

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 16734 of 2018

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Panpati Devi @ Paramda Devi Widow of Late Sri Ram Sharma, resident of
Village- Khudauri, P.S.- Hulasganj, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Education, New Secretariat, Vikash Bhawan, Patna
2. The Principal Secretary, Department of Education, New Secretariat, Vikash Bhawan, Patna.
3. The Director, Primary Education, Department of Education, New Secretariat, Vikash Bhawan, Patna.
4. The District Education Officer, Gaya.
5. The Treasury Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr Sanjay Kumar, Advocate

For the Respondent/s : Mr Subhash Chandra Mishra, SC XVI

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 08-06-2020 The matter has been listed today for consideration
through Video Conferencing.

Learned counsels are appearing and making
submissions from their residence. The Court Master and
Secretary are also part of this virtual Court proceedings with the
aid of audio visual technology.

Heard Mr Sanjay Kumar, learned counsel for the
petitioner as well as Mr Subhash Chandra Mishra, SC XVI for
the State.

Writ petition has been filed for a direction to the
respondents to pay salary for the period between April, 1991 to



January, 1999 in respect of the petitioner's husband. The case of the petitioner is that her husband was an Assistant Teacher in Primary School, Kutalupur in the district of Gaya.

From the averments made in the writ petition and the counter affidavit, copy of which was served on the petitioner's counsel, long back, i e, on 19.12.2018, it is apparent that the petitioner's husband was absent from duty without information from April 1991 to 31.01.1999. The petitioner's husband was deemed to have been dismissed from service under Rule 76 of the Bihar Service Code for such unauthorized absence for more than five years.

It is under this circumstance that the petitioner's husband moved this Court earlier twice in CWJC No 7759 of 2007 and CWJC No 17483 of 2012. From the order of this Court dated 04.01.2013 passed in CWJC No 17483 of 2012 (Annexure 10), it is apparent that this Court held that the petitioner's husband would be deemed to have been validly superannuated. The decision in the writ proceedings is based on the fact that no proceeding in accordance with the principles of natural justice was conducted against the petitioner's husband under Rule 76 of the Bihar Service Code. The deemed dismissal was held to be, therefore, void ab initio. This Court,



therefore, directed the respondents to pay gratuity and pension due to the petitioner's husband, and thereafter, family pension to the petitioner, as her husband had already passed away. The Court directed that payment along with calculation of dues was to be paid within two months.

From the order passed in CWJC No 17483 of 2012, it is apparent that the petitioner had not claimed salary for the period of absence. Thus, the same was not considered and no directions were issued by this Court in respect of salary for the period of unauthorized absence, i e, from April, 1991 to 31.01.1999.

The petitioner, in the instant proceedings, now has moved this Court by the instant proceedings instituted in August, 2018 claiming salary for the said period. This Court, in the circumstances, asked the petitioner's counsel whether such a plea can be raised now, since it was not raised in the earlier proceedings though the petitioner had moved this Court for retiral dues on account of absence for the said period and had consciously not claimed any salary for the period of absence.

Mr Sanjay Kumar, learned counsel for the petitioner, therefore, submits that when the order for payment of retiral dues was passed in CWJC No 17483 of 2012, Authorities did



not comply the same. Petitioner filed a contempt petition. MJC No 3370 of 2013 was finally disposed of, since the order of the Writ Court was complied and due retiral benefits were paid to the petitioner. The order disposing of the contempt proceedings in MJC No 3370 of 2013 is dated 05.03.2014. The same reads as follows:

“Learned counsel for the petitioner now fairly states that substantially the order has been complied with. In case, the petitioner has any other grievance, she may raise it before the appropriate authority, which would be duly considered.

Accordingly, this application stands disposed of.”

Since the order allows the petitioner to raise any other grievance before the appropriate authority, learned counsel submits that the petitioner's claim for her husband's salary for the period April, 1991 to January, 1999 can very well be raised. Petitioner is not precluded from raising such claim.

The order of this Court passed in MJC No 3370 of 2013 is very explicit. It does allow the petitioner an opportunity/liberty to raise any other grievance before the appropriate authority. The said order was passed on 05.03.2014. There is not even a whisper in the writ petition that after the order, the petitioner has availed of the said liberty and raised her



grievance before any Authority whatsoever. More than four years after the liberty was granted to the petitioner, without raising her grievance before any Authority to avail the liberty granted under order dated 05.03.2014, she has once again directly approached this Court seeking payment of salary for the said period.

The counter affidavit states that the petitioner's husband was not entitled to any salary for the period in question. Petitioner has not filed any reply or rejoinder thereto. Petitioner's counsel, however, submits that during the said period, petitioner's husband was actually prevented from working. If the petitioner's husband was prevented from working for about eight years, then the circumstances under which he was prevented, what steps he took for redressal of such prevention, are disputed issues of fact which could have been considered by the Authorities had the petitioner raised her grievance in accordance with liberty granted to her under order dated 05.03.2014 passed in MJC No 3370 of 2013 which she has not done.

In view of the aforesaid background, there is no occasion for this Court to exercise jurisdiction under Article 226 of the Constitution of India when the petitioner herself did not



avail the liberty which she had obtained in MJC No 3370 of 2013.

Without prejudice to the petitioner's right to avail the remedy under order dated 05.03.2014 passed in MJC No 3370 of 2013, the writ petition is disposed of.

(Madhuresh Prasad, J)

M.E.H./-

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