IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6957 of 2022

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Arun Kumar Singh, Son of Shiv Mangal Prasad Singh, presently Resident of Mohalla-Sikandarpur (Behind of S.P. Kothi on River Bank), P.S. Town, District-Muzaffarpur (Bihar)-842001.

... ... Petitioner/s

Versus

1. The State of Bihar through Directorate, ICDS, Bihar, Patna.
2. The Accountant General (A & E), Patna Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Sr. Advocate Ms. Kanupriya, Advocate Mr. Abhishek Anand, Advocate
For the Respondent/s	:	Mr. S.K. Mandal, SC-3 Ms. Neelam Kumari, AC to SC-3
For the AG, Bihar	:	Mr. Ram Yash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 01-05-2025

Heard Mr. Satyabir Bharti, learned Sr. Advocate with Ms. Kanupriya, learned Advocate for the petitioner, Mr. S.K. Mandal, learned Standing Counsel No.3 for the State and Mr. Ram Yash Singh, learned Advocate for the Accountant General.

2. The petitioner upon being superannuated on 31.01.2016 from the post of Clerk-cum-Typist at the office of the CDPO, Paroo, Muzaffarpur, has approached this Court seeking a direction upon the respondent concerned to extend all the admissible retiral benefits and other dues. During the pendency of the writ petition, though substantive amount under

the retiral benefits have been paid to the petitioner, however, the respondent authorities vide letter dated 23.02.2023 as contained in Memo No. PEN-14-2146/2022-23 have slashed down pension of the petitioner along with the gratuity by excluding the period of retrenchment of the petitioner, from 01.10.2001 to 25.07.2006 and also the period from 16.06.2013 to 05.12.2014, while making fixation of the pension. It is this letter which was put to challenge by filing Interlocutory Application No.1 of 2024 in the present writ petition. The petitioner also sought quashing of the consequential PPO No. 202411141018PO/GPO No. 202411141018GO dated 09.04.2024, by which reduced pension and gratuity has been fixed.

3. Before adjudicating the legality of the impugned action and the order, it would be apt to summarize the short facts for better appreciation.

4. The petitioner was initially appointed as Clerk-cum-Accountant in the office of Adult Education Project, Goriakothi, District-Siwan on 06.02.1985. Subsequently, the petitioner and other identically situated Class-III as well as Class-IV employees including the Supervisors, who were employed under the Mass Education Directorate, were retrenched w.e.f. 01.10.2001, which order was put to challenge

and finally the petitioner along with others were absorbed under Memo No. 582 dated 20.05.2005 in different departments of the State. The petitioner was duly absorbed in ICDS under department of Social Welfare on 25.07.2006. The petitioner was paid his salary on the basis of his Last Pay Certificate issued by the Assistant Director, Non-Formal Education, West Champaran, Bettiah and accordingly salary of the petitioner was determined by the CDPO, Goraul and paid without any interruption till his retirement on 31.01.2016.

5. Time to time, pay-scale of the petitioner was revised in terms of the recommendation made by the Pay Commission. However, notwithstanding his superannuation on 31.01.2016, when the petitioner has not been allowed his admissible retiral benefits, he approached this Court by filing C.W.J.C. No. 7284 of 2021 and only thereafter the concerned department sent his pension paper and service book to the office of the Accountant General but the same was returned to the department with certain objection. There was repeated communications between the CDPO and the Accountant General with regard to the fixation of retiral benefits of the petitioner and finally vide letter no. 318 dated 25.06.2021, the CDPO forwarded the petitioner’s application for fixation of

pension, which was again returned by the office of the Accountant General, Bihar vide letter dated 09.09.2021 stating therein that the petitioner was employed in Adult Education Directorate on 06.02.1985 and was retrenched on 30.09.2001 and later on he was absorbed in ICDS on 25.07.2006; hence, in view of letter no. 464 dated 28.02.2019 issued by the Education Department, Government of Bihar, the period of retrenchment afore-noted, shall not be counted for any financial/service benefit in determination of pension.

6. Based upon the office objection of the Accountant General, Bihar, the office of the CDPO, Goraul recalculated the pay of the petitioner and sent it for approval to the District Accounts Officer, Muzaffarpur.

7. Mr. Satyabir Bharti, learned Senior Advocate for the petitioner has firstly taken this Court through the order dated 20.07.2006 as contained in Memo No. 2102 of the Social Welfare Department, ICDS Directorate, Government of Bihar, whereby the petitioner along with others were absorbed. Referring thereto, it is submitted that it was specifically prescribed that though the employees would not be entitled for seniority based upon the past services and their absorption shall be treated as new appointment, however, their past services

rendered in the Mass Education Directorate before retrenchment shall be counted for pension. It was also directed that the salary would be paid in accordance with the Last Pay Certificate issued by the previous office where the employee was posted.

8. The learned Senior Advocate, thereafter, has taken this Court through the resolution dated 15.07.2013 issued by the Education Department, Government of Bihar, wherein in the light of the decision of this Court dated 19.04.2011 passed in C.W.J.C. No.20780 of 2010 along with C.W.J.C. No.20801 of 2010, it was directed that the period of retrenchment of the employees of the Adult Education would be notionally counted for fixation of salary after the employees absorbed in another department. The learned Senior Advocate, placing reliance upon the aforesaid resolution as well as the order passed by this Court in C.W.J.C. Nos. 20780 of 2010 and 20801 of 2010, has strenuously argued that the petitioners of the said writ petition on being aggrieved with the order of the exclusion of their retrenchment period between 1992 to 1998 had approached this Court and the learned Court while setting aside the impugned order of the Principal Secretary, Government of Bihar, directed to consider the petitioners as continuing in service between 1992 to 1998 on notional basis only for the purpose of grant of

monetary benefit from 1998 onwards and post retiral monetary benefits. It was made clear that the petitioner and other supervisors shall not be entitled for salary of the period in any manner and shall also not claim any seniority over other Government servants. The period shall be counted in the service only for personal monetary benefits of the petitioners and nothing more.

9. The resolution of the Education Department contained in Memo No. 1366 dated 15.07.2013, in no uncertain terms made explicit that in compliance with the order of this Court afore-noted, the period of retrenchment shall be counted notionally only for the purpose of pension; hence, in any view of the matter, the exclusion of retrenchment period for the purpose of pension is wholly illegal and unjustified. So far the impugned order whereby the pension of the petitioner has been slashed down by including the period of retrenchment, is wholly misconceived, inasmuch as the same is based upon irrelevant and incorrect facts. The letter dated 20.12.2018, would reveal that the Director, Mass Education by misinterpreting the judgment of the Hon’ble Supreme Court in SLP No. 7358 of 2018 have requested the Additional Chief Secretary, Social Welfare Department not to consider the period of retrenchment

from 2001 to 2006-07 for the purpose of any service benefit/pension etc. The recommendation, in fact, is contrary to resolution of the State Government notified on 15.07.2013. It is further clarified that SLP No. 7358 of 2018 was with respect to payment of salary for retrenchment period from 2001 to 2006-07 and thus any decision of the Apex Court in the said matter has no relevance to the issue involved in the present writ petition. It is further urged that the order passed in LPA No. 2307 of 2016 arising out of C.W.J.C. No. 22208 of 2018, which was the subject matter in SLP No. 7358 of 2018 was only with respect to salary for the period of retrenchment, which was adjudicated and finally the order of this Court came to be set aside by the Hon'ble Supreme Court. The petitioner's claim is confined to determination of pension on the basis of notionally counting the period of retrenchment from 2001 to 2006-07 and has no concern with the salary for the period in question.

10. Mr. S.K. Mandal, learned Standing Counsel No.3, dispelling the afore-noted contention has submitted that the issue involved and the relief sought for by way of interlocutory application in the present case came to be set at rest by the Apex Court. The Director, ICDS, Bihar, Patna vide letter dated 15.01.2019 addressed to all the District Officer, highlighting

therein the order dated 29.10.2018 of the Hon'ble Supreme Court passed in SLP No. 7358 of 2018, explicitly held that the period of retrenchment of adjusted employees from 2001 to 2006-07 should not be counted for any kind of salary/pension purpose. In this regard, Memo no. 3094 dated 20.12.2018 of the Director Education Department, Government of Bihar has also been issued prescribing therein the period of retrenchment shall not be counted in the light of the order of the Hon'ble Supreme Court. In compliance with the afore-noted resolution and the order of the Apex Court, the pension of the petitioner came to be fixed by the Accountant General, Bihar, Patna, and accordingly issued the admissible PPO/GPO. In no circumstances, the services of the petitioner for retrenched period for the year 2001 to 2006-07 is countable for retiral benefit(s).

11. This Court has anxiously heard the learned Advocate for the respective parties and also perused the materials available on record.

12. Having gone through the Bench decision of this Court in C.W.J.C. No.20780 of 2010 along with C.W.J.C. No.20801 of 2010, there is no iota of confusion that the issue before this Court was with respect to continuation of service for the period between 1992-1998, during which services of the

petitioners of the said writ petition were retrenched. The learned Court after taking note of Rule 103(d) of the Bihar Pension Rules, 1950 has allowed the writ petition and set aside the impugned order with a direction to the respondent to consider the petitioner as continuing in service between 1992-1998 on notional basis only for the purpose of grant of monetary benefit(s). Pursuant to the aforesaid direction, the Government of Bihar in the department of Education came out with the resolution as contained in Memo No. 1366 dated 15.07.2013 approving the services of retrenchment period notionally for the purpose of pension. The said resolution still holds the field.

13. It is not in dispute that some of the petitioners of the afore-noted writ petitions have also come up before this Court in C.W.J.C. No. 22208 of 2013 for payment of salary for the period from 01.10.2001 to 03.07.2007, by placing reliance upon the decision rendered in the case of **Smt. Ram Laxmi Mishra v. The State of Bihar and Others (C.W.J.C. No. 1712 of 2002)**, which decision was duly affirmed up to the Apex Court in Special Leave to Appeal (Civil) No. CC9401 of 2008; thus the writ petition, C.W.J.C. No.22208 of 2013, also came to be allowed vide order dated 22.08.2016, directing the respondents to ensure payment of salary to the petitioners of the

said writ petition for the period 01.10.2001 to 03.07.2007, which order also subsequently got affirmed by the learned Division Bench of this Court in LPA No. 2307 of 2016. However, when the legality of the order of this Court were questioned before the Supreme Court by the Government of Bihar in SLP (C) No. 7358 of 2018, the Hon'ble Apex Court on being found the case of **Smt. Ram Laxmi Mishra** (supra) distinguishable on facts, has been pleased to allow the appeal and set aside the impugned judgment and order passed by the learned Division Bench of this Court in L.P.A. No. 2307 of 2016 and dismissed the C.W.J.C. No. 22208 of 2013.

14. Having gone through all the orders discussed hereinabove, this Court is of the opinion that the issue involved in C.W.J.C. No. 22208 of 2013 as well as L.P.A. No. 2307 of 2016 was only confined to the salary of the petitioners for the period of retrenchment from the year 2001-2006-07. There is no adjudication on the issue which has already been given a quietus in the earlier round of litigation in C.W.J.C. No. 20780 of 2010 along with C.W.J.C. No.20801 of 2010. Consequent thereto, the Government has come out with the resolution as contained in Memo No. 1366 dated 15.07.2013 extending approval to the period of retrenchment for the purpose of fixation of pension.

15. So far the period from 16.06.2013 to 05.12.2014 is concerned, the petitioner specifically contended that he was all along on duty in the period afore-noted, which has not been denied by the answering respondents, hence, this Court does not find any merit in such objection.

16. In view of the aforesaid facts, this Court is of the opinion, that the order of the Director, ICDS, Bihar, Patna as contained in Letter no. 315 dated 15.01.2019 as also the letter as contained in Memo no. 3094 dated 20.12.2018 issued by the Director Education Department, Government of Bihar, are wholly misconceived to the extent whereby the respondents have excluded the period of retrenchment while making fixation of pension of the petitioner, especially in view of the order of absorption as contained in Memo No.2102 dated 20.07.2006 as also the consequential resolution dated 15.07.2013, which are explicitly clear and hold the field.

17. In view thereof, this Court finds the impugned order as contained in Memo No. PEN-14-2146/2022-23 dated 23.02.2023 unsustainable in law as well as on facts, and are hereby set aside. The respondents are directed to revisit the matter and make proper calculation of pension of the petitioner by counting the period of retrenchment for the purpose of fixation of pension and send it to the office of the

Accountant General, Bihar, Patna for issuance of fresh PPO/GPO.

18. The writ petition stands allowed to the extent indicated above.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06-05-2025
Transmission Date	