IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.28 of 2019
In
Letters Patent Appeal No.718 of 2015

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Krishna Murti Prasad R/O Village Hemanpur, Ward No. 11, P.O P.S - Dighwara, District - Saran.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors bihar
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna Bihar Patna
3. The Executive Officer, Notified Area Nagar Panchayat Dighwara, Saran. Saran
4. The Chairman Nagar Panchayat Dighwara, District - Saran Saran Bihar
5. The Accounts Assistant cum Head Clerk Nagar Panchayat Dighwara, District- Saran saran Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Shashi Shekhar Tiwary,
For the State	:	Mr.Rakesh Ambastha, AC to AAG7
For Nagar Panchayat	:	Mr.Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-08-2023

<u>Re: I.A. No. 1 of 2023</u>

2. Heard I.A. No. 1 of 2023 for condonation of delay of 2 years 7 months and 5 days in filing civil review petition. For the reasons stated in the application and affidavit, in particularly Para 4 the reasons assigned by the petitioner for condonation of delay is taken note of. Accordingly, the delay of 2 years 7 months and 5 days is condoned and I.A. No. 1 of 2023 is allowed.

3. With the consent of the respective counsels for the parties Civil Review No. 28 of 2019 is taken up for final disposal.

4. The Civil Review petitioner has sought for recalling the orders of this Court dated 11.05.2016 passed in LPA No. 718 of 2015. To the extent that Co-ordinate Bench has not considered that the petitioner is entitled to gratuity amount along with the 90% of the provisional pension. It is submitted that gratuity is part and parcel of pension. Once the 90% of the provisional pension has been granted to the petitioner it is inclusive of gratuity, whereas, the respondents have denied the benefit of 90% of gratuity amount to the petitioner.

5. Learned counsel for the petitioner, submitted that in terms of Bihar Pension Rules, 1950 read with two decisions, namely ***Arvind Kumar Singh vs. State of Bihar & Ors. (Full Bench)*** reported in **PLJR 2018 (2) 933**, and further relied on ***Dr. Hira Lal vs. State of Bihar & Ors.*** reported in **(2020) 4 SCC 346.** It is submitted that in the light of aforementioned judicial pronouncements, petitioner is entitled to 90% gratuity along with the 90% provisional pension in terms of the order dated 11.05.2016 passed in LPA No. 718 of 2015 and in not ordering for gratuity the present review petition has been filed.

6. *Per contra*, learned counsel for the respondents resisted the aforesaid contention and submitted that petitioner is a Municipal Employee of Nagar Panchayat, Dighwara, Saran. Petitioner is governed by separate set of rules called Bihar Municipal Officers and Servants Pension Rules, 1987 (for short 'Rules, 1987'). Respondent is relying on Rule 9. Further, learned counsel for the respondent has pointed out Rule 60 of Bihar Pension Rules, 1950 which excludes employees of the Municipality. It is also submitted that petitioner had been granted 90% provisional pension by the Co-ordinate Bench instead of 75% provisional pension in the light of Rule 9 of Rules, 1987.

7. Heard the learned counsel for the respective parties.

8. Core issue involved in the present review petition is whether petitioner is entitled to 90% gratuity amount in addition to 90% provisional pension as ordered by the Co-ordinate Bench dated 11.05.2016 passed in LPA No. 718 of 2015 or not? It is necessary to take note of the gist of the fact that review petitioner is an employee of Municipality. He is governed by separate set of rules called Bihar Municipal Officers and Servants Pension Rules, 1987. It is necessary to re-produce Rule 9 of Rules, 1987. Rule 9 reads as under:-

> *"**9.(i)** Municipal servants who are under suspension at against whom*

departmental or judicial proceedings or enquiries have not been concluded on the date but has retired on attaining the age of compulsory retirement, or otherwise shall be paid 75 per cent provisional pension of the pensioner which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement up to the date immediately preceding the date or which he was placed under suspension but no gratuity shall be paid to him until conclusion of such proceedings and the issue of final orders thereon.

(ii) *Payment of provisional pension made under the above provision shall be adjusted against the final retirement benefits sanctioned to such servant upon conclusion of the aforesaid proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional or the pension is reduced or withheld either permanently or for a specified period.*

(iii) *The grant of pension under the aforesaid provision shall not prejudice the operation of Rule 13 where final pension is sanctioned upon the conclusion of proceedings."*

9. Sub Rule 1 of Rule 9 provides for disbursement of 75% provisional pension, and further it prohibits payment of gratuity till conclusion of proceedings and issue of final orders in a departmental inquiry or judicial proceedings.

10. On the other hand, learned counsel for the petitioner is relying on Bihar Pension Rules, 1950 read with the two

decisions cited (supra). At this stage, it is necessary to re-produce Rule 60 of Bihar Pension Rules, 1950. 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 servants 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."*

11. In the aforementioned rule, there is an exclusion clause to the extent that municipal employees are excluded. Therefore, we have to draw inference that Bihar Pension Rules, 1950 are not applicable to the municipal employee like petitioner.

12. Judicial pronouncements cited on behalf of the petitioner is not applicable to the case in hand for the reasons that the cited decision is in respect of Bihar Pension Rules, 1950 and not Bihar Municipal Officers and Servants Pension Rules, 1987. Hence, the decisions do not assist the petitioner's case. Further, it is to be noted that for grant of any service benefits to an employee it all depends on relevant service rules. Apex Court in the case of

Nair Service Society Vs. Dr. T. Beermasthan & Ors. reported in ***(2009) 5 SCC 545*** in Para 48, it is held 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 the particular service rules in the State governing that field. 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 be applied taking 20 vacancies as a block."*

13. Recently, on 23.08.2023, the Apex Court, in the case of ***Central Council for Research in Ayurvedic Sciences & Anr. vs. Bikartan Das & Ors.*** reported in **2023 LiveLaw (SC) 692,** held that relevant statutory rules are required to be taken note of. In the cited case the issue was whether two sets of employees are discriminated in respect of age of superannuation wherein High Court of Odisha had granted benefit to employee to the extent that it amounts to discrimination. Whereas, the Apex Court has reversed the order stating that if two sets of employees are governed by two sets of rules, in such an event, one cannot draw inference that there is a discrimination among two sets of employees who are governed by two sets of different rules. In the present case, it is to be noted that petitioner's is a municipal

employee and is governed by Rules called Bihar Municipal Officers and Servants Pension Rules, 1987 and petitioner cannot ask us to take note of Bihar Pension Rules, 1950 read with the judicial pronouncements which have been dealt with Bihar Pension Rules, 1950.

14. Accordingly, the review petitioner has not made out a case. Hence, the present civil review petition stands dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

abhishekkr/-

AFR/NAFR	NAFR
CAV DATE	NA
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