

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1527 of 2017

In

Civil Writ Jurisdiction Case No.19661 of 2015

Manju Devi, wife of Sudhir Kumar Mishra, resident of Village- Bhatwaliya,
P.S.- Sangrampur, District- East Champaran.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Human Resources Development,
Government of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development
Department, Government of Bihar, Patna
4. The District Magistrate, East Champaran Motihari.
5. The District Programme Officer, Establishment, East Champaran Motihari.
6. The District Provident Fund Officer, East Champaran Motihari.
7. The Area Education Officer, Block- Chakiya, District- East Champaran
Motihari.
8. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Pramod Mishra, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13
For the A.G.	:	Dr. Anand Kumar, Advocate
		Mr. Rajan Prakash, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 17-03-2023

Heard learned counsel for the appellant and learned
counsel for the respondents.

2. The present L.P.A. is directed against the judgment
dated 21.09.2017 passed in CWJC No. 19661 of 2015 by the



learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the appellant has been dismissed both on merits as well as on the ground of delay and laches.

3. In the writ petition, the appellant-petitioner has sought following relief :

“i) A certiorari setting aside the order passed by Respondent District Programme Officer (Establishment) contained in Memo No. 2048 dated 30.05.2014 whereby and where-under the Respondent District Programme Officer (Establishment) has in a very casual, mechanical and copy-cat manner rejected the claim of the late mother of this petitioner namely Mostt. Malti Kuwar for payment of her family pension only upon the grounds of earlier rejection of such claim, without application of his own judicial mind in compliance of order of this Hon’ble Court dated 21.08.2013 passed in C.W.J.C. No. 7366/2010, which also amounts to contempt of this Hon’ble Court.

ii) A Mandamus commanding and directing the Respondents concerned to make payment of whole amount of family pension of deceased mother of the petitioner as both father and mother of this poor petitioner who is their only legal heir have died only making application and prayers for payment of family pension but not a single farthing has been paid either to the deceased employee Arun Deo Pandey or as family pension to his widow Mostt. Malti Kuwar, who died in destitute due to non-payment of her rightful family pension.



iii) And/or any other relief/relief's for which the petitioner is found entitled to in the facts and circumstances of this case."

4. Brief facts of the case are that the father of the appellant was appointed as Assistant Teacher on 03.03.1962 and posted as such in Primary School, Sirni, Areraj, East Champaran, Motihari. He died on 07.05.1992 while working as Headmaster in Middle School, Kurhiya, Chakiya, East Champaran, Motihari. Thereafter, the mother of the appellant represented her case for family pension and other death-cum-post retiral benefits of her husband before the authorities. Vide letter no.572 dated 28.02.2007, the then District Superintendent of Education, East Champaran called for the service book and other relevant information so that family pension and other retiral dues might be paid to the widow of deceased employee. Pursuant thereto, the Area Education Officer, Chakiya wrote a letter bearing no.28 dated 23.01.2008 requesting the then District Superintendent of Education, Motihari to take steps for payment of family pension and other retiral dues to the widow of deceased employee after obtaining the duplicate service book as the original service book of the deceased employee was not available. On 23.06.2008, the widowed mother of the appellant filed an application before the then District Superintendent of



Education, East Champaran, Motihari with a prayer to grant her family pension and make payment of due amount of her husband. Again on 03.09.2008, the widowed mother of the appellant sent her representation with the same prayer. Thereafter, again on 08.09.2008 the mother of the appellant sent an application giving all the details of the service of her husband to the respondent Director, Primary Education, with the same prayer. When the grievance of mother of the appellant was not redressed, she moved before this Court by filing CWJC No.5467 of 2009, which was disposed of vide order dated 24.04.2009 with a direction to the District Superintendent of Education to pass appropriate order on the representation of the mother of the appellant. Pursuant to the aforesaid direction, the District Superintendent of Education vide Memo No.1356 dated 05.10.2009 rejected the claim of mother of the appellant holding that pension claim was not maintainable in the case of the appellant's father because the father of the appellant absconded prior to implementation of pension scheme, which was again challenged by the mother of the appellant in C.W.J.C. No. 7366 of 2010. The Court again disposed of the writ petition vide order dated 21.08.2013 with liberty to place her case before the District Programme Officer (Establishment). Pursuant to such



remand, the order contained in Memo No.2048 dated 30.05.2014 has been passed by the District Programme Officer (Establishment), East Champaran, Motihari, which has been challenged in CWJC No.19661 of 2015. The learned Single Judge having considered the matter in its entirety, dismissed the aforesaid writ petition vide judgment dated 21.09.2017, which is under challenge in the present LPA.

5. The learned counsel for the appellant has submitted that the case of the appellant was not properly considered by the respondents authorities while rejecting the claim of the appellant. It is admitted position that the deceased father of the appellant was in service under the respondents from 03.03.1962 to 07.05.1992 (till his death) and during that period, no adverse order either of dismissal or removal from his service was passed and the appellant being the legal heir and representative of the deceased employee is entitled to get the death-cum-retirement benefits and this factual aspect of the matter could not be considered properly by the learned Single Judge while dismissing the connected writ petition. The learned counsel further submitted that the father of the appellant became mentally ill and ultimately he died on 07.05.1992 while in service. The deceased mother of the appellant continuously



pursued the matter in the department immediately after death of her husband-deceased employee but always she was said that her claim was endorsed before the respondent Accountant General for finalization of her family pension and other service benefits but till her death not a single farthing was paid to her under service benefit of her deceased husband and, as such, there was no delay in pursuing the matter either by the deceased mother or by this appellant.

6. *Per contra*, the learned counsel for the respondents has submitted that no interference in the impugned judgment of learned Single Judge is called for as the same has been passed after duly considering all the materials on record. Thus, no interference in the matter is required by this Court.

7. Having considered the material available on record and further considering the rival submission, in the present case, questions for consideration are as follows :

(i) Whether the appellant as legal heir to the deceased teacher is entitled to any service benefit including death-cum-retiral benefit in the backdrop of the fact that the deceased teacher had rendered service in the then Primary School (Private School) during the period from the year 1962 to 1970 and the State Government issued a Notification in the year 1976 taking over the Private Schools with retrospective effect i.e. with



effect from 01.01.1971.

(ii) Whether the claim of the mother of the appellant before the authorities after 15 years of the death of her husband is grossly barred by delay and laches?

8. A counter affidavit has been filed on behalf of the respondent no.3 i.e. Director, Primary Education, Bihar, Patna. It would be relevant to quote paragraph 7 of the said counter affidavit :

“7. That it is submitted that from perusal of the report submitted by the concerned District Education Officer, East Champaran vide letter no. 2838 dated 19.12.2022 and by the District Programme Officer (Establishment), East Champaran vide letter no. 4464 dated 20.12.2022, the following facts have emerged :

(a) Middle School, Kuriya Block-Chakiya, East Champaran, Motihari was taken over by virtue of Taking Over Act, 1976, which had been effective from 01.01.1971 and it is at the said school that the appellant's father was appointed as teacher; but as per the scanty available records appertaining to the said school, which are of the year 1983-84, it is nowhere that the name of appellant's father namely Arun Deo Pandey (Late) finds mentioned.

(b) In such backdrop it would be of much relevant to submit that the appellant/petitioner has also not brought on record, the appointment letter, by which her father would have been appointed, as



the same would have much bearing on the issue at hand as the school where the appellant's father is said to have been appointed, had been a committee managed school which had been Taken Over by the State Government w.e.f. 01.01.1971.

(c) And if the fact as stated by the appellant that her father had been appointed in 1962, is to be considered, in that situation, the said school at which appellant's father is said to have been appointed was at relevant point of time was a committee managed school and prior to 01.01.1971, there had been no liability of such committee managed school upon the respondent”.

9. Thereafter, 2nd supplementary counter affidavit has been filed on behalf of respondent no.3 in terms of order dated 10.02.2023 of this Court. It would be relevant to quote paragraph nos. 5 to 7 of the said counter affidavit :

“5. That it is submitted that after perusal of the case, the same was for obtaining the required information i.e. the factual status of Middle School, Kuriya, East Champaran and its connected documents that vide memo no.191 dated 15.02.2023, a two member Committee had been constituted.

And after inspection of the school in question by the said committee, a report vide letter dated 17.02.2023 had been submitted by the said committee, from perusal of which the following fact position has surfaced.

(a) No document/service details of



teachers, at the time of taken over of Middle School, Kuriya, East Champaran could be traced at the office of the said school, nor any record appertaining to the same could be available at the office of the District Education Officer, East Champaran.

(b) The said issue had also been got enquired from the concerned Block Education Officer as well as from the local residents, who had also been unable to furnish any material/information with regard to the service details of teachers of the said school, (at the time of taking over of the said school).

(c) Further no material could be traced / located showing that any action had been taken by the managing committee against Late Arun Deo Pandey (father of the appellant) for his unauthorized absence.

*6. That further it is most respectfully submitted that the relevant provision dealing with the consequences of taking over, as provided under the **Bihar Non- Government Elementary Schools (Taking Over of Control) Act 1976** under its clause 4 provides as follows:*

(1) All the assets and properties whether movable or immovable owned or possessed by the schools taken over by the State Government under section 3 including lands, buildings, documents, books and registers relating to the schools shall stand transferred to and be deemed to have come into the possession and ownership of the State Government.



(2) Every officer, teacher or other employee holding any office or posts in the school taken over by the State Government shall be deemed to have been transferred to and become an officer, teacher or employee of State Government with such designation as the State Government may determine and shall hold office by the same tenure, at the same remuneration and on the terms and conditions of service as he would have held before the taking over of the said school and shall continue to do unless and until such tenure, remuneration, terms and conditions of service are duly altered by the State Government.

(3) The service of employees of local bodies working on deputation in the office of the District Superintendent of Education, Sub Divisional Education Officer cum Municipal Education Officer and those working in the education section of Patna Municipal Corporation shall be deemed to have been transferred to and taken over by the Government and such employees shall in case of their opting to Government service, be deemed to have become Government servants w.e.f. the date of enforcement of this Act.

7. That thus it would manifest that notwithstanding, the sincere and bonafide efforts which had been undertaken, it is still that no evidentiary material with regard to service details of teachers, at the time of taking over of Middle School Kuriya East Champaran, could be located/traced”.

10. It appears that service of Late Arun Deo Pandey had



not been taken over by the State in terms of Taking Over Act, 1976 as there is no proof of appellant's father being available in the office since July, 1970 as he remained absent unauthorizedly and abandoned service and he ceased to be in service as on 01.01.1971 to make him entitled to service benefits. The scheme of grant of family pension to teachers of Elementary School was introduced on 01.04.1976 and the facts on record show the father of the appellant abandoned from his post and his duty since July, 1970.

11. From the facts and circumstances, it appears that the father of the appellant is said to have joined government service in the year 1962 and since the year 1970, he did not report for duty and as claimed later in the year 1992, he passed away. Thereafter, only in the year 2007, the mother of the appellant filed an application for pensionary benefits. Therefore, this Court is of the view that the deceased teacher is not entitled to any service benefits like retirement benefits etc. since he had rendered service in the then Primary School (Private School) only during the period from the year 1962 to 1970 and, thereafter, in the year 1976, when the State Government had issued a Notification for taking over the Private Schools with retrospective effect i.e. with effect from 01.01.1971, the services



of deceased were not taken over by the State since he had abandoned service.

Moreover, the appellant has failed to bring on record the appointment letter of his deceased father or any other relevant document which would show the deceased father was engaged and working when the school was taken over by the State Government. Thus, the appellant has not been able to bring out a case in her favour.

Then, there is no explanation for inordinate delay in bringing the matter before the authorities and the learned Single Judge has rightly taken note of this fact while passing of the impugned judgment, relevant paragraph of which is reproduced below for reference :

“Having considered the matter, the Court can only observe that once the petitioner, after putting in only 8 years of service, did not report for duty and after 22 years died, it is clearly a case of willful abandonment. Further, even the mother of the petitioner having moved the authorities for the first time in the year 2007, i.e., after 15 years of the death, the case is grossly barred by delay and laches. The Court would also indicate here that now it is the daughter of the deceased, who has moved before the Court”.



12. In the light of discussion made hereinabove and under the facts and circumstances of the case, it cannot be said that the learned Single Judge has committed any error which calls for interference by this Court in exercise of the appellate jurisdiction. We are in agreement with the view taken by the learned Single Judge.

13. Accordingly, the present Letters Patent Appeal is dismissed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	21.02.2023
Uploading Date	17.03.2023
Transmission Date	N.A.

