IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17403 of 2017

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Shreechand Prasad Singh, son of Maruan Singh of village- Najari, P.O. & Police Station- Haveli Kharagpur, District Munger, presently residing at AT & P.O. Kiranpur, Police Station- Shah Kund, District Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, New Secretariat, Patna-cum- Chairman, Bihar Industrial Area Development Authority, Patna.
3. The Chairman, Bureau of Public Enterprises, (Finance Department) Government of Bihar, Old Secretariat, Patna.
4. Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Accountant General, Birchand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner	:	None.
For the Respondents	:	Mr. Rakesh Ambastha, AC to AAG-7
For BIADA	:	Ms. Binita Singh, Adv.
For Accountant General	:	Mr. Prabhat Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 29-06-2021

The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Hea Singh, the learned counsel

appearing for the Bihar Industrial Area Development Authority (hereinafter referred to as “BIADA”), Shri Rakesh Ambastha, the learned AC to AAG-7 and Shri Prabhat Ranjan, the learned counsel appearing for the Accountant General.

Though, nobody has been repeatedly appearing for the petitioner since past several dates, but the facts of the case lie in a very narrow encompass, which has been elucidated vividly in the counter affidavit filed by the respondents.

The present writ petition has been filed for directing the respondent- BIADA to pay pension as per the Bihar Pension Rules along with the arrears of retiral benefits.

It has been averred by the petitioner in the writ petition that he had superannuated from the services of BIADA w.e.f. 31.12.2003 while working on the post of Assistant Development Officer (Mechanical). It has been stated in the writ petition that the petitioner is entitled to pension and for the said purpose he has relied on a judgment rendered by the Hon’ble Apex Court in the case of **K.O. Varghese & Ors. vs. Kerala State Road Transport Corporation and Ors.**, reported in Judgement Today 2003 (Suppl.-II) SC 145.

Per contra, the learned counsel appearing for the respondent- BIADA has submitted, by referring to the counter affidavit filed case that the present petition is barred by the principles of res-judicata and constructive res-judicata inasmuch as the petitioner had earlier approached this Court by filing a writ petition bearing CWJC No. 19748 of 2012, for the same and similar reliefs as has been prayed for in the present writ petition, however, the same was dismissed by a co-ordinate Bench of this Court, by an order dated 03.01.2013 whereafter the petitioner had challenged the said order dated 03.01.2013 by filing an appeal bearing L.P.A. No. 1166 of 2013, which was also dismissed by the learned Division Bench of this Court by an order dated 12.01.2017. The petitioner has then moved the Hon'ble Apex Court by filing a Special Leave petition vide Diary No. 22184 of 2017 but the same has also stood dismissed by the Hon'ble Apex Court by an order dated 08.08.2017. The learned counsel for the BIADA has further submitted that the judgment rendered by the Hon'ble Apex Court in the case of **K.O. Verghese** (supra) is not applicable in the facts and circumstances of the present case inasmuch as the Hon'ble Apex Court has not ruled that an employee would be entitled for pension even if the Service Rules governing him do not provide for payment of pension. It is submitted that as far as BIADA is concerned, it is a non-pensionable establishment and its employee after retirement are not entitled for pension but are covered by the [illegible] nd the petitioner has already been paid all that was due to him as per the CPF scheme.

The learned counsel for the State has supported the stand taken by the learned counsel appearing for the BIADA and has submitted that the case of the petitioner for grant of pension has already stood rejected up to the Hon'ble Apex Court, hence, the present petition is not maintainable. It is also submitted that the petitioner has already been granted the benefits of the CPF scheme.

The learned counsel for the respondent Accountant General has also supported the stand taken by the learned counsel for BIADA and the learned counsel for the State and has further submitted that as far as BIADA is concerned, there is no scheme for payment of pension, thus the petitioner is not entitled to any amount of pension.

Having regard to the facts and circumstances of the case, this Court finds that firstly the employees of BIADA are not covered by any pension scheme, rather they are covered by the CPF scheme, hence the claim of the petitioner is not sustainable in the eyes of law. This Court further finds that the present petition is barred by the principle of res-judicata and constructive res-judicata inasmuch as the prayer of the petitioner for grant of pension has already stood rejected upto the Hon'ble Apex Court, a ted herein above in the preceding paragraphs, hence, the present petition stands dismissed, being barred by the doctrine of res-judicata.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2021
Transmission Date	N/A