma vs. State of Bihar) which was disposed of by the order dated 05.02.2010 giving a direction to the petitioner to file a representation about his claim for entitlement to the pensionary benefit. In pursuance thereof, the authority has disposed of the representation of the petitioner refusing to take into consideration the past service rendered by the petitioner in the Non-Government Organisation and held that they are not entitled to any pensionary benefit.

13. The learned counsel for the petitioner submits that the Non-Government Organisation were created at the instance of the Central Government with avowed object to maximise the generation of rural employment and at the initial stage, the Central Government had given money and participated in creation of the non-government organisation but later on, it was conveyed to the State Government that it would no longer provide any assistance to the State Government for running those Non-Government Organisations. The State has to run Non-Government Organisation on its own strength. The statement has been made that all the funds have been provided by either Central Government or State Government and later on, on account of intervention of the Court, the services of the petitioner has been absorbed.

14. In that view of the matter, it is desirable and proper that the past period of service should also be taken into consideration to the extent of deficit period for eligibility of granting pensionary benefit to the petitioner.

15. In support of his submission, the petitioner has placed reliance on the judgements reported in 2017 (2) PLJR 107 [Meenu Kumari vs. State of Bihar], 2009 (3) PLJR 471 [Ramashray Singh vs. State of Bihar], 2014 (2) PLJR 318 [Yugeshwar Mahto vs. State of Bihar, 2015 (3) PLJR 278

[Anju Kumari vs. State of Bihar] and 2017 94) PLJR 501 [Prabhakar Mishra & Ors vs. the State of Bihar] and on that strength, the argument has been made that the petitioner is entitled for counting the period of past services to the extent of deficit period and he should be made entitled to the extent of minimum slab of the pension as has been given to the government employees whereas the State has submitted that the petitioner was not a government employee before his absorption, his working under the Non-Government Organisation granting a fund by the State Government or Central Government does not make the persons to claim that they are government employees and in no stretch of imagination, they will be treated to be government employees, will be entitled to the pensionary benefit and, as such, though the petitioner was initially appointed in the year 1973, his services was taken over with effect from 28.02.1994 and he has superannuated from service on 31.7.2001, so altogether he has worked with the government for seven years. There is a deficit of three years and the past period to the extent of deficit will not be taken into consideration to make him entitled for the pensionary benefit.

16. Having considered the rival contention of the parties, only the limited issue has to be decided as to whether the petitioner is entitled to the pension under the Bihar Pension Rules reckoning the past period to the extent of deficit to make the petitioner entitled for the pensionary benefit.

17. The petitioner in order to substantiate his claim for reckoning the past period of service for pension, having placed reliance on few judgments, so before arriving to an ultimate finding about the entitlement of reckoning the period, it will be better to discuss and consider the judgment placed by the petitioner.

18. This Court first will discuss the case of Yugeshwar Mahto (supra) as the fact of this case will near to the fact of the present case. The fact involved in that case is, the petitioner was appointed on 01.10.1970, later on, he made permanent on 03.03.1976. After retirement in 2008, he was deprived of the pension and gratuity. When he was not given benefit of pension and gratuity, he approached this Court by filing C.W.J.C. No. 14085 of 2009, which was disposed of on 27.10.2009 with a direction to the concerned authority to take decision on the representation filed by the petitioner, but his grievance was not redressed. In that case the petitioner was appointed in the Rural Institute of Higher Studies, Birouli, Samastipur, which was established in 1955, the fund was provided by the Central Government and later on, the Government of India disassociated itself from the association on and from 11.01.1971. After disassociation, the aforesaid institute was affiliated by Mithila University, later on, it was registered as Society under the Societies Registration Act with a memorandum of association. The State Government notified Service Condition Rules, 2004 of Rural Institute Birouli, Samastipur, no benefit of retiral dues was provided to the non-teaching employee of the Institute after registration of Society. The question in that case arose that as they are governed by Service Condition Rules, 2004, it does not provide any pensionary benefit. He cannot claim the same, but the Court has recorded a finding that after disassociation, the aforesaid Institute was affiliated by Mithila University and at the time of affiliation of Institute, the petitioner was working in the aforesaid institute which reflects that the appointment was made much prior to disassociation of Union of India from the aforesaid institute. The finding has been recorded in the aforesaid judgment that the petitioner was not appointed by the Society, but was appointed by the State Government and further said that the Service Condition Rules, 2004 was made applicable with effect from 05.01.2004, it does not have retrospective effect, so on the basis of finding recorded in that case by the Court that the petitioner of that case Yugeshwar Mahto was appointed by the Government, not by the Society, in such circumstance, having held that he is entitled to the pensionary benefit. This case is not applicable to the fact of the present case on the reason that the petitioner as such was not appointed by the State Government, but was appointed by Muzaffarpur Vikash Mandal, which is completely a Non-Government Organisation was not any Department of Government of Bihar nor was any Corporation rather the Non-Government Organisation was receiving the fund from the Central Government as well as State Government but later on, the Central Government disassociated itself and the Government of Bihar reorganised the structure of the Non-Government Organisation and renamed as Rural Industry Project/District Industry Centre and the power of the governance was vested with the Chairman of the District Industry Centre though after the judgment passed in the aforesaid case, the services of the petitioner was absorbed with effect from 28.02.1994 so the judgment of Yugeshwar Mahto is not applicable to the present case. It will be relevant to quote paragraph 11 of the judgment, is as follows:-

> *"The case of the State is that the Union of India disassociated itself from the institute on 11.01.1971 and after that the aforesaid institute was affiliated with Mithila University and, therefore, the aforesaid document shows that at the time of affiliation of aforesaid institute with Mithila University, the petitioners were working in the aforesaid institute and, therefore, the aforesaid fact goes to show that petitioners were appointed much prior to disassociation of Union of India from the aforesaid institute. Admittedly, after disassociation of the Union of India from the aforesaid institute, the aforesaid institute was registered as Society and, therefore, it is clear from the aforesaid document that the petitioners were not appointed by the concerned Society rather they were appointed by the State Government. Furthermore, Rural Institute, Birauli, Samastipur Service Condition Rule 2004 was made applicable with effect from 05.01.2004 and the aforesaid rule does not have any retrospective effect as there is nothing in the aforesaid rule to show that the aforesaid rules have been made with retrospective effects rather the aforesaid rules have been made applicable in respect of the persons who have been appointed by the Society."*

19. In the case of Ramashray Singh (supra), the pensionary benefit was allowed on the ground that the petitioner was appointed by the Bihar State Agro Industries Development Corporation Ltd. and this Court has taken view that Public Sector Undertaking is an extended arm of the Government. They also discharge the public service, remain in service right from 1962 to 1999, on that ground, direction was given for pensionary benefit, but in the present case the fact is otherwise so this case is not applicable to the case of that case. In the present case, Anju Kumari's case(supra) is also not applicable on the fact that the husband of the petitioner remained as Work Charge Establishment, till his death in the year 2013. The Court has taken view that the husband of Anju Kumari remained in service in work charge establishment for long 26 years which reflects that it was not a casual engagement looking to the length of service. Hence this case also does not apply to the facts of this case.

20. In the case of Bimli Devi vs. State of Bihar, reported in 2014 (4) PLJR 238, the pensionary benefit was extended on the ground that the husband remained as work charge establishment, as like Anju Kumari case (supra), Bimla Devi has also been granted the benefit, that case is quite different to this case, is not applicable and the case of Meenu Kumari (supra) is also not applicable, as the matter relates to the appointment of Anganwari Sevika. The instruction for appointment of Anganwari Sevika postulates that the relative of the Government employee will not be entitled to or considered for appointment of Anganwari Sevika. The issue was involved with respect to the status of

Panchayat Teacher will debar the consideration of the wife for appointment of Anganwari Sevika. The Court has opined that the Panchayat Raj has been recognized as third tier for governance at local level created under Part-IX of the Constitution of India, in such circumstance, the Court has arrived to a finding that the Panchayat Teacher would be treated as State Government employee and consequently his wife was rightly ineligible for appointment as Anganwari Sevika which has nothing to do with present case. The identical issue for reckon the past period was raised, decided in favour of Shashi Kumar Sharma (supra), the Hon'ble Single Judge set aside the impugned order but later on, the said judgment has overruled in LPA No.1141 of 2010 (the State of Bihar & another vs. Narain Dutta Pandey and another), in that case, the period prior to absorption to be reckoned for the purposes of pensionary benefit was under consideration. The Single Bench has taken view that the engagement under the Non-Government Organisation will also be taken into consideration for the purposes of reckoning the period for making eligible for the pensionary benefit, but the Division Bench has placed reliance on the judgment of Secretary, Finance (National Savings) Department, Government of Bihar and another vs. Vinod Kumar and others reported in 2006 (1) PLJR 269, having held that there is no room of any doubt that service rendered under different organisations will not be treated as service under the State and rejected the claim and the action cannot be held to be suffering from arbitrariness in refusing to recognize the period before absorption of service of District Industry Centre so the judgment of the Division Bench squarely covers in the present case.

21. In such view of the matter, there would be irresistible conclusion to the fact of this case is completely identical to the case of Narain Dutta Pandey (supra), and as such, the service period prior to absorption cannot be reckoned for granting the benefit of pension to the petitioner.

22. Hence, this petition is dismissed.

(Shivaji Pandey, J)

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