

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4955 of 2022

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Anil Kumar, S/o Late Kesto Das, Resident of Village- Murila Narayanpur,
P.O.- Ram Nagar, P.S.- Ram Nagar, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Pr. Secretary, Art Culture and Youth Department, Government of Bihar, Patna-1.
3. The Director General, Bihar State Sport Authority, Moinul Haque Stadium, Rajendra Nagar, Patna-16.
4. The Director cum Secretary, Bihar State Sports Authority, Moinul Haque Stadium, Rajendra Nagar, Patna-16.
5. The Accountant General (A and E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jayant Kumar Karn, Advocate
For the Respondent/s : Mr. Anant Prasad Singh, SC-15

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 13-08-2024

Heard the parties.

2. The petitioner superannuated on 31.08.2021 while holding the post of Messenger, Bihar State Sports Authority, Patna (hereinafter referred to as ‘the Authority’) has invoked the jurisdiction of this Court seeking a direction to the respondent authorities to settle all the retiral benefits and other dues of the petitioner at the earliest. The petitioner also sought a direction upon the respondents to ensure payment of death-cum-retiral gratuity as well as the balance amount by way of MACP worth Rs.7,50,000/- along with the statutory interest.



3. The petitioner was initially appointed on temporary basis in the Bihar State Sports Council in the year 1983 vide Office Order dated 28.07.1983. The services of the petitioner was regularized vide Office Order dated 21.04.1986, the copy of which is marked as Annexure-P/2. In the year 1986, the Bihar State Sports Council was dissolved and the petitioner along with other three employees, namely, Shri Kameshwar Prasad Singh, Shri Nathu Ansari and Shri Sunil Kumar shrivastava were adjusted in the Bihar State Sports Authority, Patna vide letter dated 09.09.1986.

4. When the petitioner and other similarly situated persons were denied the dearness allowance, bonus, Central Pay Scale and to maintain group insurance and provident fund, they approached before this Court in CWJC No. 3298 of 1990, which came to be disposed of on 02.03.1994 directing the petitioner to file a representation bringing on record the entire facts. In compliance with the order of this Court, the petitioner as well as other similarly situated employee were accorded all the benefits as available to the employees of the State Government vide order dated 27.04.1994 and 28.12.1994.

5. On being found satisfactory service, the Special Secretary to the Government, in the Department of Art, Culture



and Youth communicated the decision of the Establishment Committee to absorb and regularize the services of the petitioner and other similarly situated employees against the post of Messenger vide letter dated 27.02.1997. Pursuant thereto, the services of the petitioner and others were absorbed and regularized vide Office Order No. 26 dated 03.05.1997.

6. Learned Advocate for the petitioner drew the attention of this Court to the office order, as contained in Letter no. 26 dated 03.05.1997 marked as Annexure-P/8 and contended that the Government had taken a decision that the petitioner and others shall be allowed the revision of pay scale and all the benefits on par with the 4th Grade employees of the State Government. Accordingly, vide letter dated 08.01.1998 issued by the Director-cum-Special Secretary, Government of Bihar to the Secretary, Bihar State Sports Authority and allowed to revise the pay scale to the petitioner and others.

7. In the meanwhile, the petitioner again approached this Court in C.W.J.C. No. 7042 of 1998 praying therein a direction to the respondent authorities to deduct/maintain the petitioner's Group Insurance, LIC and provident fund amount, which have already been deducted; and for a further direction to pay balance amount for the period



between 1989 to 1997. Pursuant to the direction of the Hon'ble Court, the aforementioned grievance of the petitioner has been redressed and thus the petitioner and other identically persons continuously discharged their duties peacefully.

8. Adverting to the aforesaid facts, learned Advocate for the petitioner contended that out of four employees, including the petitioner, who were appointed and regularized in the similar manner, one Nathu Ansari superannuated and he has not been allowed retiral benefits, including the group insurance, LIC, P.F., Gratuity and pension, as also the time bound promotion, he approached before this Court in C.W.J.C. No. 15774 of 2007, which came to be dismissed vide order dated 01.05.2015 (Annexure-P/12). The said Nathu Ansari being aggrieved preferred LPA No. 205 of 2016 and the Division Bench of this Court vide its order dated 13.09.2017 has set aside the order of the learned Single Judge and allowed the appeal directing the respondents to treat the petitioner to be a Government Employee and grant him all the benefits accruing to a Government Employee by virtue of his absorption on 03.05.1997.

9. In the meantime, the petitioner moved this Court in C.W.J.C. No. 251 of 2019 for grant of benefits under the ACP



Scheme; the petitioner and one another similarly situated person have been allowed the benefit of ACP. During the pendency of the writ petition, the benefits accrued under the ACP scheme has also been accorded to the petitioner. Despite the aforementioned facts, the claim of the petitioner for death-cum-retiral gratuity has been denied.

10. A counter affidavit has been filed on behalf of respondent no.2. Learned Advocate for the State contended that the services of the petitioner vide Office Order No. 26 dated 03.05.1997 was adjusted and regularized in the Authority w.e.f. 26.03.1987 on the sanctioned post of Messenger, which was equivalent to the post of orderly, simultaneously, he has been extended all the benefits of revised pay scale and all other benefits available to the Class-IV State Government employees. The Services of the petitioner was merely adjusted and regularized in the Authority, but services of the petitioner has not been regularized as a substantive and permanent employee of the State Government.

11. It is next contended that in the year 2000, a separate rule governing the service condition of the employees was framed, which is known as Bihar State Sports Authority Rule, 2000 (hereinafter referred to as 'the Rule, 2000'). Rule 15



of the aforesaid Rule clearly stipulates that benefit of pension and gratuity will not be admissible to the employees of the Authority, but they will be covered by the Contributory Provident Fund and Group Insurance Scheme with the approval of the State Government. With regard to benefit of MACP, it is submitted that the authority have already granted the benefit of ACP/MACP as admissible to the petitioner.

12. This Court has anxiously heard the learned Advocate for the respective parties. The contention of the State have no basis for the simple reason that while considering the claim of identically situated person in the case of **Nathu Ansari Vs. The State of Bihar & Ors (L.P.A. No. 205 of 2016)**, the learned Division Bench of this Court in its penultimate paragraph has held as follows:

“Accordingly, we are of the considered view that by applying the provisions of Clause-15 of the notification dated 10th of April, 2000 the rights that had accrued to the petitioner by virtue of his being absorbed as a Government Servant on 3rd of May, 1997 cannot be taken away. That apart, when all these factors were considered by us while hearing the matter on 12th of July, 2017 and when the notification Annexure-A dated 10th of April, 2000 were brought to our notice, we directed the petitioner to indicate as to whether he has availed all the benefits accruing to him by virtue of this notification



dated 10th of April, 2000 and at that point of time, we were of the considered view that prima facie the petitioner cannot take the benefits of both the conditions of absorption and the notification dated 10th of April, 2000. In pursuance to the order passed on 12th of July, 2017 the petitioner has filed a supplementary affidavit and in para 12 of the said supplementary affidavit specific averments have been made by the petitioner to say that none of the benefits accruing to an employee by virtue of a Government notification dated 10th of April, 2000 was made available to the petitioner nor he has availed any of such benefits. To this supplementary affidavit, State Government has also filed supplementary counter affidavit on 25th of August, 2017 and there is nothing in this affidavit to show that the petitioner was granting the benefits by virtue of the notification dated 10th of April, 2000. Therefore, it is a case where treating the petitioner to be a Government Employee having been absorbed on 3rd of May, 1997 even the benefit accruing to him by virtue of the notification dated 10.04.2000 was not accorded to him and therefore, there is no reason as to why the petition should not be allowed and the petitioner be granted all the benefits to which he is entitled to treating him to be a Government Employee.

Accordingly, we allow the petition, quash the order passed by the leaned Writ Court and direct the respondents to treat the petitioner to be a Government Employee and grant him all the benefits accruing to a Government Employee by virtue of his



absorption on 3rd of May, 1997.”

13. This Court has also apprised that against the order passed by the learned Division Bench of this Court, the State has preferred SLP (Civil) No. 30713 of 2018, which also came to be dismissed vide order dated 26.04.2019. The State of Bihar and other official respondents also filed Civil Review No. 25 of 2020, that also resulted with the same fate vide order dated 14.03.2023.

14. The counter affidavit filed on behalf of the State does not whisper or refuted the contention of the petitioner that the claim of the petitioner is not similar and identical to the case of Nathu Ansari, who has been allowed all the retiral benefits, including the death-cum-retiral gratuity. The issue with respect to the identically situated person has already been settled by the learned Division Bench of this Court; duly affirmed by the Hon'ble Supreme Court.

15. In the aforesaid premise, this Court finds that none payment of death-cum-retiral gratuity to the petitioner would cause manifest discrimination and defiance of the order of the learned Division Bench, which has been passed in the case of identically situated person. The respondent authorities are also bound to honour the provisions contained in Clause C



of the Bihar State Litigation Policy, 2011, as the petitioner’s claim is covered matter.

16. In the aforementioned facts, circumstances and the position obtaining in law, the writ petition stands allowed with a direction to respondent no.2 to strictly consider the claim of the petitioner in the light of the judgment rendered by the learned Division Bench of this Court, as discussed hereinabove, and accord similar treatment and pay the consequential benefits, including the death-cum-retiral gratuity as well as other dues preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

17. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2024
Transmission Date	NA

