

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1579 of 2017

In
Civil Writ Jurisdiction Case No.22402 of 2013

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Dr. Prof. Lakshmi Roy , son of Late Ajodhi Roy, Profession Retired
Chairman, Bihar Public Service Commission, Resident of 48- Bhagwat
Nagar, Naya Tola, Kumhrar, P.O. Bahadurpur Housing Colony, P.S. Agam
Kuan, District – Patna, 800026

... .. Appellant/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Governor of Bihar through his Principal Secretary, Raj Bhawan, Patna
3. Principal Secretary, Department of General Administration, Government of Bihar, Patna.
4. Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
5. Accountant General, Bihar, Patna.
6. Bihar Public Service Commission through Chairman.
7. Sri. A.K. Choudhary, the then Chief Secretary, Government of Bihar, Patna.
8. Sri Amir Subhani, Principal Secretary of the Department of Personnel and Administrative, Reforms at the relevant time-now Principal Secretary, Home Department, Government of Bihar, Patna.
9. Sri. Krishna Kumar Sinha, Assistant of Section 7 of the Department of Personnel and Administrative Reforms at relevant Time (renamed now as Department of General Administration) during 2003-2009 and presently Section Officer, Department of Registration, Government of Bihar, Patna through the Principal Secretary, Department of General Administration.
10. Sri. Basudev Sharma, Section Officer of Section 7, Department of Personnel and Administrative Reforms (Now retired) through the Principal Secretary, Dept. of General Administration, Government of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ashok Kumar Choubey, Sr. Advocate Mr. Anil Kumar Tiwary, Advocate
For the State	:	Mr. Sanjay Kumar Ghosarway, AC to AAG 3
For the BPSC	:	Mr. Sanjay Pandey, Advocate Mr. Nishant Kumar Jha, Advocate
For the Accountant General:		Mr. Arun Kumar Arun, Advocate



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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-10-2022

Heard learned counsels for the respective parties.

2. In the instant appeal, appellant has assailed the order of the learned Single Judge dated 09.10.2017 passed in C.W.J.C. No. 22402 of 2013.

3. Core issue involved in the present litigation is whether the appellant is entitled to revised pension with reference to the post held by him namely Chairperson of the Bihar Public Service Commission. The Bihar Public Service Commission (Conditions of Service) is governed by the Regulation called the Bihar Public Service Commission (Conditions of Service) Regulations, 1960 (for short 'Regulation 1960'). Regulation No. 12 of Regulation 1960 reads as under:

“12. (1) In the case of a Member who on the date of appointment was not in the service of the Union or a State, the pension to which such Member will be entitled shall-

(i) in the case of a Chairman, if he has completed six years service for pension and has drawn pay at the rate of Rs.2,500 a month, be Rs.5,75 per annum; and



(ii) in the case a Member, other than the Chairman, if he has completed six years, service for pension and has draws pay at the rate of Rs.2,250* a month, be Rs.4,500* per annum.

(2) If a member has completed three years, four years or five years service for pension, be three - sixths four - sixths or five-sixths respectively, of the full pension which would be payable to him, as the case may be, in accordance with clause (1).

(3) Where the pay determined under clause (3) of regulation in respect of a period of six years of service for pension of Member is less than the pay specified in relation to such period in sub clause (i) or (ii) of clause (1), the amount of pension admissible per annum shall be the amount arrived at by multiplying the average monthly pay determined under clause (3) of regulation 9 with the amount of pension to which the Member would be entitled if his full, and not average, monthly, pay had been taken into account, and the product then being divided by the full pay mentioned in sub-clause (i) or (ii) of clause (1), as the case may be.

(4) In case specified in clause (2) if the average monthly pay determined under clause (3) of regulation 9 is less than the full pay to be taken into account for purpose of the clause, the pension admissible shall be the relative proportion in each case, specified in the said clause, of the amount of pension arrived at in accordance with clause (3)."

4. The appellant do not fall under definition of service of the Union or a State so as to extend any service benefits under Regulation 12 and it is not disputed by the appellant. Therefore, one has to draw inference that the appellant has no statutory or



vested right to claim revision of pension when appellant do not fall under the definition of service of the Union or a State under Regulation No. 12 of Regulation, 1960.

5. Perusal of the learned Single Judge order, it is evident that the appellant has not made out a statutory right to seek direction for revision of pension with reference to the post held by him namely Chairperson of the Bihar Public Service Commission. We find no infirmity in the order of the learned Single Judge in rejecting the appellant's claim for revision of pension with reference to his initial appointment as a Lecturer in the IIT Kharagpur read with terms and conditions stipulated in Regulation No. 12 in the case of a member who on the date of appointment was not in the service of the Union or a State, the pension is required to be determined. In the light of these facts and circumstances, the appellant has not made out a case so as to issue direction to the concerned respondent to consider grievance of the appellant.

6. For issuance of writ of mandamus two ingredients are mandatory namely statutory right followed by demand. The appellant has not pointed out that he has a vested right to claim revision of pension with reference to the post held by him namely Chairperson of Bihar Public Service Commission. Accordingly,



the present appeal stands dismissed while affirming the order of
the learned Single Judge dated 09.10.2017.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2022
Transmission Date	

