

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1088 of 2018

In
Civil Writ Jurisdiction Case No.11587 of 2010

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Awdhesh Dwivedy Son of Late Dr. Jay Narayan Dwivedi Resident of Village-Simri, Post Office-and P.S.-Simri, District-Buxar.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Chief Secretary, The State of Bihar, Patna.
3. The Joint Secretary of the State of Bihar, Patna.
4. The Director, Health Department Deshi Chikitsa Patna.
5. The Secretary, Health Medical Education and Family Welfare and Deshi Chikitsa Department of the Gov
6. The Principal Rajkiya Shree Dhanwantri Ayurvedic College and Hospital, Ahirauli, District-Buxar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nil Kamal, Advocate
For the Respondent/s : Mr. S.D.Yadav (AAG-9)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-08-2023

The appellant claims pension due to his father, who is claimed to have been a government employee. The learned Single Judge who considered the writ petition found that the appellant's father had only service less than 10 years and he is not entitled to pension, under the Bihar Pension Rules, 1950, which require a minimum of 10 years of service under the Government. Insofar as termination of the father of the



petitioner, it was found that the order was passed after the death of the father of the petitioner and hence, no penal consequence arise. It was also noticed that the authorities have not directed for any recovery of amounts paid to the petitioner's father by way of salary.

2. Learned counsel for the petitioner submitted that, in fact the entitlement of pension was found in a batch of writ petitions bearing C.W.J.C. No. 3290 of 2005 and analogous cases. It is also argued that the petitioner's father was appointed as a lecturer by the Managing Committee on 27.08.1976, but, due to some dispute in the Managing Committee, the petitioner's father was again appointed to the post of Medical Officer on 07.03.1986 in the Ayurvedic College and Hospital, Buxar, which was affiliated to the Bihar University, Muzaffarpur. The Private Medical College was taken over by the State Government of Bihar on 09.12.1986 under the Bihar Private Medical (Indian Medicines System) College, Taking Over Act, 1985. It is also stated that from 01.06.1986, the petitioner's father was receiving government salary and it has been asserted that he retired from service at the age of 58 on 11.07.1996. It is hence, contended that even between 01.06.1986 and 10.04.1996, there is more than 10 years service and the petitioner's father is entitled to pension, which is said to



have been declared in the aforementioned case.

3. Further, it is pointed out that in the case of one Dr. Jay Narayan Pandey, similar to that of the petitioner's father, after his death the prayer for pension was allowed to the wife/son of the said employee. The judgment in C.W.J.C. No. 9529 of 2001 *Shanti Devi v. The State of Bihar & Ors.* dated 24.09.2001 is relied on. The wife of Dr. Jay Narayan Pandey in the said petition claimed retiral benefits due to her husband, including DCRG; which was allowed. There is no claim of pension prayed for or granted. Yet another judgment in C.W.J.C. No. 8213 of 2004 dated 18.10.2005 *Rakesh Kumar Pandey v. The State of Bihar & Ors.* is also relied on to argue that there can be no termination after the death of the employee. In Rakesh Kumar Pandey (*supra*) also, the son of the employee had approached the Court against the termination order dated 29.08.2003, when the employee himself was no more as on 10.12.1987. In the case of Rakesh Kumar Pandey, the son of Jay Narayan Pandey, it was held that the order dated 29.08.2003 terminating the service of the petitioner's father was a clear nullity and void in law. Further reliance is placed on the decision in C.W.J.C. No. 14824 of 2013 dated 08.01.2013, *Shamima Akhtar v. The T.M. Bhagalpur University and Others.*



4. We have examined the various decisions placed on record as also called for the records of C.W.J.C. No. 3290 of 2005 and C.W.J.C. No. 4182 of 2006; the later of which was the earlier writ petition filed by the petitioner herein. The batch of writ petitions did agitate the claims of the retired employees and the legal representatives of those, who died in harness or after retirement, for arrears of gratuity as per the rates prescribed, provident fund with statutory interest as also dues under various heads. There were also claims made regarding arrears of salary which was not paid during the service period and under different heads, on account of revision of pay-scales and so on and so forth. The Judges paper of C.W.J.C. No. 4281 of 2006, the writ petition filed by the petitioner herein; did not contain the writ petition in the records, nor was the same produced by the petitioner. However, the writ petition being of the year 2006 and the termination being of the year 2003, necessarily the writ petition would have been filed against the termination order and agitating the claim of pension; which was tagged along with other cases. In the common judgment passed in a number of analogous cases, a learned Single Judge of this Court issued directions as to how the retiring employees should be dealt with, to ensure that their benefits including pension were paid immediately after their retirement. It was also directed that



insofar as the petitioners, there should be award of penal interest at the rate of 18% on any amount due to them, on and after filing of the writ application; which award of penal interest was also stated to be over and above the statutory interest. Hence, the entitlement of the individual petitioners to retirement benefits was not in issue and in the case of the petitioner, his father's entitlement to pension was not at all considered.

5. There was also no consideration of the challenge against the termination order issued in the 2003. The common judgment directed the payments to be made as directed therein and posted the matter as 'to be mentioned' on a later date for the purpose of reporting compliance. Insofar as C.W.J.C. No. 4182 of 2006 is concerned, by order dated 16.11.2009, later to the judgment in the batch of cases dated 28.09.2008, the order passed on 26.09.2008 was referred to, again in a batch of cases, and it was directed that if any of the petitioners are aggrieved, they could file individual contempt applications. Admittedly, no contempt application was filed, presumably due to the claim for pension having not been adjudicated at the earlier point of time. The termination order passed against the father of the petitioner also remained as such. We find that the learned Single Judge, who passed the impugned judgment in the present appeal had noticed that the termination was after the death of the



appellant's father; which we find to be not factually correct from the dates mentioned. The petitioner's father is said to have died on 02.09.2004 while the termination order was dated 29.08.2003.

6. We will now examine the judgments placed on record, which according to the petitioner has identical facts. Dr. Jay Narayan Pandey's wife, Smt. Shanti Devi was the petitioner in C.W.J.C. No. 9529 of 2001 and his son Rakesh Kumar Pandey was the petitioner in C.W.J.C. No. 8213 of 2004. In C.W.J.C. No. 9529 of 2001, the wife of the deceased lecturer claimed death-cum-retiral benefits due to the employee of the Health Department, Government of Bihar. Dr. Jay Narayan Pandey acquired the status of a government servant, on the take over of the private medical college on 01.06.1986 and he continued there, till 10.12.1997; on which date he expired. There was a direction to the respondents to sanction the death-cum-retiral benefits. Smt. Shanti Devi approached this Court *vide* M.J.C. No. 637 of 2002, as a contempt case in which the termination of the employee dated 29.08.2003 was brought on record. In M.J.C. 637 of 2002, the learned Judge declined to proceed under the Contempt of Courts Act but left liberty to the petitioner to challenge the termination order. The son of the deceased lecturer filed C.W.J.C. No. 8213 of 2004, in which the



termination was found to be a clear nullity and void in law. It is to be noticed that Dr. Jay Narayan Pandey had more than 10 years service after the Government took over the private medical college and in any event what was allowed as we see from the records is only the death-cum-retiral benefits and not pension as such. Even if pension has been granted, this does not enable such grant to the appellant's father since he did not have 10 years service after take over by the Government.

7. Shamima Akhtar (*supra*) was also a case where an employee died on 05.06.2012 and after his death, it was the case of the respondents that the deceased was not appointed to a sanctioned vacant post and hence, there could be no question of absorption; which itself was illegal. A learned Single Judge of this Court found that there is no denial insofar as the absorption of the husband of the petitioner, the deceased employee *vide* Annexure-4 or his continuance with regular disbursement of salary from February 2005 till his death in 2012. Only when the petitioner, the wife of the deceased employee came to the Court claiming death-cum-retiral dues, after the death of her husband in-harness, the State and the University raised the question of sanction and absorption of the husband of the petitioner and categorized both as illegal. The Court found the said contention to be not maintainable especially after the death of the



employee.

8. In the present case, it has to be essentially noticed that the petitioner does not have 10 years service under the Government. Admittedly, the Private Medical College was taken over and the salary of the employees of the Medical College were disbursed by the Government only from 01.06.1986. The status of a government servant, for the employees of the Medical College taken over by the Government, commenced only from 01.06.1986. There is also no dispute as to the retirement of the petitioner which occurred on 10.04.1996. The appellant in the writ petition has raised a contention that in fact the retirement of his father was at the 58 years of age on 01.05.1996, thus satisfying 10 years of service. Immediately, it has to be noticed that even according to the writ petition itself the date of birth of the petitioner's father is stated to be 10.04.1938 and the date of superannuation at 58 years would be 10.04.1996. We see absolutely no reason to accept the date of retirement asserted by the appellant in the writ petition. It is also very evident that the appellant's father did not have 10 years of service. Further, it cannot be ignored that the order of termination was on 29.08.2003 and the death of the retired employee was on 02.09.2004. Hence, neither the case of *Shamima Akhtar (supra)* nor that of *Shanti Devi / Rakesh*



Kumar Pandey (supra) applies to the instant case.

9. The learned counsel had also placed reliance on L.P.A. No. 544 of 2012 decided on 14.07.2014, ***Parmeshwar Paswan v. The State of Bihar and Others***. Therein a Division Bench of this Court found that the State Government has power to condone the deficiency of not more than 3 months under rule 106 of the Bihar Pension Rules, 1950. In fact, the petitioner therein had deficiency for more than 3 months despite which the Court itself taking a sympathetic view and also reckoning the consistent efforts made by the petitioner therein by approaching the High Court repeatedly, directed the pension to be granted condoning the deficiency of 7 months.

10. We notice that in the present case the deficiency is of two and half months, however, we have to notice that the petitioner's father was terminated from service on 29.08.2003 and the same was not challenged before the death of the appellant's father on 02.09.2004. The writ petition first filed by the appellant herein, the son of the deceased employee was in the year 2006, two years after the death of his father. It is also pertinent that the writ petition which presumably was against the termination order and claiming pension, was disposed of along with a batch of writ petitions, without considering the specific cause agitated in the writ petition. The



petitioner therein, suffered the order, without pointing out the distinction in the claims raised and neither filed a review nor an appeal from the said judgment. The specific claim raised by the appellant in the writ petition from which the present appeal arises, was not pressed in the earlier writ petition. At this juncture, there is no reason to entertain the said challenge that too by the son of the employee, who did not challenge his termination when he was alive.

11. We find the appeal to be devoid of merit for the reasons stated herein, in addition to those stated by the learned Single Judge and also in modification of the specific fact noticed of the termination having occurred after the death of the appellant’s father; which is not correct.

12. The LPA stands dismissed without any order as to costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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