IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3932 of 2018
In
Letters Patent Appeal No.1160 of 2005

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Vimala Devi Wife of Late Dr. Indrakant Jha, Resident of Village-Raiyam (West), P.S. Bhairab Asthan, Dist-Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through R. K. Mahajan, Principal Secretary, Department Of Education, Bihar, Patn
2. Sushil Kumar Director, Higher Education, Bihar, Patna.
3. Lalit Narayan Mishra Institute of Economic Development and Social Change, Patna through Dr. N. Vija
4. Dr. N. Vijayalakshmi, Director, Lalit Narayan Mishra Institute of Economic Development and Social C

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Shankar Kumar Choudhary, Advocate
For the Opposite Party/s: Mr.Ashutosh Ranjan Pandey - AAG 15

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-09-2023

Heard I.A. No. 02 of 2023 filed by the opposite party nos.1 and 2 to modify or recall the order dated 17.08.2023. The order dated 17.08.2023 reads as under:-

"Heard the matter for some time.

2. Core issue involved in the present lis is whether petitioner who is legal heir of the Respondent Institute employee is entitled to relief of retiral benefits of her husband or not? Husband of the petitioner had joined the Institute on 01.10.1975. He attained the age of superannuation and retired from service 31.01.2001. In the meanwhile, State Govern-

ment took a policy decision while introducing Act called 'Bihar Private Educational Institutions (Take Over) (Repeal and Amendment) Act, 1991' read with communication dated 19.01.2001 of the State Government to the Institute. Deceased-employee is entitled to pension from the date of his retirement on 31.01.2001 till he died on 15.04.2023 and thereafter, petitioner, who is wife of the deceased-employee is entitled to family pension. In this regard, a detailed speaking order shall be passed and placed on record as to how deceased-employee as well as legal heir is entitled to pension and family pension. Further, necessary calculation shall be made and placed on record for the reasons that the present matter is pending consideration for the last five years. That apart, deceased-employee retired on 31.01.2001 and has died on 15.04.2023. If the concerned respondent fails to settle the petitioner's grievance insofar as pension and family pension before the next date of hearing, he is hereby directed to pay cost of Rs. 1000/- per month from the next day onwards till compliance.

3. Re-list this matter on 24.08.2023."

2. Learned counsel for the State pointed out from the interlocutory application that deceased Dr. Indra Kant Jha had filed C.W.J.C. No.12068 of 2000 seeking certain reliefs including the retiral benefits and it was decided on 01.04.2005. Thereafter, L.P.A. No.1160 of 2005 was filed on behalf of the State and it was decided on 19.10.2006. The ultimate decision on 19.10.2006 reads as under:-

"The respondent-original petitioner was working at the relevant time in the Institution as Reader and he superannuated before the Rules pertaining to service conditions came to be framed and enforced. However, so far as the old rules, as well as, the new rules framed are concerned, the payment of retiral dues has to be made and Contributory Provident Fund, as well as, gratuity wold be payable under the old Government rules. Therefore, it has been so directed by the learned Single Judge, and in our opinion, rightly so, more so when the Government has written a letter to the Insitutute on 19.01.2001 that the original writ petitioner-respondent, herein, shall be treated as employee of the State Government. Obviously, therefore, all retiral dues permissible under the rules are available to the respondent or original writ petitioner.

In the result, this appeal shall stand dismissed at this stage itself. No costs."

3. Reading of the order dated 19.10.2006, it is evident that the concerned authority was required to take note of the Old and New Rules for the purpose of payment of retiral dues and contributory provident fund as well as the gratuity. Further, observation that treat the deceased employee as an employee of the State Government and, thereafter, all retiral dues permissible under the rules available to the respondent-writ petitioner and State Appeal was dismissed.

4. Parallelly, the petitioner filed C.W.J.C. No.682 of 2003 and it was decided on 14.05.2009. The petitioner grievance

for claim of interest for the delayed payment of retiral dues was before the respondent no.3. In this regard, petitioner was permitted to file representation. Thereafter, the concerned respondent no.3 was required to dispose of the same by reasoned order. Petitioner feeling aggrieved by the order dated 14.05.2009 passed in CWJC No. 682 of 2003 preferred L.P.A. No.1280 of 2010 and it was decided on 05.04.2013. It is necessary to reproduce the relevant portion of the order dated 05.04.2013. It reads as under:

> *"We have considered the submissions on behalf of the parties. The service conditions under the Institute before take over did not provide for pensionable service. After take over by virtue of the Government notification of 13.11.1990 the employees were deemed to be Government servants pending determination of their service conditions and which would include issue of pension. The conditions of service decided in 2004 did not provide the services to be pensionable. <u>In C.W.J.C. No.12068 of 2000 the petitioner accepted his status of non pensionable service and collected the contributory provident fund and gratuity</u> reserving the right to claim interest only in C.W.J.C. No.682 of 2003. The observation in LPA No.1160 of 2005 in context of the letter dated 19.01.2001 cannot be seen in isolation to the complete exclusion of Clause-11 of the notification dated 13.11.1990 not noticed providing that his service condition would be determined later which did not provide for pension.*
>
> *We thus find no merit in the Appeal except to the extent of any claims for interest*

> *on delayed payment of gratuity and provident fund as directed by the learned Single Judge.*
>
> *The Appeal is dismissed with the exception."*

(Underline Supplied)

5. Reading of these two set of C.W.J.C. and L.P.A., *prima facie,* the deceased employee has not approached this Court with the clean hands in apprising the later decisions passed in C.W.J.C. No.682 of 2003 and L.P.A. No.1280 of 2010. There is a clear finding that 'the conditions of service' decided in 2004 did not provide the services to be pensionable and such position has been accepted by the petitioner and the same has been recorded in L.P.A. No.1280 of 2010. Therefore, there is finality insofar as whether deceased employee's post was pensionable or non- pensionable. The finding is that it is not pensionable. Instead of questioning the validity of L.P.A. order dated 05.04.2013 either in filing review petition or in approaching the Apex Court, the petitioner proceeded to initiate contempt proceedings insofar as violation of the order of this Court dated 19.10.2006 passed in L.P.A. No.1160 of 2005 which is simply not permissible in view of aforesaid facts. Accordingly, I.A. No.02 of 2023 stands allowed in recalling the order dated 17.08.2023.

6. In view of the above facts and circumstances, question of initiating any contempt proceedings against the respondents for non-compliance of the order dated 19.10.2006 passed in- L.P.A. No.1160 of 2005 is not warranted. Accordingly, the present proceeding of MJC-contempt stands dropped.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A