

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11041 of 2024

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Shail Devi W/o Late Surendra Prasad Mishra resident of Village- Bahadurpur
Patori, P.S.- Shahpur Patori, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Dept. Govt. of Bihar.
2. The Principal Secretary, Revenue and Land Reforms Dept. Govt. of Bihar.
3. The Deputy Secretary, Revenue and Land Reforms Dept. Govt. of Bihar.
4. The Collector, Samastipur District.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madan Prasad Singh No.2
For the Respondent/s : Mr. Standing Counsel (18)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 25-07-2024 The petitioner filed CWJC No. 6597 of 2016 for directing the respondents to grant their Modified Assured Career Progression (Hereinafter referred to as 'MACP'), with effect from 28.02.2007 when the petitioner's husband completed 30 years of service, counting it from 28.02.1977 with all consequential benefits.

2. It is contended by the learned Advocate appearing on behalf of the petitioner that during the pendency of the CWJC No. 6597 of 2016, the Collector, Samstipur passed Annexure P/1 on 22nd February 2024, rejecting the petitioner's prayer for grant of MACP from 28th February 1977 after completion of his 30 years of service. The said order could have



been challenged by filing an interlocutory application in CWJC No. 6597 of 2016. The said writ petition was dismissed by a Co-ordinate Bench of this Court.

3. The learned Advocate on behalf of the petitioner vehemently, urged in reference to Annexure- P/2 being an order regarding MACP passed on 16th March 2017 that in CWJC No. 6597 of 2016 by filing one interlocutory application, the petitioner prayed for amendment of the prayer which was allowed and the said respondents were directed to file supplementary counter-affidavit within four weeks. However, supplementary counter-affidavit was not filed by the State respondents. The prayer in the interlocutory application was not considered *vide* an order dated 23rd April 2024 in CWJC No. 6597 of 2016, so the petitioner is entitled to file the instant writ petition.

4. I am afraid to digest the submission made by the learned Advocate for the petitioner. The simple reason for the same is that CWJC No. 6597 of 2016 was disposed of by a Co-ordinate Bench, if the case of the petitioner was not considered by the Hon'ble Single Bench, he had every authority to challenge the same in appeal. The second writ petition on the same prayer cannot be admitted on the principle of constructive



res judicata. However, the petitioner is given liberty to file an appeal against the order dated 23rd April 2024 passed in CWJC No. 6597 of 2016 and if such appeal is filed, the Division Bench will surely consider the aspect of condonation of delay, during the period within which the petitioner was diligently pursuing CWJC No. 13985 of 2024.

5. With the above observation, the instant writ petition is dismissed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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