

(2024) 02 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10753 Of 2020

Mostt. Puspa Nath

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 06-02-2024

Acts Referred:

Bihar Service Code, 1952 — Rule 89, 103

Citation : (2024) 02 PAT CK 0023

Hon'ble Judges : Harish Kumar, J

Bench : Single Bench

Advocate : Virendra Prasad, Ramadhar Singh, Upendra Prasad Singh

Final Decision : Disposed Of

Judgement

1. Heard Mr. Virendra Prasad, learned counsel for the petitioner and Mr. Ramadhar Singh, learned GP-25, for the State.

2. The petitioner is the wife of late Dr. Nagendra Nath, who was working as Civil Surgeon, Sadar Hospital, Bhabhua and subsequently been posted as Regional Deputy Director, Health, Darbhanga Division, Laheria Sarai and finally superannuated on 31.01.2003, has filed present writ petition seeking a direction upon the respondents to ensure fixation of pension of her late husband in the pay scale of Rs.14,300-18,300/- on 01.02.2003 and to pay all the differential amount of pension, gratuity and leave encashment by treating her husband superannuated as Regional Deputy Director, Health, Darbhanga Division, Laheria Sarai and be further directed the respondent Accountant General, Bihar to ensure issuance of Pension Payment Order in the revised pay scale of Regional Deputy Director and to make the payment of arrears of pension/family pension to the petitioner.

3. The facts, which led to the filing of the writ petition in narrow compass is that the petitioner's husband was appointed as Medical Officer on 27.05.1971 and posted at Primary Health Centre, Bodh Gaya, District Gaya. Subsequent thereto,

the petitioner's husband was promoted to the post of Senior Medical Officer and further as Deputy Chief Medical Officer. While the husband of the petitioner was working as Deputy Chief Medical Officer, the State respondent authorities considering his performance recommended his name for promotion to the post of Civil Surgeon and finally promoted to the post of Civil Surgeon in the pay scale of Rs.12,000-16,500/-in the year 2001, but has been allowed salary in the lower pay scale of Rs.10,000-15,200/-.

4. It is the case of the petitioner that while her husband was discharging the duty of Civil Surgeon, Bhabhua Sadar Hospital, Bhabhua (Kaimur), in the mean time, vide notification no. 979(3) dated 07.08.2002, the petitioner's husband was again promoted to the post of Regional Deputy Director, Health Services, Darbhanga Division, Darbhanga. However, despite having been discharged the services on the post of Regional Deputy Director, her husband has not been allowed the pay scale of the Regional Deputy Director i.e. Rs.14,300-18,300/-, as was enforced at that point of time. The petitioner's husband made several representations, but his claim has never been acceded, compelling her to approach before this Court.

5. Per contra, learned Government Pleader representing the State submitted that admittedly the husband of the petitioner superannuated on 31.01.2003 and died on 01.02.2015, but has never chosen to file any writ petition in his life time and for the first time, the wife of the erstwhile employee has filed the writ petition in the year 2020. He next submitted that the husband of the petitioner late Dr. Nagendra Nath joined the post of Medical Officer in the Bihar State Health Services Cadre on 27.05.1971 and in view of the Health Department Notification No. 240(4) dated 15.07.1993 issued in the light of the orders passed by this Court as well as the Apex Court, the seniority of the husband of the petitioner has been revised in the basic category on the basis of his date of appointment and his position in the merit list was recommended by the Bihar Public Service Commission, Patna, fixing his seniority at serial no. 1519 in the gradation list and the Medical Officers only upto Sl. No. 1401 of the gradation list has been granted promotion w.e.f. 01.11.2002, and the husband of the petitioner had already retired from service on 31.01.2003, as would be evident from notification No. 140(3) dated 20.02.2007. It is further manifest that Medical Officer having attained seniority upto the Sl. No. 1496 were granted promotion w.e.f. 01.04.2004, but by that time husband of the petitioner had already superannuated. Moreover, no junior to the petitioner's husband has been accorded any promotion in the pay scale of Rs.14,300-18,300/-.

6. Further submission has been made that with respect to the aforesaid seniority gradation serial no. 1519, no grievance has ever been raised by the husband of the petitioner. He next submitted that so far the posting of the husband of the petitioner to the post of Regional Deputy Director, Health Services was concerned, the same was made in the same pay scale of Civil Surgeon-cum-Chief Medical Officer, and the letter of notification is very much clear in this respect.

7. At this juncture, learned counsel for the petitioner submits that the claim of the petitioner's husband has never been considered in the rightful perspective, as none of the identical persons was/were holding the higher post whereas the deceased husband had been duly promoted and posted to the post of Civil Surgeon, then Regional Deputy Director of Health Services, from which post he came to be superannuated. He next submitted that in similar circumstances, the learned Division Bench of this Court in the case of Dr. Nitya Gopal Bandyopadhyay Vs. The State of Bihar & Ors., reported in 2008(1) PLJR 245, taking note of Rules 89 and 103 of the Bihar Service Code, 1952 has been pleased to hold as follows:

"12. Therefore, the question is whether the post of Principal in which the appellant was directed to officiate on and from 1st February, 1984 involved assumption of duties or responsibilities of greater importance than those attached to the post then held by the appellant, i.e. the post of Professor. There is no dispute that the scale of pay applicable to the post of Professor is lower than the scale of pay applicable to the post of Principal. It goes without saying that Principal, being the leader of the team of teachers, the post of Principal involves assumption of duties and responsibilities of greater importance. There being no dispute that the appellant having discharged the duties of Principal from 1st February, 1984 until his retirement, i.e. until 31st December, 1993, the appellant is entitle to the highest pay to which he would be entitled if his appointment to that post stood alone. In the instant case, his appointment in officiating capacity stood alone to the post of the Principal of the said College involving assumption of greater responsibilities and duties. The appellant, thus, in terms of the provisions of the said Code, became entitle to the pay attached to the post of Principal of the said College on and from 1st February, 1984 until 31st December, 1993 and also to pension and other terminal benefits upon taking into account the entitlement of such pay.

13. In the circumstances, we do not agree with the writ court that the appellant was only entitled to special allowances and not the pay of the Principal of the said College and, accordingly, set aside the judgment and order under appeal and dispose of the letters patent appeal by directing the State to pay to the appellant the emoluments attached to the post of Principal of the said College less remunerations already paid to the appellant for the period 1st February, 1984 until 31st December, 1993 and to recalculate pension and other terminal dues due and payable to the appellant taking into account the pay to which he is entitled to but not paid to him, as above, within a period of six months from today."

8. Further reliance has also been made on another Division Bench judgment in the case of Prafulla Ranjan Shrivastava Vs. The State of Bihar & Ors., reported in 2008(3) PLJR 144, especially para nos. 8 and 9 thereof. He next submitted that if the case of the petitioner is relegated to the department for consideration of the claim made by the petitioner in the present writ petition, her grievance would be

redressed.

9. Considering the submissions advanced on behalf of the petitioner and the reliance on the judgment of the learned Division Bench of this Court, instead of adjudicating the issue, this Court deems it appropriate to relegate the matter to the respondent no.2, who shall examine the claim of the petitioner, in the light of the judgments referred and relied upon by the learned counsel for the petitioner and shall pass a reasoned and speaking order, as raised in the present writ petition, preferably within a period of twelve weeks' from the date of receipt/production of a copy of this order.

10. Needless to observe that if the claim of the petitioner's husband finds favour in the light of the orders passed by the learned Division Bench of this Court, as noted hereinabove, the similar benefit(s) shall be accorded to the petitioner within the stipulated period.

11. This disposes the writ petition.