IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15564 of 2017

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Sudha Devi Widow of Late Arbind Kumar, Resident of Village/Mohalla- Ajij Ghat, Daira, Khandakpar, P.O. P.S.- Bihar, District- Nalanda.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Commissioner-cum-Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. Director, Primary Education, Bihar, Patna.
4. Director, Mass Education, Bihar, Patna.
5. District Magistrate-cum-Collector, Nalanda at Bihar Sharif.
6. District Program Officer, Nalanda at Bihar Sharif.
7. Director, Provident Fund, Bihar, Patna.
8. District Provident Fund Officer, Nalanda at Bihar Sharif.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar
		Mr. Ritesh Kumar
For the Respondent/s	:	Mr.Jitendra Kr. Roy No-1-SC-13

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 03-08-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. Heard learned counsel for the parties.

3. Before noticing the nature of relief, which the petitioner has sought in the present writ application, it would be apt to notice the admitted facts, which are essential for determination of controversy in hand.

4. The petitioner is widow of one Arvind Kumar,

who was appointed as Supervisor in Non-Formal Education in the year 1985. The services of all persons working in Non-Formal Education were terminated on 12.12.1994 in the light of the letter of the said date issued under the signature of the Director, Mass Education, Government of Bihar, which is available at Annexure-2 to the writ application. From the said letter, it transpires that noticing the fact that the programme of Non-Formal Education was not being carried out in accordance with the guidelines issued by the Government of India and it was impossible to improve the system of supervision of quality of Informal Education Centers, it was decided that all honorary Supervisors engaged in the said scheme should be relieved of their duties. The said letter dated 12.12.1994 indicates that the petitioner's appointment was not on regular and permanent basis under any Department, rather, it was on honorarium basis. The said decision of the Government was challenged before this Court. It appears from Annexure-5 dated 06.06.2011 that it was decided to hold a limited competitive examination for the Informal Education Supervisors whose services were terminated by virtue of the said order dated 12.12.1994 for their appointment as Primary Teachers. An advertisement was, accordingly, issued by the Bihar Public Service Commission in

2001 (Annexure-4). The petitioner's husband had participated and after having been declared selected in the year 2004, was appointed on the post of Primary Teacher. He, however, died in harness on 30.09.2012.

5. New Rules for appointment and service conditions of Panchayat Primary Teachers were framed, in the meanwhile, in 2006. A question had arisen before this Court in CWJC No. 8611 of 2007 (Pramila Kumari and ors Vs. State of Bihar and ors) as to whether service conditions of the persons appointed as teachers through limited competitive examination held by the Bihar Public Service Commission of ex Non-Formal Education Supervisors shall be governed by the rules/provisions existing prior to coming into force of 2006 Rules. This Court by an order dated 11.08.2008 passed in case of Pramial Kumari (supra) held that service conditions of such persons shall be governed by the rules as existing on the date of the recommendations made by the Bihar Public Service Commission. This is not in dispute that for employees appointed under the Government on or after 01.01.2004, a new contributory pension scheme was introduced by the Government of India, following which the State Government of Bihar has adopted the same scheme for its employees appointed after

01.09.2005 as stipulated in the resolution no. (27) issued *vide* memo No. 1964 dated 31.08.2005 by the Finance Commissioner, Government of Bihar.

6. The petitioner has filed the present writ application seeking direction to the respondents to grant and fix family pension; grant benefits of first and second Assured Career Progression and other consequential benefits. She has also sought for a direction for payment of full pension, gratuity, GPF amount and leave encashment. She is also seeking a direction for payment of difference of salary arising out of implementation of sixth pay revision. The petitioner has sought for a direction for payment of interest on the amount which according to her, has been illegally withheld so far.

7. A counter affidavit has been filed on behalf of the State of Bihar, wherein the facts asserted in the writ application as noted above, have not been disputed. It has been stated that the petitioner's husband was appointed on the post of Assistant Teacher on 07.01.2007. It is the specific case of the respondents that all admissible dues have been paid to the petitioner. It has been stated that a sum of Rs.10618/- has been paid to the petitioner, being the cash equivalent to unutilized earned leave of the deceased employee in 2013 itself. Group Insurance

amount of Rs.32235/- has also been paid to her. The provident fund amount has also been paid to her. As regards payment of pension and gratuity, it has been stated in paragraph 10 that the District Programme Officer (Establishment), Nalanda vide his letter dated 14.08.2013 requested the Accountant General, Bihar and accordingly provisional pension and gratuity have been paid to the petitioner. Difference of salary arising out of sixth pay revision Commission Report has also been paid.

8. The Accountant General, Bihar vide his letter dated 12.12.2013 addressed to the District Programme Officer (Establishment), Nalanda has noted that all Government servants appointed after 01.01.2004 are covered by new pension schemes. The office of the Accountant General had, however, requested the District Programme Officer (Establishment) to communicate any decision for payment of family pension and gratuity in respect of the employees covered by new pension schemes. There is nothing on record to demonstrate that the State respondents have ever responded to the said communication of the Accountant General.

9. Learned counsel appearing on behalf of the petitioner has submitted that the pension scheme, prevailing as on the date of recommendation made by the Bihar Public

Service Commission should govern her claim for grant of family pension and gratuity in the light of this Court's observation in case of Pramial Kumari(supra). He has argued that for the lapses on the part of the respondents, the petitioner cannot be denied her legal rights. He has argued that similarly situated persons selected on the basis of same selection process shall be entitled for pension, family pension and gratuity under the Bihar Pension Rules on account of their appointment before the cut-off date, whereas the petitioner is being denied such benefits on erroneous considerations.

10. Learned counsel representing the State of Bihar has submitted that in view of the objections raised by the Accountant General through its letter dated 12.12.2013, the petitioner has not been held to be entitled to get pensionary benefits in accordance with the provisions of Bihar Pension Rules, 1950.

11. It is surprising to note that whereas the Accountant General in his letter dated 12.12.2013 (Annexure-F to the counter affidavit filed on behalf of the State of Bihar) has mentioned 01.01.2004 as the cut-off date to determine whether a Government servant shall be entitled to pensionary benefits under the old pension scheme or the new pension scheme, the

State Government decision as contained in resolution No. 1964 dated 31.08.2005 mentions 01.09.2005 as the date for such determination. No decision has been brought to this Court's notice as to whether the said date, viz, 01.01.2004 has been adopted as the cut-off date for the employees appointed under the State Government of Bihar. If 01.01.2004 is the cut-off date, the petitioner cannot have any claim as admittedly the recommendatins were made after 01.01.2004. If on the other hand, a Government servant under the State of Bihar on or before 01.09.2005 is entitled to pensionary benefits under the Bihar Pension Rules, the question would arise as regards applicability of this Court's decision in case of Pramial Kumari (supra).

12. In the absence of any clear pleadings on record on the crucial aspects of the matter for determining the petitioner's claim, the Court deems it fit and proper to dispose of this writ application with a direction to respondent No.2 to take a decision as to whether the petitioner's claim for family pension and gratuity under the Bihar Pension Rules, 1950 is made out or not and pass an order in this regard within a period of two months from the date of receipt/production of a copy of this order. The respondent No.2 shall be under obligation to

respond to the query made by the Accountant General, Bihar in its letter dated 12.12.2013 in this regard, immediately thereafter.

13. This writ application stands disposed of with the aforesaid observations and directions.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	05.08.2021
Transmission Date	