

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14330 of 2012

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Shyam Pyari Devi W/O Late Bal Krishna R/O Opposite L.I.G., R/22 Harmu
Housing Colony, P.S.- Argara, District- Ranchi Jharkhand..

. ... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Finance, Government Of Bihar, Patna
3. The Principal Secretary Department Of Industries, Govt. Of Bihar, Patna
4. The Director Of Industries Department Of Industries, Govt. Of Bihar, Patna
5. The Deputy Director Of Industries Department Of Industries, Govt. Of Bihar, Patna
6. Director, Handloom And Sericulture Department Of Industries, Bihar, Patna
7. The Managing Director Bihar State Handloom And Handicraft Corporation Ltd., Udyog Bhawan, Patna, Bihar
8. The Chairman, Finance Lok Udyam Bureau, Bihar, Patna
9. The Account General, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar No.1, Advocate
For the State	:	Mr. Subhash Pd. Singh, Advocate
For the AG, Bihar	:	Mr. Utkarsh Bhushan, Advocate
For the Corporation	:	Mr. Rajan Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-07-2024

Heard Mr. Arun Kumar No.1, learned counsel
appearing on behalf of the petitioner; Mr. Subhash Pd. Singh,
learned counsel for the State; Mr. Utkarsh Bhushan, learned
counsel for the Accountant General, Bihar and Mr. Rajan
Prakash, learned counsel for the Corporation.

2. Petitioner has *inter alia* prayed for following
reliefs in the paragraphs No.1 of the writ petition:-



(I) For issuance of writ of in the nature of writ of mandamus directing the respondents to hold and declare, the husband of the petitioner as a permanent government servant from 14.06.62 to 19.09.1982 and to count his entire service for all the pensionary and other benefits which are due to him in accordance with law but not paid.

(ii) For issuance of appropriate writ/writs, order/orders, direction/directions, command/commands, commanding upon the respondents to pay the petitioner pension and retiral benefits by taking into consideration the services rendered by her late husband in the State Government.

(iii) For any other appropriate relief/reliefs to which the petitioner may be entitled to in the facts and circumstances of the case.”

3. Brief facts of the case are that the petitioner's deceased husband was initially appointed on *ad hoc* basis on 14.04.1962 in the Industries Department, Government of Bihar and to confirm the same, the petitioner has brought on record the communication dated 13.08.1975, giving the fact that services of the petitioner was transferred from Industries Department to the government created Bihar State Handloom and Handicraft Corporation Limited with effect from 22.09.1975 to be adjusted on different post. Husband of the petitioner after joining the Corporation had died on 19.09.1982 working as Sales Manager in harness. The petitioner is aggrieved for non-payment of family pension, retiral dues and other terminal benefits, as a result of death of her husband. The petitioner has claimed that Ramanand Prasad and Ram Sagar



Yadav, whose services were also transferred by the State Government were denied the pensionary benefits and pension, had filed writ petition before this Court and the same got dismissed *vide* order dated 16.09.2003. Aggrieved by the said order, they preferred LPA which was also dismissed by the Division Bench of this Court. One similarly situated employee Kamal Bansh Narayan Singh also filed a writ petition and thereafter he also preferred LPA against the said order and the Division Bench passed the order in favour of the said Kamal Bansh Narayan Singh. The State preferred SLP against the order of the Division Bench passed in favour of Kamal Bansh Narayan Singh bearing Civil Appeal No.1684 of 2004 and Ramanand Prasad and Ram Sagar Yadav filed SLP against order of the Division Bench bearing Civil Appeal Nos.2594 of 2005 and 2595 of 2005 respectively. The Apex Court after considering the fact that the initial appointment was of the year 1962 in respect of the appellants/ Ramanand Prasad and Ram Sagar Yadav before it and in view of the fact that they were permanent government servants from 14.06.1962 and they were sent to Corporation, held that their entire service would be counted for all pensionary and other benefit, which are due to them in accordance with law.



4. Learned counsel submitted that the case of the petitioner on the facts, as well as, on law is the same and family pension and other death-cum-retrial benefits, to which, she is entitled for, is required to be paid to her by the respondents.

5. *Per contra*, Learned counsel appearing on behalf of the State submitted that a counter affidavit has been filed on behalf of the State and he submitted that the fact is that services of the employees of the Industries Department including the petitioner and the two similarly situated employees, in whose case, the Apex Court had directed for payment of pensionary benefits, however, the case of the petitioner has been rejected on the ground that husband of the petitioner had died in harness in the year 1982, which don't entitle her husband, who was appointed on 14.04.1962 and remained in government service till 22.09.1975, for retiral dues including full pension in light of the government circular contained in Memo No.27/Pay.Co.137/2008/819 dated 23.09.2009. He further submitted that that after the service of the husband of the petitioner was transferred to the Bihar State Handloom and Handicraft Corporation Limited with effect from 22.09.1975, his services came to an end with the State Government. It has also been stated in the counter affidavit that since the husband of



the petitioner had worked for a period less than 15 years having not rendered qualifying period the petitioner being his widow is not entitled for proportionate family pension from the State Government. It has also been stated in the counter affidavit that claim of the petitioner cannot be considered in light of the instruction issued by the Industries Department, Government of Bihar, contained in letter no.4589 dated 22.11.2000 in consultation with the Finance Department, Government of Bihar in relation to payment of pensionary benefit to employees of State Government, whose services were handed over to the Corporation with effect from 22.09.1975. The case of the petitioner has also been denied on the fact that the two employees, namely, Ramanand Prasad and Ram Sagar Yadav were deputed in Corporation and, therefore, their case stand on different footing from the case of the petitioner's husband and, as such, identical relief cannot be granted to the petitioner.

6. Mr. Utkarsh Bhushan, learned counsel appearing on behalf of the Accountant General, Bihar has submitted that at this stage in absence of any sanction order for making payment of pension and other death-cum-retiral benefit to which the petitioner is entitled for on account of death of her husband in harness, the Accountant General has no role so far as the



relief as prayed for in the present writ petition is concerned.

7. Mr. Rajan Prakash, learned counsel appearing on behalf of the Bihar State Handloom And Handicraft Corporation Limited submitted that Corporation has not filed any counter affidavit, however, the case of the petitioner can be considered in light of the law laid down by the Apex Court in the case of Civil Appeal No.1684 of 2005 and others analogous matters (supra).

8. Heard the parties.

9. The question which requires to be decided by this Court is, as to whether, the case of the petitioner is identical to the facts of Kamal Bansh Narayan Singh, Ramanand Prasad and Ram Sagar Yadav, who were also appointed in the year 1962 in the Bihar State Small Industries Corporation Limited and relief has been granted to them by the Apex Court to the extent that they are entitled for pension and other benefits. It has been admitted that the husband of the petitioner finds first position in the list of altogether 53 persons, who were transferred from Industries Department to Bihar State Handloom and Handicraft Corporation Limited, while they remained in Industries Department from 01.04.1962 to 21.09.1975. From the same list, three persons, who were transferred, namely, Kamal Bansh



Narayan Singh, Ramanand Prasad and Ram Sagar Yadav aggrieved for non-payment of retiral benefits including pension preferred writ petition before this Court and thereafter the matter travelled up to the Apex Court, in which the State of Bihar was the appellant in one of the cases, who had filed Civil Appeal No.1684 of 2005 in respect of Kamal Bansh Narayan Singh and in other two cases, Ramanand Prasad and Ram Sagar Yadav were the appellant in Civil Appeal No.2594 and Civil Appeal No.2395 of 2005 respectively. All the three SLPs were clubbed together and heard on 02.08.2007. The Hon'ble Supreme Court after considering the entire individual facts of the three employees, whose services were transferred by the State Government to the Bihar State Handloom and Handicraft Corporation Limited found that the services of the appellants were absorbed in the Bihar State Handloom and Handicraft Corporation Limited and they had superannuated from the Corporation, partial pensionary benefit and retiral benefits due to them were paid but the claim in respect of pension and other retiral benefits and so far as they rendered their service in the State Government was denied in view of the order dated 13.01.1999 of the State Government. The Division Bench of this Court took view that the services of the aggrieved employees



stood terminated in the year 1975 after they were absorbed in Corporation, therefore, confirmation order dated 13.01.1999 issued by the Government was held to be erroneous. The case of the petitioner is slightly different from the case of three persons before the Apex Court to the extent that the husband of the petitioner had died in harness on 19.09.1982 which entitles the petitioner for family pension and other death-cum-retiral dues. The Apex Court in the said judgment has considered the fact that the State Government on 13.01.1999 had confirmed the services of three employees. The Apex Court observed that if the Government wanted to terminate the services of the appellants, it ought to have given one month notice in terms of notification dated 13.08.1975 and based on such appreciation of fact, the Apex Court passed the order in following terms which are reproduced hereinafter:-

“The Notification dated 13.3.1975 only enables the State Government to terminate the services of regular employees by giving one month’s notice but no such notice of termination was given to the appellant herein. This is more so for the reason that the government has already confirmed the appellant in service right from the date of his initial appointment, i.e., 14.6.1962. In this view of the matter, we are opinion that the view taken by the learned Single Judge as well as the Division Bench of the High Court does not appear to be well founded. It is wrong for



the High Court to presume that the order dated 13.1.1999 passed erroneously. This is not the case of the State Government also that the order dated 13.1.1999 was passed erroneously or at any time the same was revoked and, therefore, the appellant was a permanent government servant from 14.6.1962 and he was sent to corporation, his entire service should be counted for all pensionary and other benefits which are due to him in accordance with law. Accordingly, this appeal is allowed and the order of the learned Single Judge dated 16.9.2003 dismissing the writ petition and the order of the learned Division Bench dated 25.11.2003 dismissing the Letters Patent Appeal are both set aside.

For the reasons given hereinabvoe, Civil Appeal No.2595/2005 is also allowed and the order of the learned Single Judge dated 09.03.2004 dismissing the writ petition is set aside.

Since these cases relate to pensionary benefits of superannuated government servants, we direct that the State Government shall pay the pension or other benefits which are due to the appellants in accordance with law within a period of six months from today, Arrears of pension, if any, shall also be paid within the same period.

Appeals are allowed. No order as to costs."

10. In view of the law laid down by the Apex Court in Civil Appeal No.1684 of 2005 and other analogs matters, I am of the opinion that petitioner's husband was government servant from 14.04.1962 till his death and he was sent to Corporation and as such, his entire service would be counted for all pensionary and other benefits which are due to the petitioner in



accordance with law. In view of the above facts and discussion made, hereinabove, I find that the decision of the Industries Department contained in Memo No.1406 dated 21.03.2013 (Annexure A to the counter affidavit) cannot be sustained in light of the law laid down by the Apex Court in the case of similarly situated employees, which is based on communication contained in letter No.4589 dated 21.11.1976 (Annexure B to the counter affidavit) and the same are set aside and quashed. The respondent / State Government is directed to give the family pension and other death-cum-retiral benefit, which is due to the petitioner within a period of three months from the date of communication of this order along with statutory interest @ 18% taking into consideration that payments were not made to the petitioner in time. The law is well settled in this regard. The Apex Court in the case of **State of Kerala v. M. Padmanabhan Nair** reported in (1985) 1 SCC 429 and **D.D. Tewari v. Uttar Haryana Bijli** reported in (2014) 8 SCC 894 has laid down that when the employer delays the release of Pensionary benefits, it is bound to pay interest on account of the delay. The principle that the disbursement of pension and other retirement benefits should not be treated as a matter of bounty but are valuable rights and property and any delay in settlement



or disbursement thereof must be compensated with the penalty of payment of interest at the current market rate till actual payment to the employee.

11. In these backgrounds of the above discussed facts and law, the writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2024
Transmission Date	NA

