

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16247 of 2017

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Renu Jha, wife of Shambhu Nath Jha, Resident of Ward No.6, Godhala Road,
Madhubani, Police Station- Sadar, Town and District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Gramin Vikash Vibhag (Rural Development Department), Government of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Block Development Officer, Benipatti, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Lalit Narayan Jha, Advocate. Mr. Arun Kumar Jha, Advocate.
For the Respondent/s	:	Mr. Saroj Kumar, AC to GP-7.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-04-2023

Heard Mr. Lalit Narayan Jha, learned counsel along

with Mr. Arun Kumar Jha, learned counsel appearing on behalf

of the petitioner and Mr. Saroj Kumar, learned AC to GP-7.

2. Petitioner has filed the present writ petition for the

following reliefs:

(a) For issuance of a writ in the nature of Certiorari to quash the order dated 19.09.2014 contained in Memo No. 1529/Distt. Estab. Madhubani dated 19.09.2014 (Annexure-14) by which the District Magistrate, Madhubani has rejected the claim of the petitioner for payment of her retiral dues and pension etc. on the ground that petitioner has been in Government Service only for three years and eight months and eleven days.

(b) For issuance of a writ in the nature of Mandamus directing and commanding the Respondents to pay her retiral dues such as gratuity, earned leave, commuted pension amount and basic pension per month along with admissible interest.

(c) For issuance of an appropriate writ, order or direction commanding and directing the Respondent No.3 to send all the relevant documents to the office of Accountant General, Bihar, Patna for proper calculation and payment.

(d) For issuance of an appropriate writ, order or direction to release appropriate fund for payment of retiral dues.



3. Brief facts of the case are that vide order No. 50/86 dated 01.08.1986, the petitioner was appointed on the post of 'Gram Sevika' by the Selection Committee headed by the District Magistrate (Annexure-1) and the petitioner joined the service on 02.08.1986. Vide Memo No. 8961 dated 24.09.2007, the post of petitioner and twenty other 'Gram Sevika' was regularized (Annexure-2). The District Magistrate, Madhubani vide Letter No. 47 Mukhiya District Establishment dated 25.08.2008 sought clarification from Principal Secretary, Rural Development, Government of Bihar, Patna as to whether length of service of petitioner should be calculated w.e.f. 02.08.1986 or 01.01.2008. On 11.12.2010, petitioner applied for VRS under the provisions of Rule 74(b)(ii) of the Bihar Service Code Part-I and also requested for early payment of all her retiral dues (Annexure-5). Vide Memo No. 1371 dated 16.09.2011 and by order passed by the District Magistrate, Madhubani, the petitioner's application for voluntary retirement was accepted w.e.f. 16.09.2011 and it was ordered that all her retirement benefits shall be paid (Annexure-6). Vide Memo No. 490 dated 13.03.2012, the services of the petitioner was confirmed from the date of appointment to the date of retirement (Annexure-4). The Block Development Officer, Benipatti vide Memo No. 562 dated 20.03.2012 asked the petitioner to submit her pension papers (Annexure-7). Vide Memo No. 610, dated 27.03.2012, 1st



A.C.P. was given to the petitioner w.e.f. 09.08.1999 (Annexure-3) and vide Memo No. 772 dated 28.04.2012, 2nd A.C.P. was given to the petitioner w.e.f. 01.01.2009 (Annexure 3/1). In the meantime, the petitioner received Rs.1,22,797/- as G.P.F. amount. The petitioner also received Rs.1,03,825/- as earned leave encashment for only 137 days though she is entitled for 143 days and for that Rs.5000/- is still due. The petitioner informed the B.D.O., Benipatti to that effect on 23.08.2012 (Annexure-8) and to the District Magistrate, Madhubani on 29.08.2012. Petitioner states that following amount are still due to her under different heads:

1. Gratuity : Rs. 2,84,200/-
2. Commuted Pension : Rs.2,82,000/-
3. Basic Pension per Month : Rs.7,195/-
4. Earned Leave Encashment : Rs.5,000/-

4. On 24.09.2012, petitioner sent application to the Block Development Officer, Benipatti for payment of her retiral dues (Annexure-10). When nothing was done, the petitioner sent application to the District Magistrate, Madhubani on 16.11.2012 accosting him with the entire facts and requesting him to do the needful to get her entire retiral dues to be paid (Annexure-11). The petitioner filed C.W.J.C. No. 271 of 2013 on 02.02.2013. Order dated 16.08.2013 was passed in C.W.J.C. No. 271 of 2013 directing the respondents No.2 to decide the claim of the petitioner and to make payment of admissible dues within four months. On 26.08.2013, after obtaining the certified copy of the



Order dated 16.08.2013, the petitioner made prayer to the respondents to do the needful (Annexure-13). Vide Memo No. 1636 dated 26.10.2013, an order was passed to recover the amount. On 11.02.2014, the petitioner filed Contempt petition being MJC No. 760 of 2014 against the respondents for not adhering to the directions given in the Order dated 16.08.2013. The Secretary vide Gyapank No. 201180 dated 13.09.2014 considering the case of the petitioner directed all the District Magistrates, especially the District Magistrate, Madhubani that the petitioner was appointed on 01.08.1986 under the scheme of Central Government on purely temporary basis and after five years the scheme was closed. Vide Memo No. 1529 dated 19.09.201, the respondent no.2 deprived the petitioner of her retiral dues, which was annexed through a show cause filed. On 26.04.2017, MJC No. 760 of 2014 was heard and an order was passed holding that no case for initiating action for contempt was found but observed that if the petitioner has any grievance with regard to the manner in which her representation has been decided shall have liberty to challenge the same afresh (Annexure-15). Petitioner contends that she was given benefit of VRS and as per the Bihar Service Code, this benefit is given to an employee when he completes 20 years of service.

5. Learned counsel appearing on behalf of the petitioner submits that petitioner has not been paid gratuity



amounting Rs.2,84,200/- and earned leave for six days amounting Rs.5000/-. Petitioner is entitled to be paid entire amount of gratuity which has been withheld along with earned leave for six days.

6. Per contra, learned counsel appearing on behalf of the respondent has submitted that petitioner is not entitled for payment of gratuity and earned leave. Petitioner has taken voluntary retirement from service in the year 2011 which disentitles her from the benefit of gratuity. Learned counsel further submitted that the petitioner was appointed by DRDA on 01.08.1986 under the scheme of Central Government on purely temporary basis and after 5 years the scheme was closed. The said post was not government post. After adjustment as Gram Sevika in Block which is a government post, petitioner has taken voluntary retirement in 2011. He further submitted that the petitioner is claiming her retiral benefits from 02.08.1986, but as per the Rule 63 of the Bihar Service Code, the calculation of retiral benefits will be admissible from the date she joined as a government servant and her previous service will not be counted as a service. Therefore, the claim of the petitioner is not admissible in the eye of law. It is further submitted that as per New Pension Rule, the person joined from 01.09.2005 in government service are entitled for pension. Under the aforesaid circumstances, the petitioner is entitled for pension and other



retiral dues from 01.05.2008 and not from 01.08.1986. It is further submitted that the petitioner has withdrawn more amount than admissible, therefore, the Block Development Officer had ordered for recovery of amount.

7. It is well settled that the High Court acts as an authority while exercising its power under Article 226 of the Constitution of India cannot be countenanced. It is also well settled that the High Court exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India, does not adjudicate hotly disputed questions of facts.

8. Similar issue arose before the Hon'ble Apex Court in the case of **P.R.Murlidharan & Ors. Vs. Swami Dharmananda Theertha Padar & Ors.** reported in (2006) 4 SCC 501, wherein the question of entitlement of police protection to the appellant of the said case, having regard to the threat perception to his life and liberty or for protection of rights declared by a decree or order passed by a civil court, the Hon'ble Apex Court has held that adjudication of civil right can not be invoked in terms of decree or order passed by a court with jurisdiction. The Hon'ble Apex Court in paragraph no.12 and 13, after discussing the facts of the case, has observed, *inter alia*, as under :

“12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an



office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the Code of Civil Procedure stare on his face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required abduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

13. Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit.”

9. The petitioner, if so advised, may file a detailed representation before the District Magistrate by adducing all the relevant evidences in support of his claim.

10. District Magistrate is directed to dispose of the representation of the petitioner considering the fact that as to whether the petitioner is entitled to the claim as made in the



present writ petition within a period of six weeks. If the petitioner is found to be entitled for his claim of gratuity and earned leave, the same be paid to the petitioner not beyond a further period of two weeks.

11. It goes without saying that petitioner is also entitled for interest on delayed payment.

12. The order dated 19.09.2014 contained in Memo No. 1529 (Annexure-14) is set aside. Accordingly, present writ petition is disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	06.05.2023
Transmission Date	N.A.

