

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14285 of 2023

=====

Sumitra Devi Wife of Late Jaleshwar Singh, Resident of Village-Goraul, P.S.-
Goraul, District-Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Education,
Government of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar,
New Secretariat, Patna.
3. The Deputy Secretary, Department of Education, Government of Bihar,
Patna
4. The Director, Secondary Education, Budh Marg, Patna, Bihar.
5. The Deputy Director, Secondary Education, Government of Bihar, Patna.
6. The Regional Deputy Director of Education, Muzaffarpur.
7. The District Education Officer, Vaishali
8. The Principal, Project Girls High School, Goraul, District-Vaishali.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Satish Chandra Mishra, Advocate Mr. Md. Nurul Hoda, Advocate Mr. Birendra Nath Pandey, Advocate
For the Respondent/s	:	Mr. Subhash Chandra Mishra (Sc16) Mr. Madhukar Mishra, AC to SC-16

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 12-12-2024

Heard learned counsel for the petitioner and learned
counsel for the respondent/State.

2. This writ application has been filed for following
reliefs:-

(i) For issuance of an appropriate writ/writs in
the nature of certiorari for quashing the impugned
order contained in Memo No. 94 P dated 10.08.2022
(Annexure-5) issued under the signature of
Respondent No.4 i.e. the Director, Secondary



Education, Bihar, Patna in pursuance of the order dated 07.08.2013 (Annexure-4) passed by this Hon'ble Court in petitioner's CWJC No. 14970 of 2013 whereby and where under Respondent No.4 has wrongly, erroneously and illegally rejected the claim of approval of the services of the Late husband of the petitioner namely Late Jaleshwar Singh, Clerk Projects Girls High School, Goraul, Vaishali on the ground of being overage at the time of his initial appointment as this act of Respondent No.4 in rejecting the claim of approval of services of the husband of the petitioner is wrong and illegal in view of the settled principle of law at the level of the Hon'ble Supreme Court and hence, the impugned order is liable to be quashed in the fact and circumstances of the case.

(ii) For further issuance of an appropriate writ after quashing the aforesaid impugned order an appropriate writ of mandamus be issued directing/ commanding the Respondents to make payment of the entire arrears of salary, retirement benefits and all the arrears of the Late husband of the petitioner, apart from her family pension with entire arrear in up-to-date manner with permissible statutory interest without any further delay.

(iii) Any other relief/reliefs for which petitioner is entitled for in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that husband of the petitioner was appointed by the then Managing Committee of Project Girls High School, Goraul, Vaishali on 20.09.1982 vide Appointment Letter contained in Memo No.12 dated 20.09.1982 issued by the Secretary of the said Managing Committee (Annexure 1 to the writ petition). The then



Headmistress of the School had submitted the detailed information about the husband of the petitioner in a prescribed manner to the department for consideration on 05.06.2006 and thereafter, vide Office Order contained in Memo No.335 P dated 08.07.2010, the approval of services of the husband of the petitioner was rejected on the ground that at the time of initial appointment, he was overage.

4. Learned counsel for the petitioner further submits that the husband of the petitioner was suffering from various ailments and therefore, he suddenly died on 02.01.2012, as a result of which the family of the petitioner went in hardships, but the petitioner against the aforesaid Office Order dated 08.07.2010 (Annexure-3), moved before this Hon'ble Court in CWJC No.14970 of 2013 and this Hon'ble Court, without going into the merit of the case, disposed of the writ petition, vide order dated 07.08.2013 and directed the Director, Secondary Education (Respondent no. 4) to decide the matter sympathetically keeping only in view that the widow (petitioner) may become entitled for certain monitory benefits if it is held that her husband was wrongly deprived of the benefit of regularization on an erroneous ground. In pursuance of the aforesaid order dated 07.08.2013 passed in the C.W.J.C. No. 14970 of 2013 (Annexure-4), the petitioner submitted her



representation along with a copy of the aforesaid order before the Director, Secondary Education, Bihar, Patna, but, the claim of the petitioner has been rejected, vide impugned Order contained in Memo No.94 P dated 10.08.2022 issued by the Respondent No.4 wherein he has wrongly, erroneously and illegally rejected the claim of approval of the services of the Late husband of the petitioner namely Late Jaleshwar Singh on the ground of being overage at the time of his initial appointment, which is absolutely illegal, in view of the settled principle of law and hence, the impugned order is liable to be quashed in the fact and circumstances of the case.

5. Learned counsel for the petitioner submits that the issue of over-age or under-age has already been settled by the Full Bench of this Court in the case of *Project Uchcha Vidyalaya Shikshak Sangh versus The State of Bihar and others*, reported in **2000 (1) P.L.J.R. 287**, by which several cases of similarly situated persons have been decided with a direction to the concerned authorities to regularize the services of the Teaching and Non-Teaching Staff of the schools and as such, learned counsel requests for setting aside the impugned order.

6. On the other hand, a counter affidavit has been filed on behalf of State wherein it is stated that the respondent no. 4



/Director Secondary Education, Bihar has examined the matter regarding claim of the petitioner with sympathetic view, but the husband of the petitioner was over age at the time of appointment, therefore, the claim was rejected.

7. Heard learned counsel for the parties. The issue is no longer *res integra* as same has been decided by this Court in paragraph 21 and 22 of the aforesaid judgment of **Project Uchcha Vidyalaya (supra)**. In a similar situated case, a coordinate Bench of this Court, vide order dated 04.04.2012 passed in C.W.J.C. No. 18860 of 2011 with C.W.J.C. No. 4133 of 2011, has observed in paragraph nos. 4, 5 & 6, which are as follows:-

“4. Attention of the Court has been drawn to paragraph 21 and 22 of the said decision where the Full Bench while dealing with such dispute relating to the Project Schools at the High Court level had the foresight to express its opinion that claim of an employee would not be brushed aside or negated on the ground that even if they have had uninterrupted period of service beyond 16-17 years, they ought not to be removed on the simple ground that they had crossed the age of 31 years at the time of initial appointment by the Managing Committee.

5. The Full Bench further has gone to deal with the issue of over-age or under-age, as the case may be, and has also opined that since there was no rule in place at the time when such engagements



were made by the Managing Committee, the same cannot be made yardstick for judging such appointments after so many years.

6. The Full Bench decision of the High Court even travelled to the Apex Court but the Apex Court did not express any contrary opinion on the observation of the Full Court. It did lay down certain guidelines based on which verification of the status of the schools were required to be made on the actual head- count on the field but rejection of claim for regularization on spacious ground is one of the aspect which has been talked about even by the Apex Court.”

8. Considering the Full Bench Judgment of this Court as well as order dated 04.04.2012 passed in C.W.J.C. No. 18860 of 2011 alongwith C.W.J.C. No. 4133 of 2011 passed by a coordinate Bench of this Court as also considering the materials available on record, this Court is of the considered opinion that the impugned order, contained in Memo No. 94 P dated 10.08.2022 (Annexure-5 to the writ petition) issued under the signature of Respondent No.4 i.e. the Director, Secondary Education, Bihar, Patna is bad in law and same is, hereby, quashed with further direction to the respondents to reconsider the claim of the petitioner, take decision for regularizing the services of deceased employee and thereafter, pay all consequential benefits to the petitioner within a reasonable



time frame, preferably within a period of three months from the date of receipt/production of copy of this order.

9. With above observation and direction, the writ petition is allowed.

(Prabhat Kumar Singh, J)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.12.2024
Transmission Date	N/A

