

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3605 of 2020

1. Nusrat Jahan @ N. Jahan, Wife of Late Md. Aftab Alam, Resident of House No-85/1, Road No.7, Haroon Nagar Sector-1, P.S.-Phulwari Sharif, District-Patna.
2. Md. Sami Ahmad, Son of Late Md. Khalil, resident of Mohallah- Gayas Nagar, Nohsa, P.s.- Phulwari Sharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Minority Welfare Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Minority Welfare, Government of Bihar, Patna.
3. The Additional Chief Secretary, Finance Department, Government of Bihar, Patna.
4. The Bihar State Sunni Waqf Board, 34 Ali Imam Path (Harding Road), Patna through its Chief Executive Officer,
5. The Chairman, Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road), Patna.
6. The Chief Executive Officer, Bihar State Sunni Waqf Board, 34 Ali Imam Path (Hardin Road) Patna
7. Md. Aslam, Son of Late-Md. Salim, Resident of Mohalla- Khalilpura, P.O. and P.S.- Phulwari Sharif, District-Patna.
8. Ashiq Rasool, Son of Late Abdus Samad, Resident of Mohalla- Makhdoom Rasti Nagar, P.O. and P.S.- Phulwari Sharif, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Anis Akhtar, Advocate
For the Respondent/s	:	Mr. Sita Ram Yadav, GP-16
		Mr. Jitendra Kumar, AC to GP-16
For the Waqf Board	:	Mr. Md. Helal Ahmad, Advocate
For the Respondent No.8:	:	Mr. Nadim Seraj, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 15-12-2022

Pursuant to earlier order dated 08.12.2022, a supplementary counter affidavit has been filed on behalf of Waqf Board. The same is taken on record.



2. Heard Mr. Anis Akhtar, learned counsel for the petitioner, Mr. Helal Ahmad, learned counsel for the Waqf Board, Mr. Nadim Seraj, learned counsel for the respondent no.8 and the learned counsel for the State.

3. By filing the present writ application, the petitioner seeks the following reliefs:

“(A) For issuance of an appropriate writ, order or direction quashing part of resolution No-40 dated 26-06-2019 to the extent that “the same will be implemented from the same date” (Annexure-8) passed by the Bihar State Sunni Waqf Board, Patna (hereinafter called Waqf Board) which was communicated through Memo No-1985 dated 08-07-2019 issued under the signature of the Chief Executive Officer, Bihar State Sunni Waqf Board whereby pension and family pension for the regular employee who were appointed before 01-09-2005 has been implemented with effect from 26-06-2019 in very arbitrary manner and the same is whimsical causing hostile discrimination to the petitioners with similarly situated persons.

(B) For issuance of an appropriate writ, order or direction, directing the respondent authorities especially respondent No-4 Bihar State Sunni Waqf Board, Patna to grant benefits of pension and family pension to the petitioners as husband of the petitioner No-1 and petitioner No-2 were regular employee who were appointed before 01-09-2005 and they are similarly situated to the respondent No-7 namely Md. Aslam & respondent No-8 namely Ashiq Rasool who



have been granted benefit of pension and family pension.

(c) For issuance of any other relief or reliefs which is fit and proper in the facts and circumstances of this case.”

4. The short facts, which led to the filing of the present writ application is that the husband of petitioner no.1 was appointed on the post of Assistant in the office of Waqf Board on 01.04.1989 and he died in harness on 29.01.2014. So far the petitioner no.2 is concerned, he was appointed as Assistant on 07.01.1985 and subsequently promoted to the post of Budget-cum-Account officer and finally retired on 31.01.2018 from the service.

5. The issue involved in the present writ application in narrow compass is that the respondent Waqf Board in its meeting dated 12.09.2018 has taken a decision for implementation of pension/family pension scheme for the employees or the dependent of the State Waqf Board as recommended in 9th JPC at par with the employees of the Central Waqf Council, Andhara Pradesh Waqf Board, Jammu and Kashmir Waqf Board and Kerala Waqf Board, as they were getting the same benefit. Further the Bihar State Shia Waqf Board in its meeting dated 26.10.2018 has also considered to implement monthly pension scheme to the employees and accordingly it is resolved that the pension scheme be approved to the retired employees or dependent family



members as per State Government as and when retired. Vide resolution no. 40 dated 26.09.2019, the Bihar State Sunni Waqf Board has come out with a decision to grant pension and family pension to the regular employee, who were appointed prior to 01.09.2005. However, while issuing the said resolution, the condition has been imposed that the same will be implemented with effect from 26.06.2019, to that extent, which is impugned herein.

6. Learned counsel appearing on behalf of the petitioner submits that the impugned resolution to the extent whereby it has been made effective with effect from 26.06.2019 has no rationality, though in a similar circumstances, the Bihar State Siya Waqf Board has taken a decision to extend the benefit of pension/ family pension to the employees, retired employees as per the State Government as and when retired. He further submits that pursuant to the decision taken by the Sunni Waqf Board altogether eight persons have been allowed the benefit of pension / family pension. It is vehemently submitted that the petitioners are also similarly circumstanced to those, who have been allowed the benefit of pension/family pension, but only on account of the arbitray riders put by the Sunni Waqf Board that the resolution would be made effect w.e.f. 26.06.2019, the vested right of the petitioners have



been taken away. He further submits that it is the admitted fact that the husband of petitioner no.1 and petitioner no.2 were appointed prior to 01.09.2005 and as such they should also be allowed the same benefit, as has been granted to other persons, who were appointed prior to 01.09.2005.

7. On the other hand, learned counsel appearing on behalf of the Sunni Waqf Board by referring to the statements made in the counter affidavit as well as supplementary counter affidavit submits that though the Waqf Board by order dated 26.06.2019 has taken a decision to grant the benefit of pension to the employees, who have been appointed prior to 01.09.2005, however, the said decision has been taken in anticipation of approval of the Regulation by the State Government. He also submits that in absence of approval to the Regulation the Waqf Board has taken decision to review the earlier order of grant of pension to its employees in its meeting dated 14.11.2022 and vide resolution dated 14.11.2022 took a decision to issue show-cause notices to those beneficiaries, who are getting benefits of pension and after reply to the show-cause, the matter will be considered afresh by the Waqf Board. He next submits that admittedly the husband of petitioner no.1 and petitioner no.2 were died in harness/ superannuated prior to 26.06.2019 and as such the benefit,



as has been allowed to other persons are not admissible to the petitioners, though they have been appointed prior to 01.09.2005, but they were not in service on 26.06.2019, on the date the decision for granting pension/ family pension has been made effective.

8. Mr. Nadim Seraj, learned counsel appearing on behalf of respondent no.8 by filing counter affidavit has justified his entitlement and submits that they have rightly been allowed the benefit of the pension in view of the decision taken by the Sunni Waqf Board. However, he submits that any show-cause issued by the Waqf Board is wholly unjustified and illegal.

9. Having considered the submissions made on behalf of the parties and the materials available on record. Admittedly the husband of petitioner no.1 and petitioner no.2 were appointed prior to 01.09.2005 like other employees, who have been allowed the benefit of pension/family pension. Further this Court does not find any rationality in making the decision effective with effect from 26.06.2019, as that would certainly defeat the very purpose of allowing the benevolent scheme of granting pension/family pension. This Court is also conscious of the fact that in a similar circumstance Siya Waqf Board has taken a decision to grant pension / family pension to its retired employees or the dependent



members, as per the State Government as and when retired. It has also been informed to this Court that the Chief Executive Officer of both the Boards were the same and one person, however, he taken a different approach in putting a rider while granting the pension/family pension to the employees of Sunni Waqf Board, which is wholly arbitrary and passed without any rationality.

10. While considering similar kind of issue, the Hon'ble Supreme Court in the case of **D.S. Nakara and others Vs. Union of India and others**, reported in **AIR 1983 SC 130** has been pleased to hold that the difference in the date of superannuation shall not encroached upon or impede the passage of seniority, as the same shall be violative of Articles 14 and 16 of the Constitution of India.

11. The Apex Court further held that the Central Government cannot pick out a date from a hat and that is what it seems to have done in saying that a period prior to that date would not be deemed to be approved by the Central Government within the second proviso. In case before us, the eligibility criteria for being eligible for liberalised pension scheme have been picked out from where it is difficult to gather and no rationale is discernible nor one was attempted at the hearing. The ratio of the decision would squarely apply to the facts of this case.



12. In view of the aforesaid facts and the position obtaining in law, this Court finds substance in the submissions of the learned counsel for the petitioners and, accordingly, set aside the part of the resolution no. 40 dated 26.06.2019 to the extent whereby it has been made effective with effect from 26.06.2019 itself.

13. In view of the aforesaid facts, the matter is remitted back to the Sunni Waqf Board to consider the claim of the petitioners for grant of pension/family pension, as has been granted to other similarly situated persons.

14. It is needless to say that the entire exercise must be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

15. Accordingly, the present writ application stands disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.12.2022
Transmission Date	NA

