IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.624 of 2018
In
Civil Writ Jurisdiction Case No.7873 of 2016

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Brahmeshwar Nath Tiwary, S/o Late Ramashray Tiwary, R/o C/o Devendra Duvey, Jai Gurudeo Bhawan, Machhali Gali, New Jakkanpur, Patna- 1.

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Agriculture, New Secretariat, Government of Bihar, Patna.
2. The Joint Secretary, Agriculture, New Secretariat, Bihar, Patna.
3. The Director Agriculture, Directorate of Agriculture, New Secretariat, Government of Bihar, Patna.
4. The Director Administration-cum- Additional Secretary, Directorate of Agriculture, Bihar, Patna.
5. The Joint Director Administration, Directorate of Agriculture, Bihar, Patna.
6. The Deputy Director, Administration, Directorate of Agriculture, Bihar, Patna.
7. The District P.F. Officer, Ara.
8. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Jai Prakash Verma, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar Singh, AAG 13
		Mr. Raghwanand, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-08-2023

The writ petitioner-appellant herein sought for pro-rata pension for the period of service rendered in the Agriculture Department; from where he resigned and joined another employment, after superannuation from that other employment. The learned Single Judge rejected the writ petition against which the present appeal is filed.

2. The appellant was initially appointed in the Agriculture Department on 08.04.1964 and continued up to 15.12.1976, during which period he was transferred to various places. On 03.12.1976, the appellant applied and got appointed as a Manager in Bhojpur Rohtas Gramin Bank (for brevity the ‘Bank’). The appellant opted to join the Bank and got himself relieved from the Agriculture Department on 15.12.1976. The appellant joined the post of Manager in the Bank on 18.12.1976. The appellant having not been paid the provident fund for the periods spent in the Agriculture Department, moved the Hon’ble Lokayukta, upon which the provident fund was paid by the State on 16.01.2004. The appellant continued in the Bank and retired from the service of the Bank on 28.02.2004. Five years after retirement, the appellant filed a representation before the Director, Agriculture on 03.07.2009 for grant of pro-rata pension for the period of service rendered in the Agriculture Department.

3. The appellant contended before the leaned Single Judge that he has served the Agriculture Department for

more than 12 years and 08 months, for which he is entitled to pro-rata pension. It was also pointed out that the provident fund payment was not made by the Department in time and the appellant had to approach the Lokayukta. It was urged that when a Government employee who continues in service under the State, followed up with an appointment in a government undertaking, the service has to be taken into consideration for the purpose of pro-rata pension. Reliance was also placed on the judgment of the Hon'ble Supreme Court in **Praduman Kumar Jain v. Union of India; 1994 Suppl (2) SCC 548**.

4. Similar contentions were raised before us, which were seriously opposed by the learned Government Advocate. Grant of pro-rata pension, as argued by the learned Government Advocate, is governed by the decisions of the State Government coming from various circulars and notifications, which stand incorporated in the Bihar Pension Rules, 1950. Memo Nos. 15445 dated 05.12.1962, 1950 dated 18.02.1974 and 5190 dated 30.04.1976 were put forth wherein it is explicitly stipulated that no pensionary benefits would be payable to the persons similarly situated as the appellant. The decision contained in Memo No. 1178 dated 26.12.2017 was also relied on.

5. The learned Single Judge found no merit in the writ petition; which we fully agree with. The appellant had a claim for provident fund with interest, which, admittedly, was paid. The appellant had approached the Lokayukta with a claim for provident fund, at which instance the appellant made no claim for pro-rata pension. The claim for provident fund accrued to the appellant only after severance from the service of the Government. The pro-rata pension also, if permissible, accrues on such severance; which was never claimed along with the claim for provident fund or any time thereafter before he superannuated from the latter employment. Praduman Kumar Jain claimed for pension after his resignation, to join a public sector undertaking within less than three and half months of his resignation.

6. The learned Single Judge found that Memo No. 15445 dated 05.12.1962 stipulated that pensionary benefits would be payable only to those persons who have been transferred from Government service to autonomous bodies in public interest and such transfer is to a Government or semi-government unit and not private institutions. The Notification No. 1950 dated 18.02.1974 enables pensionary benefits to persons whose services were absorbed in public sector

undertakings. Notification bearing No. 5190 dated 30.04.1976 also clarifies that when Government servants are selected for appointment by autonomous units including public sector undertakings, such transfer shall not be in the category of transfer made in public interest. It was also specified that in such cases, there would be no terminal benefits admissible. The learned Single Judge found that the various notifications make it amply clear regarding the unsustainability of the claim of the appellant and leaves no doubt or ambiguity or confusion with respect to the entitlement of the pro-rata pension.

7. The appellant's appointment in the Bank cannot be said to be a transfer in public interest. He applied for the same and on selection, he sought relief from the Government which was allowed. The appellant obviously was looking at advancement of career prospects and the voluntary decision taken to leave the Government service and join a Bank, cannot at all be taken as a movement in public interest. The decision of the Hon'ble Supreme Court in **Praduman Kumar Jain** (supra) was also distinguished. Therein a person who had worked under the Central Government for about 13 years resigned and joined the Central Government undertaking. The refusal to grant pro-rata pension was on the ground of non-

confirmation in the Government service. The Hon'ble Supreme Court found that the appointment was substantive and the requisite length of qualifying service entitled pro-rata pension. As noticed above, immediately after joining the public sector undertaking the resigned employee sought pension, which was permissible under the rules of the Central Government.

8. Herein, the appellant had resigned from the service of the Government and joined the Bank on his own volition. After his severance from service of the Government, he never claimed for pro-rata pension. Even when an application was made for provident fund dues, the claim of pension was not raised. It is trite that a litigant should raise all claims available at the first instance and when raising some of them, if the other claims are left out, then there is a waiver insofar as such claims left out to be agitated. The provident fund claim raised by the appellant was accepted by the State and the amounts paid. He continued in the employment of the Bank and superannuated and it was five years later to the superannuation from the Bank that a claim for pro-rata pension was made. There is gross delay in making the claim and the principle of waiver also stands against the appellant. Further the Bihar Pension Rules does not permit pension in the contingency arising hereunder and

specifically disentitles grant of pro-rata pension.

9. We find absolutely no reason to interfere with the judgment of the learned Single Judge and dismiss the appeal.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
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