IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15270 of 2018

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Kiran Devi, Wife of Late Basant Kumar Singh, Resident of Village - Galimapur, P.O. + P.S.- Mashrak, District- Saran.

... ... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
3. The Secretary, Rural Development Department, Government of Bihar, Patna.
4. The Director, Mass Education Cum Additional Secretary Human Resources Development Department, Government of Bihar, Patna
5. The Accountant General (A & E), Veerchand Patel Patha, Patna.
6. The District Magistrate, Gopalganj.
7. The District Provident Fund Officer, Gopalganj.
8. The Treasury Officer, Saran.
9. The Circle Officer, Manjha, Gopalganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary, Advocate
For the Respondent/s	:	Mr. Bijay Bhushan Prasad, AC to SC13
For the Respondent AG	:	Mrs. Archana Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

13 28-01-2021 Heard learned counsel for the petitioner on the writ application as well as on the Interlocutory Application No. 1 of 2020.

Initially the writ application was filed with the following reliefs:-

(i) The respondents may kindly be directed to ensure immediate fixation and payment of Family Pension in favour of the petitioner w.e.f. 27-11-2012 after cleaning the dues under this head.

(ii) The respondents also may kindly be directed to liquidate payment of G.P.F. Group Insurance and Gratuity, Earned leave and other admissible amount after adding penal / uptodate statutory interest till the final payment.

(iii) For any other relief of reliefs also may kindly be allowed for which the petitioner be found entitled in the opinion of this Hon'ble court including the litigation cost.

It is the case of the petitioner that her husband happened to be Non-Formal Education Supervisor initially under scheme, later on by virtue of the Court's order he was absorbed against a substantive Class – III post. It is stated that the husband of the petitioner was appointed vide memo 324/Estab/dated 05.04.2011 but unfortunately he died in harness on 26.11.2012 leaving behind the petitioner and other legal heirs.

After death of her husband while the petitioner was paid the arrear of salary and a sum of Rs.72,000/- approximately on account of gratuity, she has been denied family pension.

In response to the writ application a counter affidavit has been filed on behalf of respondent no 5. It is stated therein that vide letter no. Pen-7-1057-60 dated 12.09.2018 (Annexure A to the counter affidavit) an intimation has been sought for from the Department as to the decision with regard to the payable pensionery benefits of the petitioner. Respondent nos. 6 to 9 in their counter affidavit have stated that the petitioner has received salary of her deceased husband amounting to Rs.2,66,754/-. Since during his lifetime the husband of the petitioner had not received his salary there was no question of any deduction on account of CPF and Group Insurance amount, so no amount has been paid on these accounts. As regards the due earned leave of 27 days, the petitioner has been paid a sum of Rs.10,991/-. Respondent no. 5 has later on in its supplementary counter affidavit informed this Court that the gratuity amount has also been paid.

Respondent nos. 4 to 9 have filed a separate counter affidavit in which it is stated that the husband of the petitioner was appointed on 05.04.2011 under New Pension Scheme, therefore the Accountant General, Bihar has found that the pension was not admissible to the husband of the petitioner. It is the stand of the respondents that no family pension would be payable to the present petitioner in view of the communication as contained in annexure ‘B’ to the counter affidavit of respondent nos. 4 to 9.

Learned counsel for the petitioner has assailed annexure ‘B’ to the counter affidavit of respondent nos. 4 to 9 as according to him the family pension would be payable to the petitioner in view of memo no. Pen-103/64-9505-F, dated 03.10.1964, paragraph 6 and 7 of the said memo have been relied upon.

Learned counsel for the petitioner does not dispute that the husband of the petitioner was appointed on 05.04.2011 under the New Pension Scheme. Learned counsel for the petitioner, however, submits that the husband of the petitioner was in fact reappointed on 05.04.2011 because he was already working under the scheme since the year 1986. It is thus his submission that in terms of the memo dated 03.10.1964 the petitioner would be entitled to get the family pension.

On the other hand learned counsel for the State submits that the contention of learned counsel for the petitioner is ill founded. The husband of the petitioner was working under a scheme and he happened to be a Non-Formal Education Supervisor but he was not appointed on any civil post. It is his submission that the husband of the petitioner was not a government employee while working under the scheme, it is only later on by virtue of the Hon'ble Court's order he was appointed on a substantive post in class-III on 05.04.2011, therefore by no stretch of imagination it may be said to be a case of reappointment.

Learned counsel for the State further points out that from a bare reading of paragraph 6 and 7 of memo dated 03.10.1964 it would appear that the scheme under the 1964 memo was made applicable to all regular employees of pensionable establishment. The husband of the petitioner was appointed under the New Pension Scheme which had come into effect from 01.09.2005. It is thus submitted that the 1964 memo has no application in the case of the petitioner.

Having heard learned counsel for the petitioner as well as learned counsel for the State, this Court finds substance in the submission of the learned counsel for the State. While working as supervisor under the aforesaid scheme the husband of the petitioner was not holding a substantive post and by no stretch of imagination it may be held that he was in regular service of the government that too in a pensionable establishment. Apparently he was absorbed against the class-III post by virtue of the Court's order on 05.04.2011 when the New Pension Scheme was already in force.

This Court is unable to accept the submission of learned counsel for the petitioner that the petitioner would be entitled to draw any benefit out of memo dated 03.10.1964. The submission seems to be wholly misconceived and in the nature of misplaced submission. This Court finds no reason to set aside the decision as contained in annexure B to the counter affidavit of the respondent nos. 4 to 9 which has now been formally assailed in IA No. 1 of 2020. As regards claim for family pension this Court finds no substance and the prayer to that extent stands rejected.

At this stage learned counsel for the petitioner has made a prayer to direct the respondents to make payment of interest for the delayed period in payment of gratuity amount and other retiral dues. If it is so, the petitioner will be at liberty to file an appropriate request before the competent authority within a period of 4 weeks from today and if such request is made, the same will be considered by the competent authority, to that extent this Court issues a direction to the respondents.

The writ application as well as the I.A. stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.