

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7033 of 2022

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Manju Devi Wife of Late Manoj Kumar Resident of Village and P.O.-
Bagdobh, P.S.- Nayagaon, District- Begusarai, Bihar- 851129.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director (Secondary Education), Education Department, Government of Bihar, Patna.
4. The Deputy Director (Secondary Education), Education Department, Government of Bihar, Patna.
5. The Regional Deputy Director of Education, Munger.
6. The District Education Officer, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Advocate
For the Respondent/s : Mr. Prabhakar Jha, GP-27

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 21-11-2024

Heard Mr. Kumar Kaushik, learned Advocate for the petitioner and Mr. Prabhakar Jha, learned GP-27 for the State.

2. The petitioner by invoking the jurisdiction of this Court seeking quashing of the order contained in Memo No. 548 dated 01.12.2010, issued under the signature of respondent no. 3, whereby and whereunder, the order of regularization of the husband of the petitioner on non teaching post of clerk with effect from 01.01.1989, issued vide order dated 24.06.2008 was cancelled on the ground that he died on 27.10.2006, prior to the



issuance of the order of regularization. The petitioner further prays for issuance of writ in the nature of mandamus seeking a direction upon the respondent authorities to ensure payment of family pension to the petitioner in lieu of the service rendered by her husband from 01.01.1989 to 27.10.2006 on non teaching post of clerk in Shruti Vidya Project Girls High School, Badalpura, Matihani, in the district of Begusarai (hereinafter referred to as the “School”). The petitioner also sought a direction to make payment of arrears of family pension from 28.10.2006 to the date of payment with applicable interest, apart from other terminal dues e.g. gratuity, leave encashment and others.

3. The brief facts of the case are that in the year 1981, the Government of Bihar had taken a policy decision to establish project schools in the State and for the said purpose, a Circular bearing No. 1115 dated 27.05.1981 was issued. In view of the said policy decision, the Circular dated 21.02.1982 was issued prescribing the mode and manner of appointment, as also the requisite qualification for recognition/regularization of services of teachers of project schools. A Three Men Committee was also constituted for the purposes of identification of existing schools whereafter, the schools were identified and



recognized. The appointments of teachers were made upon approval of the Vidyalaya Seva Board. The matter regarding regularization of appointment of teachers was litigated and finally came up for consideration before the Hon'ble Supreme Court in the case of *State of Bihar and Ors. Vs. Project Uchcha Vidya, Sikshak Sangh and Ors.*, reported in (2006) 2 SCC 545. The Hon'ble Supreme Court having considered all the aspect of the matter directed for constituting a Committee, comprising of Two Officers; One Educationist of repute and a retired Judicial Officer. The Committee was directed to deal with individual cases of appointment/regularization of the services of the teachers.

4. It is worth noticing that the husband of the petitioner, namely, Late Manoj Kumar, was appointed on the post of Clerk by the Managing Committee of the School on 07.02.1983.

5. The late husband of the petitioner on being found eligible for regularization filed an application before the Three Member Committee constituted in pursuance of the judgment of the Hon'ble Supreme Court. The Three Men Committee vide recommendation dated 12.02.2007 directed for absorption of the husband of the petitioner on the post of Clerk, the copy of the



said recommendation has been placed on record and marked as Annexure-P/3.

6. Thereafter, the Human Resources Development Department (now re-designated as Education Department) vide its order contained in Memo No. 419 dated 24.06.2008 issued under the signature of Director (Secondary Education), absorbed and recognized the services of various teaching and non-teaching staff, including the husband of the petitioner. The copy of the order dated 24.06.2008 has been placed on record as Annexure-P/4. The name of the husband of the petitioner figured at Sl. No. 8. It is duly mentioned that the services of the late husband of the petitioner will be regularized with effect from 01.01.1989 and 25.01.2000 or the date of training and payment of salary shall be made in five installments, after proper scrutiny of qualification and continuous service of the concerned employee.

7. It was misfortune that during the interregnum, the husband of the petitioner died on 27.10.2006.

8. Contending the aforesaid facts, learned Advocate for the petitioner submits that after the regularization of the husband of the petitioner in service, the petitioner filed representation for payment of family pension before the



respondent authorities. However, in the meantime, the respondent authorities had cancelled the order of regularization of the service of the husband of the petitioner vide Memo No. 419 dated 24.06.2008, on the ground that he did not continue in service after the aforesaid order dated 24.06.2008 due to his death on 27.10.2006. The order for cancellation of regularization of the petitioner's husband also stipulate that one of the essential condition of regularization/absorption of service was that the concerned employee shall be continuously in service, until the date of absorption. Since the petitioner had no knowledge about the cancellation of the absorption of her husband's service, she kept on continuing filing representation for the terminal benefits.

9. While assailing the impugned order, learned Advocate for the petitioner contended that the same was manifestly illegal and had never been served to the petitioner. Undisputedly, the husband of the petitioner was an employee of the School and was working for a long period of time from 1983 to the year 2006, before his death. It is the admitted position that the notification dated 24.06.2008 was issued allowing the benefit of regularization from 01.01.1989. There is no question with regard to the eligibility of the petitioner's husband to be



regularized, but simply because he died before the issuance of the order of regularization, the aforesaid benefit could not have been taken away from him. Those, who have continued on service on or after 24.06.2008, have been given the benefit with effect from 01.01.1989.

10. Drawing the attention of this Court to the decision of the Hon'ble Supreme Court in the case of ***Project Uchcha Vidya, Sikshak Sangh*** (supra), it is contended that there was a categorical direction to the Committee to submit its report within a period of three months and further it was directed to the Chief Secretary to place the report of Three Men Committee before the appropriate authority to take appropriate steps, within a further period of four months. The entire exercise ought to have been completed within a period of seven months, from the date of the order i.e. 03.01.2006. The husband of the petitioner had filed his application before the Committee within the period prescribed and if the Committee and the authorities have taken more than two year to decide the claim of the petitioner and others, there is no fault on the part of the employee and his legal heirs. In such circumstances, the petitioner cannot be denuded of the benefits accrued on account of regularization of the services of the petitioner's husband.



11. Mr. Kaushik, learned Advocate for the petitioner urged before this Court that the primal issued involved in the case is no longer res integra, as in an identical situation, one Manorma Kunwar, the widow of Late Hira Lal Pandit, had approached before this Court in CWJC No. 18598 of 2011 for family pension and terminal dues, where the State had resisted her claim on the ground that the husband of the petitioner had already died before 24.06.2008, and thus, cannot derive any benefit of notification issued after his death. The learned Court vide its order dated 24.02.2012, taking note of the facts held that the State is being totally arbitrary and unreasonable by denying the benefit of the husband of the petitioner. The respondents were directed to settle the dues of Late Hira Lal Pandit in favour of his wife and accordingly, all the benefits have been accorded with effect from 25.01.2000, but later on, the benefit has been extended with effect from 01.01.1989 along with others.

12. On the strength of the order aforementioned, as also having come to know that other similarly situated persons have been accorded the benefits of retiral/terminal dues with effect from 01.01.1989, the petitioner approached before the authorities concerned, requesting them to allow the terminal benefits to the petitioner in terms of the decision of the Hon'ble



Supreme Court. Despite of her efforts, when she did not get any succor, moved before the Hon'ble Lokayukta, Bihar, who finally vide its order dated 08.02.2022 held that it does not appear to be appropriate for this authority to examine and consider this matter. Hence, the present writ petition.

13. With reference to the delay in assailing the impugned order and approaching this Court, learned Advocate for the petitioner candidly submitted that the petitioner is an illiterate hapless widow, who did not know of her legal right and family pension and the remedy to enforce it. It is an admitted position that the copy of the impugned order has never been served upon her. The very denial of her right to family pension amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. To support the aforesaid contention, heavy reliance has been placed on a decision of the Hon'ble Supreme Court in the case of ***S. K. Mastan Bee Vs. General Manager, Sough Central Railway and Anr.***, reported in ***(2003) 1 SCC 184***.

14. Per contra, Mr. Prabhakar Jha, learned GP-27 representing the State vigorously contended that a Three Member Screening Committee constituted as per the direction of the Hon'ble Apex Court in the case of ***Project Uchcha Vidya***,



Sikshak Sangh (supra) considered the case of the petitioner's husband and made recommendation to regularize his service, subject to adjustment of one of the clerks somewhere else, as is evident from Annexure-P/3 to the writ petition. Accordingly, the Director, Secondary Education, issued an order dated 24.06.2008, contained in Memo No. 419 'P' recognizing the services of the teaching and non-teaching employees of the school with a rider that their services shall be regularized subject to their continuous services found in course of independent enquiry, as is evident from Clause-02 of Annexure-P/4 to the writ petition.

15. Drawing the attention of this Court to the eligibility criteria, especially, Clause 3 of the Letter No. 142 dated 04.02.1989, it is contended that the recognition of services can may be extended to only those teachers/non-teaching employees, who have been in continuous service at the time of consideration for approval of service. Admittedly, in the case in hand, the husband of the petitioner has already died on 27.10.2006. Since, the petitioner's husband was not in service on the date of consideration of approval of his service and accordingly, considering such aspect of the matter, the Director, Secondary Education cancelled the regularization of the



petitioner's husband vide Memo No. 548 dated 01.12.2010 contained in Annexure-P-7 to the writ petition. It is lastly contended that since the services of the husband of the petitioner has not been accorded approval, hence the claim of the petitioner for grant of family pension is not admissible in the eyes of law.

16. This Court has anxiously heard learned Advocate for the respective parties and also perused the materials available on record.

17. Before coming to the merit of this case, it would be pertinent to highlight the direction of the Hon'ble Supreme Court in the case of *Project Uchcha Vidya, Sikshak Sangh* (supra). The Hon'ble Supreme Court while disposing the case has observed that it is necessary to scrutinize as to whether the teaching and non-teaching staff appointed for the said purpose fulfill the criteria in terms of the policy decision of the State or not. Their qualification laid down under other relevant statutes for the purpose of obtaining permission must also be scrutinize. Having pondered over the matter, the Hon'ble Court was of the opinion that a Committee should be constituted for the purposes to identify the schools for recognition by the appropriate authority; thus requested the Chief Secretary of the State of



Bihar to constitute a committee, comprising two officers. In the event a judicial officer is appointed as a member of the committee, he would be the chairman thereof. All the educational institutions claiming recognition or having any other claims would file their representations together with all supporting documents within three weeks from date. It has also been clarified that as the Constitution of the Committee may take some time, such claims may be filed in the office of the Education Secretary, who would open an appropriate cell in this behalf. The committee upon scrutinizing the claims of the institutions and/or the teaching and non-teaching staff would submit a report before the Chief Secretary within three months. The Chief Secretary is further requested to place the said report together with his comments thereupon before the appropriate authority in terms of the Rules of Executive Business and it is expected that the said authority of the Government of Bihar shall take appropriate decision thereupon within four months from date. The direction of the Hon'ble Supreme Court was to be given effect to within seven months, as contemplated in the judgment.

18. Admittedly, in pursuant to the aforementioned decision, the husband of the petitioner filed an application before the



Three Member Committee, which was duly counter signed by the Principal of the concerned School on 05.05.2006 and was forwarded to the department. On being found eligible to be regularized, the Three Men Committee recommended the case of the late husband of the petitioner for absorption on the post of clerk and accordingly, the service of the petitioner along with others, teaching and non-teaching staffs were recognized and duly absorbed with immediate effect. The letter of recognition/absorption as contained in Annexure-P/4, in no uncertain terms, absorbed the services of the employee retrospectively with effect from 01.01.1989 and 25.01.2000 or the date of training. It is the admitted position that the petitioner was appointed on the post of clerk by the Managing Committee of the school on 07.02.1983 and, as such, in case he would have been alive, the date on which the letter of absorption was issued, he was entitled to all the benefits, including salary with effect from 1989.

19. The very recognition/absorption of the service of a person was based upon his past services in the school. It is not the case that there had been any lapse on the part of the petitioner in submitting his application within time or there was any shortcomings in his eligibility. However, only on account of



sudden demise in the interregnum, the benefit could not have been taken away from him. The impugned order only reveals that simply because he had died before the issuance of the order of regularization, no benefit of regularization can be accorded to him.

20. Once a person, having all the mandatory requisite qualification, rendered the services to the entire satisfaction of the authorities concerned, which rendered him eligible, leading to his absorption and regularization of service, as has been done in the case in hand, only on account of untimely death in interregnum period of filing of the application and the issuance of the order of regularization, he cannot be deprived of the benefit of the notification issued after his death.

21. This Court also finds that in an identical facts and situation, when the widow of Late Hira Lal Pandit, who was supposed to be an Assistant Teacher in the Yamuna Project Girls High School, Basantpur in the district of Siwan was working since 24.12.1980; and his case was also recommended for regularization and finally granted recognition to his services with effect from 01.01.1989, but on account of death before the issuance of regularization letter, he was deprived from the benefit of the regularization as the notification was issued after



his death. The widow of Late Hira Lal Pandit, moved before this Court in CWJC No. 18598 of 2011, for the terminal dues of her husband and family pension.

22. The learned Court upon considering all the facts of the case found the stand of the State is wholly incorrect, because the husband of the petitioner was an employee and was working with the school, in question, for a long period of time. After recommendation, a notification has been issued, therefore, the notification extends the benefit of service right from the year 01.01.1989, till the period of death of the husband of the petitioner. The Court observed that merely because the husband of the petitioner died prior to issuance of the notification, the benefit of past services will not vanish. The legal claim and right of the legal heir will subsist and survive.

23. The Court finally held that the State is being totally arbitrary and unreasonable by denying the benefit of the husband of the petitioner and thus, directed to settle the dues of late Hira Lal Pandit, in favour of the widow of the said case. The State accepted the decision of the learned Court rendered in the case of late Hira Lal Pandit and extended all the benefits with effect from 01.01.1989, which is not disputed herein.

24. Once a right is accrued on account of performance



of certain duties by a person, who was authorized in this behalf and there is no complaint, whatsoever, with regard to his performance, a vested right has been created in favour of such person, which cannot be divested on account of subsequent incidence, that was beyond his control. A mishappening or misfortune cannot snatch away the right of the person or his legal heirs, which he had acquired by the dint of unblemished long continuous hard work.

25. This Court is also of the opinion that once the matter and issue relates to family pension of an illiterate widow or the legal heirs of the erstwhile employee, it triggers a continuous cause of action and her/their claim cannot be denied, as it would be certainly in violation of Article 21 and 300(A) of the Constitution of India. The reliance of the petitioner in the case of *S. K. Mastan Bee* (supra) also supports the observation made, hereinabove.

26. In view of the discussions made hereinabove, as also the identical issue adjudicated in the case of Manorma Kunwar (supra) in CWJC No. 18598 of 2011, this Court has no hesitation in holding the order, as contained in Memo No. 548 dated 01.12.2010, unsustainable in law, apart from violative of Article 14, 21 and 300(A) of the Constitution of India.



Accordingly, the impugned order stands set-aside and the respondent authorities are hereby directed to ensure all the consequential monetary benefit by treating the services of the husband of the petitioner regularized with effect from the date of 01.01.1989 till the death of the husband of the petitioner, within a period of three months, from the date of receipt/production of a copy of this order.

27. Accordingly, the writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2024
Transmission Date	NA

