IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13947 of 2023

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Purnima Prasad Wife of Late Binod Mohan Prasad, resident of Flat No. 706, Tower No. 12, Lotus Panache, Sector - 110, Noida.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar, Patna.
2. Patna High Court through its Registrar General.
3. Registrar General, Patna High Court.
4. Director, G.P.F Accounts Birchand Patel Path, Bihar, Patna.
5. A.G Bihar, Patna.
6. Principal Secretary Finance, Department, Govt. of Bihar, Patna.
7. Secretary Department of Law and Justice Bihar, Patna.
8. Director Agriculture and Controller of weight and measure. X

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ritesh Kumar, Advocate
For AG	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Mr. Jaishankar Kumar,
For the Respondent/s	:	Mr. Sarvesh Kumar (Gp24)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-03-2024

The petitioner is the wife of a judicial officer, who retired on 01.02.1999. The claim made by the petitioner is to pay the full amount of G.P.F. with up to date interest and penal interest @ 12% per annum, leave encashment with 12% interest and group insurance with 12% interest. Though, a specific relief was not prayed, the averments in the writ petition also indicate that there is a claim for pension since the entire period of service of the petitioner's husband under the Bihar State Government is more than 10 years. By an amendment the prayer for pension also has been incorporated.

2. We heard the learned counsel for the petitioner and the learned counsel for the State as also the learned counsel appearing for the High Court.

3. On facts, it has to be noticed that petitioner's husband was appointed as a Weights and Measures Inspector in the Agricultural Department on 26.02.1964, from which service he resigned on 12.05.1972. Later, he joined the Bihar Judicial Superior Service as an Additional District and Sessions Judge on 16.05.1991. He worked in different stations and retired on 01.02.1999, after which he was also engaged in the Fast Track Courts from 15.09.2001 to 14.09.2003. The claim raised as we noticed above is of G.P.F., leave encashment, group insurance and pension.

4. We have to, at the outset, notice that the writ petition itself is grossly delayed. The petitioner's husband retired on 01.02.1999; the re-employment in the Fast Track Court being of no consequence with respect to the retirement benefits. The petitioner's husband also expired on 16.10.2022, without any such claim having been raised in his lifetime. The retired employee hence, while he was alive did not make any claim and now his wife has raised the claim after his death.

5. Be that as it may, we look at the counter affidavits of the respondents. The District Provident Fund Officer, Katihar, has filed a counter affidavit on 09.11.2023, wherein it has been stated that the G.P.F. amount of Rs. 3,41,169/- with up to date interest was dispatched to the concerned authority for making payment as per Annexure-R/D dated 27.11.2023. It is also submitted that the deceased husband of the petitioner was given interest on the G.P.F. amounts, the retirement having occurred on 01.02.1999.

6. The Joint Director, Agricultural-cum-Controller Weights and Measures, Bihar Patna has also filed a counter affidavit. It is specifically stated that the employment of the petitioner's husband in the Agricultural Department was less than 10 years from 26.02.1964 to 12.05.1972. Though, he is said to have joined judicial service on 16.05.1991, there is no disclosure of any service between May, 1971 to 15.05.1991. Rule 145 (ka) of Bihar Pension Rules of 1950 is relied on to contend that an employee would be entitled to minimum pension only if he serves the Government for 10 years. As to the G.P.F. amount due to the petitioner's husband, the authority has issued a letter for payment of admissible G.P.F. to the District Provident Fund Officer, Gaya.

7. The District Provident Officer, Gaya has also filed a counter in which it has been stated that the provident fund amounts due to the petitioner for service in the Agricultural Department amounting to Rs.38,738/- with up to date interest was paid as on 27.11.2003. The counter affidavit filed by the 8th respondent also confirms that the amounts due as G.P.F has been received and confirmed by the petitioner by a mail issued by her son, produced as Annexure-R/B.

8. The High Court also by its counter affidavit confirms the payment of General Provident Fund amounts as stated above. Insofar as the group insurance amounts, it is stated that the husband of the petitioner was a self drawing and disbursing officer and did not make any contributions to group insurance. As far as leave encashment, there is no application filed by the employee after retirement. Now it is too delayed and there is absolutely no chance of tracing out the service records. We are convinced that the claims for group provident fund, group insurance and leave encashment and interest thereat, are unsustainable.

9. Now, we look at the claim of pension. We have referred to the service details of the petitioner, which is of less than 8 years under the Superior Judicial Service from which he retired and 10 years before that; service under the Agricultural Department of little more than 7 years. The minimum period of pensionable service is 10 years and it has to be continuous, as is required under Rule 103 of the Bihar Pension Rules, 1950.

> *"An interruption in the service of a Government servant entails forfeiture of his past service, except in the following case:-*
> *(a) Authorised leave of absence.*
> *(b) Unauthorized absence in continuation of authorized leave of absence so long as the post of the absentee is not substantively filled; if his post is substantively filled, the past service of the absentee is forfeited.*
> *(c) Suspension, where it is immediately followed by reinstatement whether to the same or to a different post, or where the Government servant dies or is permitted to retire or is retired while under suspension.*
> *(d) Abolition of the post or loss of appointment owing to reduction of establishment.*
> *(e) Transfer or non-qualifying service in an establishment under Government Control. The transfer must be made by a competent authority; a Government servant who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant-in-aid school entails forfeiture.*
> *(f) Time occupied in transit from one appointment to another provided that the Government servant is transferred under the orders of competent authority, or, if he is a non-gazetted Government servant with the consent of the head of his old office."*

10. When the petitioner left the service of the Agricultural Department, he forfeits his service there at. He joined the Superior Judicial Service after a period of 10 years, in which service he did not have a minimum period of 10 years. The earlier service in the Agricultural Department under Rule 103 cannot be deemed to be service for the purpose of pension since the break in service was not on any of the circumstances contemplated under Rule 103.

11. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	
Uploading Date	20.03.2024
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