IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1641 of 2018
In
Civil Writ Jurisdiction Case No.652 of 2018

==

Mamta Devi, W/o Late Ajit Kumar Mishra S/o Late Kali Mishra, R/o Mohalla- Dhwajagali, Sultanganj, P.S.- Sultanganj, District- Bhagalpur.

... ... Appellant/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Old Secretariat, Govt. of Bihar, Patna.
3. The Principal Secretary, General Administration Department, Old Secretariat, Govt. of Bihar, Patna.
4. The Principal Secretary, Finance Department, Old Secretariat, Patna.
5. The Commissioner, Bhagalpur Division, Bhagalpur.
6. The Director, Secondary Education, Education Department, New Secretariat, Patna.
7. The District Magistrate, Bhagalpur.
8. The District Provident Officer, Bhagalpur, District- Bhagalpur.
9. The District Education Officer, Bhagalpur, District- Bhagalpur.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. advocate Mr. Vipin Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar Ghosarvey, AC to AAG3

==

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

6 17-08-2022 Heard I.A. No. 03 of 2022 for substitution of Appellant-Ajit Kumar Mishra to his wife the widow Mamta Devi. Deceased-Ajit Kumar Mishra died on 19.04.2021.

For the reasons stated in the application and affidavit I.A. No. 03 of 2022 for substitution of legal heir of the appellant to be brought on record stands allowed.

Learned counsel for the Appellant is hereby directed to carry out necessary amendment in the cause title.

Heard learned counsel for the respective parties.

On 02.08.2022, the following order was passed:-

> *"learned counsel for the appellant is permitted to make necessary correction in cause title of memo of appeal during the course of the day.*
>
> *I.A. No. 03 of 2022 has been filed for substitution of Mamta Devi, wife of the sole appellant Ajit Kumar Mishra who died on 19.4.2021 in place of original appellant. For the reasons stated in the interlocutory application, the same is allowed.*
>
> *Learned counsel for the appellant is hereby directed to peruse the latest decision on the point as to whether a person who has been appointed subsequent to the introduction of new pension scheme is entitled to old pension scheme or a new pension scheme. The Supreme Court in the case of Rajmati Devi & Anr. vs. the State of Bihar & Ors., it is held that persons who have been appointed after introduction of a new pension scheme are not entitled to old pension scheme.*
>
> *Re-list this matter on 16.08.2018."*

Deceased-Ajit Kumar Mishra was a candidate for recruitment to the post of Group-D pursuant to the advertisement dated 02.12.2001 read with 09.01.2003 he was appointed on 31.12.2016. In this backdrop, the appellant requested for extending benefit of Old Pension Scheme, benefit of panel, i.e., seniority and other benefits, w.e.f., date of advertisement dated 02.12.2001. Such relief has been turned down by the learned Single Judge in its order dated 12.10.2018 passed in CWJC No. 652 of 2018, hence, the present appeal.

Bihar Pension Rules was in vogue till 31.08.2005. With effect from 01.09.2005, New Pension Scheme was introduced. It is called New Contributory Pension Scheme *vide* Resolution dated 31.08.2005 of the Finance Department, Government of Bihar whereas deceased-Ajit Kumar Mishra was selected and appointed to the post of Group-D on 31.12.2016 pursuant to the Advertisement issued on 02.12.2001. In this backdrop, whether deceased-Ajit Kumar Mishra is entitled for all benefits from the date of advertisement from 02.12.2001 or from the date of his appointment, i.e., 31.12.2016. It is to be noted that Bihar Pension Rules was in vogue upto 31.08.2005 and w.e.f. 01.09.2005 New Pension Scheme was introduced.

It is necessary to examine the Bihar Pension Rules, 1950. Part I Rule 2 reads as under:-

> *"2. Except where otherwise provided these rules apply to all Gov-*

ernment servants to whom the rules in the Bihar and Orissa Service Code apply."

Rule 29 reads as under:-

"29. Pensionable service means service which qualifies the Government servant performing it to receive a pension from general revenues."

Chapter VI relates to service qualifying for pension.

Rule 58 reads as under:-

"58. The service of a Government servant does not qualify for pension unless it conforms to the following three conditions:-
First-The service must be under Government.
Second-The employment must be substantive and permanent.
Third- The service must be paid by Government.
These three conditions are fully explained in the following sub-sections."

Similarly, Sub-Rule (2)-First Condition-Service under Government. Rule 60 reads as under:-

"60. The service of a Government servant does not qualify unless he is appointed and his duties and pay are regulated by the Government, or under conditions determined by the Government. The following are examples of Government ser-

vants excluded from pension by this rule;

(1) Employees of a municipality,

(2) Employees of grant-in-aid schools and institutions.

(3) Service on an establishment paid from the house hold allowance of the Governor or from his contract establishment allowance.

Note 1.-If a Government servant has served partly (in a capacity which would have given his claim to pension. If the service had been paid from the general revenues), on the house hold establishment of the Governor, and partly on establishments paid from the general revenues, he is entitled from the general revenue, proportionate to the length of the service which has been so paid."

Sub-Rule (3)-Second Condition-Substantive and Permanent Employment.

(i) General

"61. Service does not qualify unless the Government servant holds substantively a post on a permanent establishment.

1.

**Regarding-Temporary Service counting for Pension.*

It has now been decided that temporary service or officiating *service under the State Government when followed by permanency whether in the same or any other post should count in full for pension except in respect of--*

(i) period of temporary service is non-pensionable establishment, and

(ii) period of service paid from contingencies.

The concession of counting officiating and temporary service in full for pension will be available to Government servants who are governed by the Old Pension Rules, or the Liberalized Pension Rules. [Notification No. 12928F...dated 4.9.1962. This has effect from 1.8.1962.]"

Chapter V relates to reckoning of service for pension. The petitioner's case do not fall under the aforesaid Chapter V.

Chapter VI-Conditions of Grant of Pensions. Under Section 1-Classification of Pensions petitioner's case is required to be examined under Rule 107(d) Retiring pensions vide Section v. The petitioner's case do not fall under the aforesaid provision.

In the light of the aforesaid Rule read with New Pension Scheme was introduced on 01.09.2005, at this stage, the deceased-Ajit Kumar Mishra has no vested legal right to seek a particular pension scheme namely Bihar Pension Rules for the reasons that he has not fulfilled the various criteria mentioned in the Bihar Pension Rules cited supra further w.e.f. 31.08.2005 and Bihar Pension Rules is not in vogue in view of New Pension Scheme which is in vogue w.e.f. 01.09.2005. At this stage, it is necessary to take note of Hon'ble Apex Court decision in the case of **Nair Service Society Vs. T. Beermastan and Ors.** reported in **(2009) 5 SCC 545**. Para 48 reads as under:-

> *"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with reference to particular service rules in the State governing that filed. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to applied taking 20 vacancies as a block."*

In the light of aforesaid decision what is relevant is as on the date of appointment is to adhere to the statutory Rule existing that is required to be applied or relevant statutory Rule is applicable. Recently, Hon'ble Apex Court in the case of **State of Bihar and Ors vs. Rajmati Devi and Anr. (Civil Appeal No. 3900-3901 of 2022)** has examined the relevancy of Old Pension and New Pension Scheme. The aforesaid decision is against the claim of the deceased-Ajit Kumar Mishra.

Undisputedly, the appellant was appointed subsequent to the introduction of New Pension Scheme. In the light of these facts and circumstances, the appellant has not made out case. Accordingly, the present LPA stands dismissed.

At later stage of the Court Session, learned senior counsel, Mr. Bindhyachal Singh submitted that the matter was heard in the morning session. When the matter was taken up learned counsel for the appellant requested for pass over it was refused on the score that we have made observation in the previous order of hearing that the matter is covered by the aforesaid decision of Hon'ble Apex Court. Therefore, re-hearing of disposed matter once again is not warranted.

Accordingly, the submission of learned senior counsel to re-hear the matter is hereby rejected reserving liberty to file review petition.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Vikash/-

U			