

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9883 of 2021

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Sri Prem Prakash S/o Late Ajardeo Narain Srivastava, R/o Village- Khudra,
P.s.- Morwan, District- Siwan, presently residing in Road no. 8, vijay Nagar,
Rukanpura, Patna-800014, P.s.- Rupaspur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal and Fisheries Resources Deptt., Govt. of Bihar, Patna
2. The Principal Secretary, Animal and Fishers Resources Deptt., Govt. of Bihar, Patna
3. The Secretary, Animal and Fisheries Resources Deptt., Govt. of Bihar, Patna
4. Director (Dairy) Animal and Fisheries Resources Deptt., Govt. of Bihar, Patna
5. The Accountant General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kr. Sharma, Advocate Mr. Promod Kr. Singh, Advocate Mr. Chetan Kuamr, Advocate
For the Respondent/s	:	Mr. Wasi Ahmad Khan, AC to SC-25

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 23-03-2023 Heard Mr. Arvind Kumar Sharma, learned Counsel

 appearing on behalf of the petitioner and Mr. Wasi Ahmad Khan,

 learned AC to SC-25 appearing on behalf of the State.

2. Learned counsel appearing on behalf of the
petitioner seeks to file hard copy of the writ petition in the
Court. Taking into consideration the writ petition is having been
filed during the period of COVID-19 pandemic, the same is
accepted and kept on record.

3. The petitioner has sought for following relief(s) in



the present writ petition:

“That this writ application is being filed for issuance of appropriate writ or writs, in the nature of the writ of Mandamus, directing and commanding the respondents to resume the payment of monthly pension to the petitioner which had been stopped after the order dated 09.07.2008 (Annexure3) of this Hon’ble Court passed in L.P.A. No. 601/2001 (State of Bihar and Others Vrs. Prem Prakash), but becomes resumable after the decision dated 24.11.2016 (Annexure-4) of this Hon’ble Court passed on C.W.J.C. No. 9091/2014 (Prabhakar Mishra and Others Vrs. The State of Bihar and Others) which stood affirmed under order dated 10.01.2018 (Annexure-5) passed on L.P.A. No. 438/2017 (State of Bihar & Others Vrs. Prabhakar Mishra & Others) and further by the Hon’ble Apex Court under order dated 12.07.2019 (Annexure-6) passed on S.L.P. No. 20892/2018 (State of Bihar & Others Vrs. Prabhakar Mishra & Others) and make payment of the current monthly pension and its arrears with consequential revision admissible and applicable thereto from time to time.”

4. Learned counsel appearing on behalf of the petitioner informed this Court that petitioner had earlier filed C.W.J.C. No. 12048 of 1998 which was allowed vide order dated 31.08.2008, directing the respondent no. 2, the Secretary, Department of Animal and Fisheries Resources, Government of



Bihar, to resume the payment of pension to the petitioner.

Interalia following order was passed:

“5. ...However, in view of the position that the corporation was an instrumentality of the State Government held its entire share, and services of some of its employees were taken over by the State Government it goes without saying that the State Govt., had taken over their services with the intent to grant them the benefit of past services rendered to the corporation. This is further fortified by observations of this Court in C.W.J.C. No. 4616/1995 set out here in above. In that view of the matter, I hereby hold that the petitioner is entitled to pension from the Bihar Govt. which shall be computed on the basis of his services commencing on 10.09.1975.”

5. The State aggrieved by the said order dated 31.08.2000, had preferred Letters Patent Appeal No. 601/2001 (State of Bihar and Others V/s Sri Prem Prakash), before this Court and this Court by passing a reasoned order dated 09.07.2008, had set aside the order dated 31.08.2000 to the extent by which the learned Single Judge gave directions for payment of pension with further direction to the government not to recover any pension paid up to date to the petitioner. The following major directions are being reproduced hereinafter:-

“It does not appear that if the petitioner had retired from the services of the government company, he would have received any pension. In other words, the conditions of service of the petitioner at the



time he was an employee of the government company did not entail pension. It also does not appear that the State had any obligation by reason of any statute or policy decision of the State Government to take in its employment, employees of a government company which was on the verge of liquidation.

In the circumstances upon Govt. Company being liquidated, the petitioner would have lost the opportunity of serving his employer. As a result of obtaining employment in state, the appellant become entitled to all the benefits attached to such employment, one of those benefits was Pension after superannuation in terms of the conditions imposed in Rules for that purpose. There is no dispute that unless an employee has served to Govt. for a period of ten years, in terms of the Rules he is not entitled to pension. The Rules do not recognize any services other than Govt. service.. in the circumstance logical conclusions would be that the petitioner was not entitled to any pension whatsoever from the Govt.”

6. Learned counsel further informed that three similarly situated employees of the Animal Husbandry Department, who were also appointed on regular basis in the Bihar Dairy Development Corporation, had preferred CWJC No. 9071 of 2014 and similar reliefs were sought by the writ petitioners to allow them pension and subsequently the petitioners had amended the prayer of the main writ petition



seeking grant of benefit of 3rd MACP and also for quashing Annexure 16 of the said writ petition, by virtue of which the service of the petitioners of the said writ were counted from 19.03.1986 and not the initial date of appointment in the Dairy Corporation. The writ petition was allowed vide order dated 24.11.2016 and the benefit of 3rd MACP was extended to the legal heirs of deceased employee by granting the benefit from the initial date of engagement or appointment in the erstwhile Dairy Development Corporation. The petitioner has brought the order dated 24.11.2016 in the present writ petition by way of Annexure 4. The relevant portion of the order is reproduced here under:-

“7. ...Because the corporation closed down, state decided to absorb such employees in the Department of Animal Husbandry. In the given facts therefore, the previous service cannot be washed away.

8. ...They will be entitled to the benefit of the 3rd MACP calculating length of service from the initial date of engagement or appointment in the erstwhile Dairy Development Corporation.”

7. The petitioner further informed that the State being aggrieved by the order passed in CWJC No 9071 of 2014 preferred LPA No. 438 of 2017 before the Division Bench after considering the entire gamut of the facts of the cases, relevant



rules and relying on a judgment of this Court reported in **2010 Volume 2 PLJR Page 357 Priya Ranjan Sharma Vs. State of Bihar and others**, the Hon'ble Court directed to count the services rendered in the Corporation for grant of pensionary benefit by treating them to be in as regular government establishment and rejected the stand of the State Government that in case of absorption the principle applicable in case of appointment or fresh appointment will apply. The relevant paragraphs of L.P.A. No. 438 of 2017 is reproduced hereinbelow:-

“12. ...In this case all the employees of the corporation vide notification dated 07.03.1986 were absorbed in the service of the State. It is not a case of appointment, regularization or inducing the employees in to the services of the State Govt. afresh. It is a case of absorbing the services of the employees who were already in regular service.

14. ...We are of the considered view that the writ court has not committed any error in passing the order by holding that in the case of absorption the Principle application in the case of appointment or fresh appointment will not apply.”

8. Thereafter, the State aggrieved by the Division Bench judgment dated 10.01.2018, preferred SLP No. C 20892 of 2018. The SLP was dismissed on 12.07.2019. In this



background learned counsel for the petitioner submitted that similar relief be granted to the petitioner as that of the other three employees in CWJC No. 9071 of 2014 and his case be also considered in view of the fact that the period of service rendered in Bihar Dairy Corporation must be counted for grant of pensionary benefit as the EPT in the favour of the petitioner.

9. Per contra learned counsel appearing on behalf of the State submitted that the facts of the present writ petition is different and similar reliefs cannot be granted to the petitioner.

10. At this stage, petitioner seeks to withdraw the present writ petition with a liberty to file a review petition before the appropriate Bench.

11. This writ petition is disposed of with a liberty to the petitioner to prefer review against the order dated 09.07.2008.

(Purnendu Singh, J)

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