

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15430 of 2022

1. Krishn Mohan Shastri @ Krishan Mohan Shastri S/o Late Parmeshwar Dayal, the General Secretary, Rajya Path Parivahan Kamgaar Union, Resident at the house of R.N. Singh, Near Ganesh Market, New Jakkanpur, P.S. Jakkanpur, District- Patna.
2. Laxmishwar Prasad Singh, S/o Late Darpan Prasad Singh, Resident of Village- Sardiha, P.S.- Simari Bakhtiyarpur, District- Saharsa.
3. Vibhash Chandra Mishra, S/o Late Sachitanand Mishra, Resident of Village- Karora, P.S.- Bausi, District- Banka.
4. Chitralkha Devi, W/o Late Shivnandan Pandey, Resident of Village- Modhipur, P.O.- Kaitha, P.S.- Bath, District- Bhagalpur.
5. Adbhud Prasad S/o Late Durga Prasad, resident of Village- Ajamgadh, P.S.- Sitamarhi, District- Sitamarhi.
6. Ram Bachan Sharma, S/o Late R15430ang Bahadur Mahraj, Resident of Village- Khaira Batbiga, P.S.- Tekari, District- Gaya.

... .. Petitioner/s

15430Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Transport Department, Government of Bihar, Patna.
3. The State of Jharkhand, through the Chief Secretary, Government of Jharkhand, Ranchi.
4. The Secretary, Transport Department, Government of Jharkhand, Ranchi.
5. The Administrator, the Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna- 800001, Bihar.
6. The Chief of Administration, the Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna- 800001, Bihar.
7. The Chief Account Officer, the Bihar State Road Transport Corporation, Pariwahan Bhawan, Birchand Patel Path, Patna- 800001, Bihar.
8. The Regional Commissioner, Employee Provident Fund Organization (EPF), R- Block, Patna- 800001, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satya Prakash Sinha, Advocate
For the BSRTC	:	Mr. Sanjay Kumar Ghosarvey, Advocate
For the EPFO	:	Mr. Prashant Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 15-05-2023

Heard the parties.



Mr. Prashant Kumar Sinha represents the respondent no. 8 while Mr. Sanjay Kumar Ghosarvey represent nos. 5 to 7.

The prayer is for issuance of an appropriate writ, order, or direction, commanding the respondents to send the list of the employees of the Bihar State Road Transport Corporation (who retired from April, 1995 till date and died during the course of the service) to the Regional Commissioner, Employees Provident Fund Organization (EPF), R-Block, Patna, and other consequential benefits concerning payment of pension of the employees of the Corporation which is entitled to them.

A comprehensive counter-affidavit has been filed on behalf of the respondent no. 8 and it is relevant to incorporate paragraphs 4 to 9 of the said affidavit which reads as follows:

“4. That the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was legislated by the Parliament of India in the year 1952 with an intention to provide for institution of Provident Funds, Pension Fund and Deposit Link Insurance Fund for the employees in factories and other establishment. The benefit of Provident Fund and other schemes are to be provided upon deposit of contribution incorporating



a share from the wages of the employees as well as equivalent contribution from the employer in the concerned Provident Fund Account maintained by the E.P.F.O. As per Section-17 of the Act, exemption from the applicability of the Act has to be provided to those establishment, whose employees are in enjoyment of other provident fund benefits, which on the whole are not less favourable to the employees than the benefit provided under this Act or any scheme in relation to the employees in any other establishment of similar nature. Later on, by the amendment made in the Act in the year 1988, a new section 16 (1) (c) was added, which stipulates that the Act shall not apply to any other establishment set-up by any Central, Provincial or State Act and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

5. That now coming back to the facts relating to the Bihar State Road Transport Corporation where the Petitioners were employed, the



Corporation has been established by the Govt. of Bihar under Section-3 of the Road Transport Corporation Act, 1952 w.e.f. 1 May, 1959. Initially, the coverage of the Act was granted to the establishment, in the year 1960, the Corporation framed its own Regulation of Provident Fund and sought exemption from the Act under Section-17. The exemption was granted to the establishment as the benefits provided under the Regulation were not less favourable than the benefits provided under the Act. Later on, when certain contribution or administrative charges were not remitted in the account of the E.P.F.O. by the Corporation, the E.P.F.O. issued notice under Section-8 (f) of the act on 05-02-1992, with a direction to the Manager, Bank of Borada, Dak Bungalow, Patna to not to make any payment out of the amount lying in the credit in the account of the Corporation being maintained by the Bank. The Bank was further directed to transfer the above amount in the credit of Regional Provident Fund Commissioner, Bihar, Patna. The



Corporation challenged the aforesaid notice under Section-8 (f) of the Act before this Hon'ble Court by filing a writ application bearing C.W.J.C. NO. 1803/1992. The writ application was disposed of vide order dated 27-03-1992 with an observation reproduced herein below-

'In our opinion, in view of the said Regulation and in view of the amended provision of Section-16 (1) (C) of the Act, as amended by Act-33 of 1988 the Petitioner-Corporation was fully covered by the said Section-16 (1) (C) of the Act and from the said amending Act coming into force the said Act was not applicable to the Petitioner-Corporation. Accordingly, no such notice could be issued under the provisions of Section-8 (f) of the said Act. The same was without jurisdiction. Accordingly, we quash the same. The application is allowed accordingly.'

From the aforesaid observation of this Hon'ble Court, it is clear that the Act is not applicable upon the establishment and in view of the observation made by this Hon'ble Court as well as the provision



contained in Section-16 (1) (C) of the Act, the Corporation was excluded from the purview of the Act wef 01-08-1988 and the same was communicated through letter No. 669 dated 18-09-1992.

A photocopy of the order passed by the Hon'ble Patna High Court in CWJ.C. NO. 1803/1992 and letter No. 669 dated 18-09-1992 are annexed and marked as Annexure-A & A/1

6. That in view of the above, it is clear that the Bihar State Road Transport Corporation is excluded from the purview of the EPF & MP Act, 1952 w.e.f. 01-08-1988 and prior to 01-08-1988, it was under exemption as it was running its own Provident Fund Trust. During the period of exemption, the Corporation was required to transfer the contribution with regard to Family Pension Scheme, 1971, to the EPFO. Thus, prior to 01-08-1988, while the Provident Fund was being managed by the Corporation itself, the Family Pension Fund was being managed by



the EPFO. However, after exclusion w.e.f. 01-08-1988, the EPFO is not even managing the Family Pension Fund.

7. That after almost 21 years of disposal of CWJC No. 1803/1992, certain employees filed Civil Review No. 38/2013 for review of the order passed in CWJC No. 1803/1992 but the review application has also been dismissed by the Hon'ble Division Bench of this Hon'ble Court vide order dated 31-08-2017.

A photocopy of the order dated 31-08-2017 passed in Civil Review No. 38/2013 is annexed and marked as Annexure-B

8. That in the year 1995, the Employees Pension Scheme, 1995 was implemented but since the Bihar State Road Transport Corporation is excluded from the purview of the EPF & MP Act, 1952, none of the employees of the Corporation are members of EPS 1995 and they cannot claim any pension under the said scheme.

9. That with regard to the



statement made in paragraph no.1,2,4,5 & 6 of the writ application, it is stated that the petitioners are not entitled for any pension/ family pension after 1988 because the employer establishment of the petitioners has been excluded from the purview of the EPF & MP Act in terms of section 16 (1) (c) of the EPF & MP Act, 1952 and also in compliance of the order passed by this Hon'ble Court. The other similarly situated employees preferred CWJC No. 16033/2016 and finding that they are not entitled for any pension under the Employees Pension Scheme, 1995 limited their prayer for payment of the amount of withdrawal benefit of the contribution deposited under the Family Pension Scheme, 1971. The Hon'ble Court disposed of the writ application with a direction to refund the amount of withdrawal benefit, thereafter the petitioners of the said case have submitted their claim for withdrawal benefit and they have already been paid with withdrawal benefit amount.

A photocopy of the order passed in CWJC No.



*16033/2016 is annexed and
marked as Annexure-C.”*

This Court has also perused the order dated 08.01.2018 in CWJC No. 16033 of 2016, and the relevant/concluding order is incorporated herein below:

“6. In view thereof, the writ petition stands disposed off with liberty to the petitioners to apply in the manner required under the relevant statutes/rules with regard to final withdrawal of the Provident Fund amount before the authority concerned, that is, either the respondents no. 6 to 8 or 9, in accordance with law in the required proforma. Upon the same being done, the authorities would look into the matter and verify it from the records. Whatever amount is found payable to the petitioners, shall be paid to them along with statutory interest, in accordance with law, within three months from the date of filing/completing the required formalities by the petitioners.”

In the light of the aforesaid facts, Mr. Prashant Sinha submits that in case there is/are any contribution of the



petitioners herein, if the same said claim is made and the BSRTC (respondent nos. 5 to 7) forwards any such application that will be duly considered and decision will be taken immediately.

The petition accordingly stands disposed of with the aforesaid liberty to the petitioners.

(Rajiv Roy, J)

Prakash Narayan /
Sunil

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