IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1793 of 2018
In
Civil Writ Jurisdiction Case No.21246 of 2012

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1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. The Engineer-in-Chief-Cum-Special Secretary, Public Health Engineering Department, Government of Bihar.
3. The Chief Engineer (Mechanical), Public Health Engineering Department, Government of Bihar, Patna.
4. The Superintending Engineer, Public Health Engineering Circle, Darbhanga.
5. The Executive Engineer, Public Health Engineering Division, Darbhanga.

... ... Appellants

Versus

Sheo Kumari Devi, wife of Late Sharda Nand Mishra, resident of village Deoram, P.S. Bahera, District- Darbhanga.

... ... Respondent

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Appearance :

For the Appellant/s : Mr. S. Raza Ahmad, AAG-5
Mr. Vishwambhar Prasad Ac To Aag 5
Mr. Alok Ranjan, Advocate

For the Respondent/s : Mr. Bam Bahadur Jha, Advocate
Mr. Gajendra Kumar Jha, Advocate
Mr. Sushil Kumar Jha, Advocate
Mr. Surya Kant Mishra, Advocate

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

Date : 08-08-2024

Ref: I.A. No. 9676 of 2018 (I.A. 02 of 2018)

Heard I.A. No. 9676 of 2018 (I.A. 02 of 2018) for condonation of delay. There is a delay of about 227 days in filing L.P.A. No. 1793 of 2018. For the reasons stated in the application read with the affidavit, delay of about 227 days in filing L.P.A. No. 1793 of 2018 stands condoned.

2. Accordingly, I.A. No. 9676 of 2018 (I.A. 02 of 2018) stands allowed.

3. With the consent of the learned counsels for the respective parties, L.P.A. is taken up for final disposal.

4. Limited argument advanced on behalf of the appellant is that Respondent is not entitled to count service from the date of entry into the Work Charge Establishment till regularization namely from 21.03.1988 to 30.11.2006. In this regard, Bihar Pension Rules do not provide for the purpose of counting service and extending pension on par with regular government servant/employee.

5. On the other hand, learned counsel for the Respondent resisted the aforementioned argument and backed the order of the learned Single Judge dated 06.04.2018 passed in C.W.J.C. No. 21246 of 2012 to the extent that service rendered in the Work Charge Establishment till regularization, the service is required to be counted for the purpose of extending all retiral benefits including pension.

6. On the other hand learned counsel for the appellant submitted that except pension rest of the dues of the Respondent has been settled to the extent that whatever the benefits entitled by an employee, while working in a Work Charge Establishment.

7. Heard the learned counsels for the respective parties.

8. Core issue involved in the present *lis* is whether deceased - Sharda Nand Mishra was entitled to have the benefit of pension under the Bihar Pension Rules or not for the period from 21.03.1988 to 30.11.2006 (the date on which he entered into Work Charge Establishment and date of regularization). Deceased employee has a status of permanent employee only with effect from 30.11.2006. Therefore, the service rendered during the intervening period from 21.03.1988 to 30.11.2006 by the deceased employee is not countable towards extending pension under Bihar Pension Rules.

9. Recently, Hon'ble Supreme Court in the case of ***UP Roadways Retired Officials and Officers Association vs. State of U.P. and Another*** reported in ***2024 SCC OnLine SC 1818*** held that merely asking for pension, the same cannot be extended unless and until employee has statutory vested right under statue. In the present case, admitted fact is that deceased employee’s services have been regularized only with effect from 30.11.2006. Therefore, the intervening period from 21.03.1988 to 30.11.2006, service cannot be counted towards extending pension benefits. To this effect order of the learned Single Judge dated 06.04.2018 passed in C.W.J.C. No. 21246 of 2012 stands modified.

10. Accordingly, L.P.A. No. 1793 of 2018 stands allowed in part.

11. The concerned Authority is hereby directed to take note of other monetary benefits have been settled in favour of the legal heir of Respondent - Sheo Kumari Devi as on this day or not? If it is not settled the same shall be settled along with the interest at the rate of 8% per annum in the light of Hon’ble Supreme Court decision in the case of ***Vijay L. Mehrotra Vs. State of Uttar Pradesh and others*** reported in **(*2001) 9 SCC 687* .** The concerned authority is hereby directed to take note of, if the principal amount is already paid, in that event, for belated settlement of retiral dues of the deceased employee, the legal heir of Sheo Kumari Devi - Respondent is entitled to interest at the rate of 08% per annum, the same shall be calculated and disbursed within a period of 03 months from the date of receipt of this order, failing which she is entitled to litigation cost and it is quantified at Rs. 10,000/- (Rs. Ten Thousand).

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

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