

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.78 of 2022

In
Letters Patent Appeal No.1084 of 2017

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1. The State of Bihar through Chief Secretary, Bihar, Patna.
 2. The Secretary, Water Resource Department, Govt. of Bihar, Patna.
 3. The Chief Engineer, Water Resources, Department, Birpur, Supaul.
 4. The Superintending Engineer, Barrage Circle, Water Resource Department, Birpur, Supaul.
 5. The Executive Engineer, Headworks Division, Water Resource Department, Birpur, Supaul.

... .. Petitioner/s

Versus

Gyanti Devi Wife of Late Kaushal Kishore Singh, resident of mohalla- Kosi Colony, Police Station- Birpur, District- Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar, AAG 4
		Mr. Sanjay Kumar, Advocate
		Mr. Alok Kumar, Advocate
For the Opposite Party/s :		Mr. Sanjeev Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 10-04-2024

Re: I.A.No.1 of 2022

1. There is delay of 7 months 6 days in filing of the appeal.
2. We have heard learned counsel for the parties.
3. For the reasons shown in the application, the delay is condoned.



Re: C.Rev. No.78 of 2022

1. Heard Mr. Anjani Kumar, learned Additional Advocate General- IV assisted by Mr. Alok Kumar Rai, learned advocate for the petitioners and Mr. Sanjeev Kumar, learned counsel appearing for the sole respondent.

2. This application has been filed seeking review of the order dated 16.09.2019 passed in L.P.A No. 1084 of 2017 whereby and whereunder this Court set aside the order of the learned Single judge in CWJC No. 21024 of 2014, allowed the appeal and while doing so held that the appellant is entitled to the family pension. This Court issued a direction to the respondent-State to calculate the family pension including the arrears and observed that the same should be paid to the appellant without any unnecessary delay, preferably within a period of three months from the date of receipt or production of the copy of the order.

3. Brief facts of the case are as under :-

4. The husband of respondent no. 1 was appointed as driver on daily wages in the year 1986, later on he was brought to the work charge establishment of the Water Resource (Irrigation) Department. It is the case of the private respondent that her husband was engaged on daily wages in the work



charge establishment in the year 1986 and on the basis of the satisfactory service and recommendation of the Chief Engineer, Birpur he was regularized in service on 8.2.1991 as driver in the then scale of Rs.950-1400.

5. The husband of the respondent was served with a show cause on 25.2.1994 calling upon him to show cause as to why his regular appointment as driver be not cancelled and he be not reverted as daily wager. He filed his explanation but that was not accepted and vide order dated 20.03.1996 the respondent cancelled his regular appointment as driver and reverted him as daily wager. The said order of reversal was challenged before this Court in CWJC No. 9681 of 1997. This Court vide its order dated 10.12.1999 set aside the reversal order dated 20.3.1996, allowed the writ application and directed the respondents to pay salary to the husband of the private respondent in the regular scale of pay including the arrears. The learned writ Court specifically held that the authorities should not have cancelled his appointment as made in regular scale, on the basis of a subsequent resolution dated 23rd October, 1987. A challenged thrown to the order of the learned writ Court by the State in LPA No. 506 of 2000 was rejected as the Hon'ble Division Bench refused to condone the delay in filing of the



letters patent appeal. The Hon'ble Division Bench observed that the respondent's husband was entitled for regular salary as directed by the learned Single Judge. It is stated that the State of Bihar challenged the order of the Hon'ble Division Bench in LPA No. 506 of 2000 before the Hon'ble Supreme Court but that challenge also failed. In this manner the order passed by this Court in CWJC No. 9681 of 1997 attained finality and the petitioner's husband remained regularized in work charged establishment but unfortunately before regularization in regular establishment, petitioner's husband died on 02.05.2001 leaving the petitioner as dependent.

6. So far as the aforementioned facts are concerned, from the counter affidavit of the Respondent Nos. 2 to 5 placed on the record of the this Court we do not find that the aforesaid statements have been controverted by the State. In fact it is stated in paragraph 8 of the counter affidavit that the petitioner had been earlier regularized vide Letter No. 2019 dated 07.07.2003.

7. It appears from the records that even as the order of this Court passed in CWJC No. 9681 of 1997 attained finality, the State-respondent paid only a portion of the retiral benefits to the private respondents. The dispute with respect to



family pension could not be resolved and that led to another round of litigation.

8. It is revealed from the records of the writ Court that the order of regularization of the husband of the respondent as contained in order no. 2019 dated 07.07.2003 was cancelled after his death vide Memo no. 2570 dated 08.08.2003. According to the petitioner, this was an attempt to over-reach the earlier judgment of this Court pursuant to which the husband of the respondent was regularized vide Memo no. 2019 dated 07.07.2003. It was also the case of the petitioner that Memo no. 2570 dated 08.08.2003 was never communicated.

9. The petitioner approached this Court first in CWJC no. 14310 of 2003 which was disposed of with a direction to file a representation and respondents were directed to dispose of the same. Pursuant to the same the private respondent filed a representation which remained pending. Whereafter she again approached this Court in CWJC No. 21024 of 2014 seeking a mandamus directing the respondent to pay family pension to the private respondent. During pendency of the said writ petition the Chief Engineer, Water Resource Department, Birpur considered the representation of the petitioner and rejected the same vide Memo no. 1393. It



however appears that CWJC No. 21024 of 2014 was dismissed by a learned writ Court.

10. The order passed by the learned writ Court in CWJC No. 21024 of 2014 came to be challenged in LPA No. 1084 of 2017. During pendency of the letters patent appeal, the Hon'ble Full Bench of this Court considered a reference in the case of Mobina Khatoon vs. State of Bihar in LPA No. 166 of 2018 and analogues matter.

11. The terms of reference before the Hon'ble Full Bench was as to whether the services rendered by work charged employee is to be taken into account for computing his pension and whether a work charged employee is, in the first instance, entitled to pensionary and other benefits which are available to a Government servant and secondly whether there is any availability of family pension to the widow of such deceased work charged employee or compassionate appointment to his heirs in case of death during service.

12. The Hon'ble Full Bench considered the previous case laws on the subject and finally concluded in paragraph '70' as under:-

“ 70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in



this regard is framed by the Government:-

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid pension and his family, in case of death of such work-charged employee, would be paid the family pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment.”

13. By virtue of the judgment of the Hon’ble Full Bench the private respondents claim for family pension got strengthened. The letters patent appeal preferred by her came to be considered finally by this Court on 16.09.2019. Benefited by the judgment of the Hon’ble Full Bench in Mobina Khatoon, the



Hon'ble Division Bench had no difficulty in allowing the letters patent appeal in terms of paragraph 70 of the judgment in Mobina Khatoon. The order of learned writ Court was set aside. Having allowed the letters patent appeal the Hon'ble Division Bench issued the directions which this Court has taken note of at the top of this judgment.

14. After Mobina Khatoon's judgment the State Government came out with a policy which is contained in resolution dated 03.7.2019. A copy of this resolution has been placed before this Court for the first time in the review application. Paragraph no. '70' of the Mobina Khatoon's judgment has been referred to in Annexure- '5' and thereafter in the light of the recommendations of the High Level Committee the following decisions were taken.

“उच्चस्तरीय बैठक की अनुशंसा के आलोक में उपरोक्त उल्लिखित न्यायादेश सरकार से उपयुक्त नियमन की अपेक्षा के क्रम में सम्यक् विचारोपरान्त निम्नांकित निर्णय जाते हैं:

(i) वैसे कर्मि जो दिनांक-11/12/1990 को या उसके पूर्व कार्यभारित स्थापना में नियुक्त हुए हो तथा जिनकी सेवा संतोषप्रद रही हो और 10 वर्षों की लगातार कार्यभारित सेवा एक ही पद पर पूर्ण किये हों. परंतु दिनांक-17/10/2013 के पहले सेवानिवृत्त मृत हो गये हों, तो उनकी सेवानिवृत्ति/मृत्यु की तिथि से कार्यभारित सेवा को नियमित करते हुए पुरानी पेंशन योजना के अंतर्गत सेवान्त लाभ अनुमान्य किया जा सकेगा।

(ii) ऐसे कर्मियों के पेंशन परिगणना हेतु वित्त विभागीय संकल्प सं०-10710 (दिनांक-17/10/2013 के समतुल्य प्रत्येक पाँच वर्ष की कार्यभारित सेवा के बदले एक वर्ष की नियमित सेवा को मान्यता देते हुए पेंशन एवं ग्रेच्युटी लाभ की गणना की जायेगी। इसके बावजूद यदि पुरानी पेंशन के तहत पेंशन स्वीकृति हेतु निर्धारित न्यूनतम पेंशन प्रदायी सेवा पेंशन 10 वर्ष पूर्ण नहीं हो तो उस हद तक न्यूनतम सेवा जोड़कर पेंशन का लाभ दिया जायेगा।

(iii) उपकंडिका (i) एवं (ii) के कार्यभारित कर्मियों के संबंध में पुरानी पेंशन योजना के लिए अन्य शर्तें यथावत लागू रहेगी।

(iv) जिन कार्यभारित कर्मियों के विरुद्ध सेवाकाल में कोई मुकदमा



दायर किया गया हो या जिनके विरुद्ध प्रथम द्रष्टव्या परमाणित भ्रष्टाचार के आरोप लंबित हो या जिनके विरुद्ध विभागीय कार्यवाही चल रही हो तथा सेवानिवृत्त हो गये हों, उन्हें पेंशन का लाभ अनुमान्य नहीं होगा। परंतु यदि सेवाकाल में चल रहे मुकदमें/विभागीय कार्यवाही के क्रम में मृत्यु हो जाती है तो उनके आश्रित को परिवार पेंशन एवं सेवान्त लाभ दिया जा सकेगा।
(v) कार्यभारित स्थापना में सेवाकाल के दौरान मृत कार्यभारित कर्मियों के आश्रित को अनुकम्पात्मक नियुक्ति का लाभ देय नहीं होगा।
(vi) ऐसे सेवानिवृत्त मृत कार्यभारित कर्मियों को ए०सी०पी० के प्रयोजनार्थ कार्यभारित सेवा अवधि की गणना नहीं की जायेगी। परंतु दिनांक-01/01/2009 एवं दिनांक 17/10/2013 के बीच इस श्रेणी के सेवानिवृत्त/मृत कार्यभारित कर्मियों को एम.ए.सी.पी. के लाभ के प्रयोजनार्थ कार्यभारित सेवावधि की गणना की जा सकेगी।"

15. It is this policy decision dated 03.7.2019 which has been placed before this Court as a ground to seek review of the judgment of this Court in LPA No. 1084 of 2017.

16. Mr. Anjani Kumar, learned AAG 4 submits that according to this policy decision only those employees who were engaged in the work charged establishment on or before 11.12.1990 and have completed satisfactory service of 10 years and either died or retired prior to 17.10.2013 would be entitled for the pensionary benefits by regularizing them in work charged service from the date of their retirement/death. According to him the husband of the respondent no. 1 had entered in work charged establishment after 11.12.1990 therefore in his case he would not have earned pensionary benefits so as to entitle private respondent to claim family pension.

17. Learned AAG 4 has placed before this Court



another Full Bench judgment of this Court in the case of **Smt. Amrika Devi and Others vs. State of Bihar and Others reported in 2019 (4) PLJR 354**. An impression has been sought to be given that the policy decision creating an embargo on the right to claim pensionary benefit in respect of those who had entered into service after 11.12.1990 has been approved by the Hon'ble Full Bench. We will discuss the fallacy of this submission while considering the same.

18. Mr. Sanjeev Kumar, learned counsel for the private respondent has opposed this application. Learned counsel submits that this Court being a Court of record under Article 215 of the Constitution of India shall consider a review application only and only when the State-respondent would show that there is any error apparent on the face of the record. It is submitted that the facts leading to engagement of the husband of the private respondent as a Jeep driver in the work charged establishment, his regularization, reversal and then his challenge to the said reversal order in writ application which was allowed have not at all been controverted in counter affidavit filed on behalf of State- respondent.

19. Learned counsel further submits that not only in the first round of litigation the State-respondents went in appeal



before the Hon'ble Division Bench and then in special leave petition to the Hon'ble Supreme Court, even in the second round of litigation when this Court allowed LPA no. 1084 of 2017 vide judgment dated 16.09.2019 which is sought to be reviewed now, the State-respondents challenged the same in SLP(Civil) Diary no. 3403 of 2020 but the said challenge failed before the Hon'ble Supreme Court of India.

20. It is submitted that having failed in challenge to the judgment of this Court in LPA No. 1084 of 2017 before the Hon'ble Supreme Court, now the State-respondents have filed this review application.

21. Learned counsel submits that the judgment of this Court has correctly taken note of paragraph '70' of the Mobina Khatoon's judgment. It is his submission that subsequently when the policy decision (Annexure-5 of review application) was taken vide resolution dated 03.07.2019 an embargo has been created that only those employees would be entitled who were appointed in the work charge establishment on or before 11.12.1990. Learned counsel submits that such subsequent embargo created in the resolution dated 3rd July, 2019 can neither be a ground for review nor it will take away the effect of the mandamus already issued by this Court.



Learned Counsel has relied us on a Judgment of the Hon'ble Supreme Court in case of **Madan Mohan Pathak and Another vs. Union of India and Others [(1978) 2 SCC 50]** in which Hon'ble Supreme Court has held that once a mandamus has been issued by the Court under Article 226 of the Constitution of India it has to be obeyed.

22. Learned counsel further submits that so far as the second limb of argument of the learned AAG-4 based on the Judgment of Amrika Devi is concerned, the fallacy writs large on the face of it when this Court goes through the judgment of the Hon'ble Full Bench particularly in paragraph '59' wherein the Hon'ble Full Bench has simply taken note of the policy decision dated 3rd July, 2019 which was placed before the Hon'ble Full Bench. The said policy decision had never fallen for consideration before the Full Bench and therefore the validity of that policy decision was neither subject matter of consideration before the Hon'ble Full Bench nor the same is required to be gone into in the present case while considering the review application.

Consideration

23. We have heard learned counsel for the parties and perused the records. It is evident from the materials



available on the record that the judgment of which review has been sought by this Court was appealed against by filing a special leave petition giving rise to SLP(Civil) Diary no. 3403 of 2020 before the Hon'ble Supreme Court of India. The said SLP stood dismissed vide order dated 01.07.2019, a copy which has been brought on the record, we quote the same hereinunder for ready reference.

“Delay condoned.

We are not inclined to interfere in our jurisdiction under Article 136 of the Constitution. Accordingly, the special Leave petition is dismissed. The question of law is left open.

Pending application(s), if any, shall stand disposed of.”

24. We are in agreement with the submission of learned counsel for the private respondent that a subsequent policy decision which is contained in resolution dated 03.07.2019 (Annexure- 5) cannot be a ground for review of the judgment of this Court which has already attained finality. In the case of Madan Mohan Pathak (supra) the Hon'ble Supreme Court observed as under :-

“the object of the Act was, in effect, to take away the force of the judgment of the Calcutta High Court recognising the settlements in favour of Class III and Class IV employees of the Corporation. Rights under that judgment could be said to arise independently of Article 19 of the Constitution. I find myself in complete agreement with my learned brother Bhagwati that to give effect to the judgment of the



Calcutta High Court is not the same thing as enforcing a right under Article 19 of the Constitution. It may be that a right under Article 19 of the Constitution becomes linked up with the enforceability of the judgment. Nevertheless, the two could be viewed as separable sets of rights. If the right conferred by the judgment independently is sought to be set aside, section 3 of the Act, would, in my opinion, be invalid for trenching upon the judicial power.

I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus issued by the Calcutta High Court, yet, the section does not mention this object at all. Probably this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constitution itself, these could not be touched by an ordinary act of Parliament. Even if section 3 of the Act seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the State are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation, I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a Mandamus from the High Court could not be taken away in this indirect fashion.....”

25. In our considered opinion denying the benefits already accrued to the respondent by virtue of two rounds of judgments of this Court on the ground of a subsequent policy decision Annexure-5) would amount to nullifying the judgments of this Court which have attained finality. No error apparent on the face of records is present in mode of judgments.

26. We have also gone through the judgment of the Hon’ble Full Bench in Mobina Khatoon and Amrika Devi. The



operative part of Mobina Khatoon in paragraph 70 clarified the legal position on payment of pensionary benefits to the work charge employees in the following terms:-

“ 70. For the aforesaid reasons, we deem it necessary and lawful to hold and declare the following that till the time, appropriate rules in this regard is framed by the Government:-

(i) That a work-charged employee who has completed ten (10) or more years of continuous service against one post in the work-charged establishment will be paid pension and his family, in case of death of such work-charged employee, would be paid the family pension.

(ii) The work-charged employees who have received regular scale of pay for ten (10) or more years on their retirement and after their death, their heirs and dependants would be entitled to claim death-cum-retiral benefits.

(iii) However, the dependants of a work-charged employee would not be entitled to claim appointment on compassionate ground in the absence of any scheme framed by the Government for such work-charged establishment.”



27. In Amrika Devi case the issue which had fallen for consideration was only with respect to counting of the period of work charge services for the purpose of computing pensionary benefits and the length of pensionable service. The said Full Bench was constituted to resolve the two conflicting Division Bench judgments in case of State of Bihar and Others vs. Sheela Devi and other analogues cases (LPA No. 416 of 2013) and Binod Kumar & Ors. vs. State of Bihar and Others (LPA No.12674 of 2017). We are in agreement with the submission of learned counsel for the private respondent that the applicability of the policy decision as contained resolution dated 11.12.1990 was neither under consideration before the Hon’ble Full Bench in Amrika Devi case nor the same would fall for consideration before this Court in the review jurisdiction.

28. In ultimate analysis, we find no merit in this review application. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Partha Sarthy, J)

Harsh/Bibhash

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