IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10089 of 2023

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Smt. Nutan Kumari W/O Prabhat Kumar Sinha, Resident of Mohalla Jhilganj, New Go down, P.O-G.P.O, P.S- Kotwali,District - Gaya, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary Bihar, Patna.
2. The Secretary department of Education Bihar, Patna.
3. The District Magistrate Gaya.
4. The District Education Officer, Gaya.
5. The District Programme Officer, Establishment Gaya.
6. The Block Education Officer Gaya.
7. The drawing and disbursing Officer Town Block Gaya cum Head master Mahavir Middle School, Gaya.
8. The Headmistress U.H.S. Bitho

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Alok Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Amit Bhushan, AC to GP-17

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 03-01-2024

Heard Mr. Dr. Alok Kumar Sinha, learned counsel appearing on behalf of the petitioner and Mr. Amit Bhushan, learned AC to GP-17.

2. The petitioner, by invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking quashing of the Memo No. 594 dated 06.02.2012, Memo No. 765 dated 23.02.2023 and Memo No. 1357 dated 08.04.2023 to the extent, whereby, the petitioner has been denied the benefit of retiral benefits under the Old Pension Scheme and further the petitioner sought a direction upon the

respondents to ensure payment of all the post retiral benefits such as gratuity, GPF, group insurance, leave encashment and pension.

3. It is submitted on behalf of the petitioner that she was as an Assistant Teacher appointed against an advertisement published in the year 2003. Irrespective of the fact that the advertisement was issued in the year 2003, the appointment of the petitioner took place in the year 2012. It is further submitted that admittedly, there was no laches on the part of the petitioner and, as such, any benefit, which was accrued in favour of the petitioner, must be reckoned w.e.f. the date, on which the advertisement was published and not from the date, on which appointment has taken place. Thus, in any view of the matter, the petitioner should be allowed all the retiral benefits, in terms of the Old Pension Scheme.

4. A counter affidavit as well as supplementary counter affidavit has been filed on behalf of the respondent no. 4 and submissions has been made that admittedly, the petitioner was appointed as an Assistant Teacher by the order of the District Education Officer, Gaya vide Memo No. 01/2012/594 dated 06.12.2012, and the petitioner finally superannuated on 31.12.2022, from Middle School, Bitho, Nagar Prakhand, Gaya.

It is submitted on behalf of the State that, in fact, the Education Department, Government of Bihar framed the Bihar Special Primary Teachers Appointment Rules, 2010 for appointment of 34,540 Assistant Teachers. Rule 12 of Bihar Special Primary Teachers Appointment Rules, 2010 states; *"the teachers appointed under this Rule will have same Pay Scale and General Service Condition as teachers appointed under District Cadre. But for pension purposes, the teachers will be covered under the Contributory Pension Scheme of the State Government."*

5. Learned counsel for the State further submitted that even in the appointment letter, issued by the Office of the District Education Officer, Gaya, it was clearly mentioned that the teachers appointed will have same Pay Scale and General Service Condition as teachers appointed under District Cadre. But for the pension purposes, the teachers will be covered under the Contributory Pension Scheme of the State Government. However, the petitioner did not raise any concern regarding the pension and other benefits despite the clear stipulations made in the appointment letter and it is also the fact that the petitioner did not apply for New Pension Scheme and even did not open an account for the same, though there is no money accumulated

in New Pension Scheme also.

6. He next submitted that based on the documents provided by the concerned office, the District Programme Officer (Establishment), Gaya has sanctioned final payment of group insurance as well as leave encashment and consequently, total payment of Rs. 4,377/- for group insurance and Rs. 1,48,893/- for leave encashment has been paid.

7. Further, the respondent has already processed the payment of gratuity through Letter No. 3530 dated 30.12.2023. It has further been clarified that the petitioner has not fulfilled their responsibilities from 22.11.2022 to 31.12.2022, the date on which the petitioner superannuated and thus, the entire duration was marked as absent, as is evident from the attendance register. Based on this, the payment for the period from January 22, 2022 to December 31, 2022, has been taken in advance by the petitioner and this, adjustment has been made against the leave encashment to be received by the petitioner.

8. The aforesaid contention of the respondent has been vehemently refuted by the learned counsel for the petitioner and submission has been made that during that period, the petitioner has attended several meetings.

9. Regard being had to the submissions made on

behalf of the parties and considering the fact that the issue with regard to the applicability of New Pension Scheme to the Assistant Teachers, who are appointed, pursuant to the Bihar Special Primary Teachers Appointment Rules, 2010 has already been set at rest by the learned Division Bench of this Court in the case of **Nand Kishor Ojha & Ors. Vs. The State of Bihar & Ors.** and other analogues cases (**CWJC No. 25362 of 2013**) vide order dated 05.04.2018.

10. This Court does not find any merit in the present writ petition and accordingly, the present writ petition stands dismissed, however, it is needless to observe that the petitioner would be entitled to get all the retiral dues in terms of the rules, as noted hereinabove, preferably within a period of eight weeks, from the date of receipt/production of a copy of this Order.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2024.
Transmission Date	NA