
7. सेवानिवृत्ति / सेवानिवृत्ति लाभ

प्रेषक,

श्री अंजनी कुमार, सरकार के संयुक्त सचिव,

सेवा में,

सरकार के सभी विभाग / सभी विभागाध्यक्ष / सभी प्रमण्डलीय आयुक्त / प्रधान मुख्य वन संरक्षक,
रांची / महाधिवक्ता, बिहार, पटना ।

पटना-15, दिनांक 18 जनवरी, 1999

विषय :- सचिवालय एवं संलग्न कार्यालयों के सहायक संयुक्त संवर्ग के सदस्यों की पेंशन एवं उपादान और अव्यवहृत छुट्टी के लिये नगद राशि की स्वीकृति देने के पहले नियंत्री पदाधिकारी से अनापत्ति प्रमाण-पत्र लेने की अनिवार्यता ।

महोदय,

उपर्युक्त विषय के प्रसंग में निदेशानुसार कहना है कि सचिवालय एवं संलग्न कार्यालयों के सहायक संयुक्त संवर्ग के सदस्यों के ऊपर प्रशासनिक नियंत्रण की शक्ति केवल कार्मिक एवं प्रशासनिक सुधार विभाग के हाथों में संकेन्द्रित है । फलतः उक्त संवर्ग के कार्मिकों के सेवांत लाभों (Terminal Benefits) की स्वीकृति देने के लिये इस विभाग के आयुक्त / सचिव ही वस्तुतः सक्षम पदाधिकारी हैं । इसके बावजूद, सेवांत लाभों के त्वरित निष्पादन के उद्देश्य से इस विभाग के पत्रांक-सं०सं०-103/90-का०3132, दिनांक 24.3.90 (प्रति संलग्न) द्वारा यह शक्ति सभी विभागों / विभागाध्यक्षों को प्रत्यायोजित की गयी है । व्यवहार में प्रायः यह पाया जा रहा है कि उक्त शक्ति को प्रयोग करते हुए विभागों / विभागाध्यक्षों द्वारा नियंत्री विभाग होने के नाते कार्मिक एवं प्रशासनिक सुधार विभाग की सहमति तक ली नहीं जाती है, जिसके चलते कतिपय गंभीर प्रशासनिक समस्या एवं उलझन उत्पन्न होती है और अवैध आचरण करनेवाले पदाधिकारी अपने दावे लेकर कानून की पकड़ से परे हो जाते हैं ।

वर्णित संदर्भ में उक्त विकार के परिहार का प्रश्न सरकार के विचाराधीन रहा है और समस्या के सम्यक विचारण के बाद निर्णय लिया गया है कि इस विभाग के पत्रांक-3132 दिनांक 24.3.1990 के अनुसार सचिवालय एवं संलग्न कार्यालयों के सहायक संयुक्त संवर्ग के सभी सदस्यों के पेंशन एवं उपादान और अव्यवहृत छुट्टी के बदले में आदेय नगद राशि की स्वीकृति अभी भी उसी विभाग / कार्यालय द्वारा दी जायेगी, जहाँ कार्यरत रहते हुए संबंधित कार्मिक सेवानिवृत्त होते हैं, पर स्वीकृति प्रदान करने के पहले वित्त विभाग के संकल्प संख्या-3014 वि० दिनांक 31-7-1980 की कॉडिका-6(ख) और परिपत्र संख्या-4564 वि० दिनांक 6-7-1993 में निहित निदेशों

के अनुपालनार्थ कार्मिक एवं प्रशासनिक सुधार विभाग से इनकी पूर्ण स्वीकृति में सहमति-सूचक-अनापत्ति प्रमाण-पत्र अवश्य ले लिया जाय। उक्त से संबंधित प्रस्ताव इस विभाग में भेजते समय संलग्न प्रपत्र में सम्बन्धित सेवानिवृत्त कर्मचारी के विषय में सूचनायें भी दी जाय।

विश्वासभाजन

ह०/- अंजनी कुमार

सरकार के संयुक्त सचिव।

कार्मिक एवं प्रशासनिक सुधार विभाग के पत्रांक 23 दिनांक 18-1-99 के साथ संलग्न प्रपत्र।

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|---|----|
| (i) विभाग का नाम | :- |
| (ii) सेवानिवृत्त पदाधिकारी / कर्मचारी का नाम एवं पदनाम | :- |
| (iii) जन्म तिथि / सेवानिवृत्ति की तिथि | :- |
| (iv) यदि विभाग के अन्तर्गत उसके विरुद्ध कोई अनुशासनिक कार्रवाई चल रही हो या उसे निलंबित किया गया है, तो उसके कारण और उसकी अद्यतन स्थिति | :- |
| (v) यदि कोई आरोप हो, जिसके लिये विभाग की मंशा विभागीय कार्रवाई शुरू करने की हो, तो आरोप-पत्र और उसके साथ पूरक दस्तावेज भी सुलभ कराया जाय | :- |
| (vi) यदि विभाग की अनुशांसा पेंशन एवम् उपादान रोक रखने या उनमें कटौती करने या उनसे किसी तरह की वसूली करने की है, तो विभागीय सचिव या विभागाध्यक्ष का सुस्पष्ट मंतव्य | :- |
| (vii) पेंशन स्वीकृत करने के लिये सक्षम पदाधिकारी के हस्ताक्षर | :- |

[2]

Office of the Advocate General, Bihar, Patna

Patna High Court, Patna.

No. 3167 Patna, dated the 27th March, 1996

From,

Sri Rameshwar Prasad,
Advocate General, Bihar,

To,

The Chief Secretary, Bihar, Patna.

Ref. No. C.W.J.C. No. 4265/94

Mostt. Rukmani Devi Vs. State and others.

Copy of the order dated 29.2.1996 passed by Hon'ble Mr. Justice Radha Mohan Prasad in aforesaid case is being enclosed herewith for circulation as directed in paragraph 18 of the order for its strict compliance.

In the High Court of Judicature at Patna.

C.W.J.C. No. 4265 of 1994

Mostt. Rukmani Devi vs. The State of Bihar & others

This writ petition has been filed by the widow of Barrister Ram, who died in harness on 14.6.1974 while posted at Vijaipur Block in the district of Gopalganj, seeking a direction to the respondents to pay the family pension month to month along with other dues, for which she is entitled after the sad demise of her husband besides other legal dues, for which her husband was entitled and not paid.

2. The petitioner being 'Mehtar' by caste is member of the scheduled caste. It is stated that her husband was put under suspension sometime in the year 1970-71 when he was working as a Circle Inspector under the State Service. A departmental proceeding was initiated against him, after conclusion of which his suspension was revoked, but he was demoted to the post of a Karamchari. Thereafter he joined as Karamchari at Vijaipur block where after serving about a year, he died in harness on 14.6.1974. It is claimed that the petitioner met the respondents on a number of occasions and that she was assured of the payment, which remained to be paid but that has not been paid so far. Further, it is stated that the petitioner is an illiterate old widow facing acute hardships on account of non-payment of the family pension and other legal dues of her late husband. She being not aware

of all the dues payable to her late husband seeks indulgence of this court to direct the respondents to file statements in this regard as to the payments admissible to her late husband.

3. Despite service of two copies of the writ petition on the learned Advocate General appearing for the State of Bihar and its office namely, the District Magistrate, Gopalganj and the Circle Officer Vijaipur Block (Respondent nos. 3 and 4) as also on the learned Standing Counsel appearing for the Accountant General, Bihar on 3.5.1994 no counter affidavit has been filed on behalf of the respondent State, and its officers. By order dated 19.12.95 four weeks time was granted to the learned counsel for the State to file counter affidavit to be affirmed by the District Magistrate, Gopalganj. Despite all these no counter affidavit has been filed on behalf of the State and its officers. Learned J.C. to G.P.I. states that despite instructions being sought from the respondents no instruction has been received from them so far.

4. However, a counter affidavit has been filed on behalf of the Accountant General, Bihar (respondent no. 2). In the said counter affidavit it is stated that in the absence of the details in the writ petition of reference of pension papers alongwith service book and sanction order for family pension and gratuity made to the office of the said respondent, the same could not be traced out. Hence letters have been sent to the concerned authority of the State Government vide letter no. pen-IC-194 dated 16.6.1994 and reminder that to also on 15.7.1994. In reply to the same the Establishment Dy. Collector, Gopalganj vide letter no. 127 dated 12.8.1994 sent a letter of Circle Officer Vijaipur that pension papers could not be submitted in absence of service book and required papers. It is further stated that the Office of the Accountant General has again requested the Department vide letter no. pen 16-384 dated 20.10.1994 and subsequent reminder letter no. pen 16-434 dated 6.12.94 to send the pension papers along with sanction order. True copies of the letters have been annexed as Annexure A, B, C, D and E respectively to the counter affidavit. Similarly, it is stated that in absence of General Provident Fund Account no. in the writ application, the petition could not be checked in the office of the said respondent. Hence, the G.P.F. Account no. was also called for vide letter no. Fd-CL-117 dated 15.6.1994 and in reply, the Circle Officer, Vijaipur, vide his letter no. 817 dated 5.8.1964 intimated that no G.P.F. Account number was allotted to the late husband of the petitioner.

5. I may re-iterate here that the husband of the petitioner died on 14.6.1974, but no action whatsoever appears to have been taken by any of the respondents during the last twenty years and when the petitioner was facing acute hardship on account of non-payment of the family pension and other legal dues, she was compelled to file this writ petition on 4.5.1994.

6. Every day I find that in most of the writ applications grievances are raised regarding non-payment of post retirement dues as well as other legal dues to the concerned Government servants and/or to their legal heirs and representative and despite service of two copies of the writ application on learned Advocate General appearing for the State Government and its officers respondents, as per the rules of this Court, in which a provision was introduced for service of two copies of the writ application on the learned Advocate General in order to expedite disposal of the writ applications at the admission stage itself, no instruction is given by the respondents to the learned State Counsel and the matter has to be adjourned only for that purpose. Ultimately, even if in any case counter affidavit is filed, no plausible explanation is given for with-holding/non-payment of the legal dues including post retiral dues of the Government servants and usually this court has to pass orders only fixing time for action to be taken by the different authorities for final disposal of the claims. It appears that non-payment of the post retiral dues of the concerned government servants in this State in normal course has become an usual phenomenon, which has unnecessarily increased the number of pendency of the cases in this court. In most of the cases no steps are taken until the Government servants or their legal heirs and representative file writ petition claiming payment of the legal dues including the post retiral dues and ultimately it is found that only on account of inaction on the part of the State authorities sanction orders for payment of such dues are not issued without there being any valid jurisdiction.

7. The Supreme Court in the case of State of Kerala and others vs. M.P. Padnabhan Nair, reported in A.I.R. 1985 S.C. 356 realising the agony and harassment of the retired employees at the fag end of their life observed as follows :-

“Usually the delay occurs by reason of non-production of the L.P.C. (Last pay certificate) and N.D.C. (No liability certificate) from the concerned Department but both these documents pertain to matters, records where of would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much

known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement can not be over emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

8. It was also held by the apex court in the said case that :

“Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become under the decision of this court valuable rights and property in their hands.”

9. It was also observed in said decision that the State Government may consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses and that such action if taken would help to generate in the official of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public.

10. Earlier, I had requested the learned Advocate General to get this problem solved in consultation with the high ups in the State Government. The learned Advocate General informs today that he had discussed the matter with the Chief Secretary and the Chief Secretary has already issued instruction to all Heads of the concerned Departments that the process of calculation of post retiral dues of the Government servants must be started six months before the date of their retirement or immediately thereafter and necessary payment order/sanction order be also issued. But I do not find any improvement in disposal of such claims.

11. Would like to mention here that in many cases I have found that after the Government servant superannuates from the service, action is taken for recovery of sums alleged excess payment without following the law relating to it contained in Rule 43(b) and/or Rule 139 of the Bihar Pension Rules, 1950 which in my opinion is just a malafide

attempt either to unnecessarily harass the government servant or to cover up the laches on the part of the State authorities. Such decision should be avoided and only the action, which is permissible in law should be taken, otherwise the State Government must fix, the responsibility and punish the concerned officer, who is ultimately found responsible or such malafide action being taken after the retirement of the Government servant. The law regarding application of Rules 43 (b) and 139 of the Bihar Pension Rules, 1950 came up for consideration before the apex court in the case of State of Bihar v. Md. Idris and by a judgement and order passed in the said case, reported in 1955(2) PLJR 51 the apex court has settled issue. Thus in my opinion, in all such cases the concerned authorities must re-examine the claims of the concerned retired Government servant and dispose it of by a reasoned order.

12. Further I have found that in the garb of non-compliance of the formalities by the concerned Government servant or their legal heirs and representative the payment of legal dues are withheld. In my opinion, that is also not a correct approach of the authorities in the State, which they only realise after their own retirement when they are also faced with similar situation. In the practice prevailing in the State all Government servants are aware that the details of various deductions made from their salary, which, under the rules are required to be communicated to the concerned Government servant by the authorities concerned, are normally not supplied to them, thus, in my opinion, it is too much to expect that the Government servant concerned and particularly after his death his legal heir and representative would be able to meet the said requirements. The entire records in regard to deductions made from the salary of the government servant towards G.P. fund and other accounts and / or advances given to them are maintained in the concerned departments of the State Government. The date of retirement of every Government servant is also very much known in advance. Thus, I am unable to appreciate why the process of collecting the requisite information and issuance of necessary sanction order should take years and the formalities be not completed before their date of retirement, so that the payments are made to Government servant on the date he retires, or, on the following day and pension at the expiry of the following months.

13. The other plea taken which I have noticed in many cases, specially by the Universities, Board, Zila Parishad, Corporations and other undertakings of the State Government is that the payment of such dues, specially post retiral dues could not be made due

to paucity of funds. I am unable to appreciate how paucity of funds can be ground to deny the payment of the legitimate dues of the employees specially the post retiral dues, in which case, after retirement one has to discharge various liabilities, such as marriage of wards, arranging for their livelihood, constructing at least a shed to live in etc.

14. Having regard to the aforementioned facts and circumstances, as also so considering the large number of pendency of cases in regard to retirement benefit matter in this court, I am constrained to pass a general order that the concerned Government servants or their legal heirs and representative should raise their claims afresh by filing representation in which they should give full details of their claim and also full address for communication henceforth before the concerned Head of Departments, who shall grant a receipt in token thereof. The heads of the respective departments shall get the entire claim filed before him examined through various concerned authorities including Director, Provident Fund, District Provident Fund officers and finally dispose them of by reasoned order dealing with each and every claim separately and shall also issue necessary sanction order/authority slip for payment of admitted dues with statutory interest as well as the interest as per various Government circulars / decisions taken in that regard within a period of two months of the receipt of the claim.

15. It is made clear that the main responsibility for payment of all the admitted dues of the concerned government servants shall be of the heads of the concerned Department. In case of any dispute, in regard to any of claims, they shall assign reasons for non-accepting the same and shall communicate to the concerned Government servant / person within the aforesaid time. If any of the formalities, such as filing of the indemnity bond or succession certificates etc. are to be completed by the claimant, then they must be communicated much before the expiry of the said period, so that the claimant may meet the said requirement and the delay in payment of the legitimate dues is avoided.

16. The Accountant General, Bihar, who is represented by Mrs. Renuka Sharma, learned Standing Counsel, is directed to issue necessary authority slip within one month of the receipt of the sanction order from the concerned authority in the State Government.

17. It is further made clear that non-compliance of any part of the aforesaid directions by any of the concerned authorities would constitute contempt of this court and will be seriously viewed. This court may also consider to award heavy penal interest and costs

besides imposition of punishment in the contempt proceeding against the concerned heads of Department / Accountant General, Bihar, which shall be realised from their pocket.

18. Let a copy of this order be given to the learned Advocate General for forwarding it to the Chief Secretary, who shall circulate it to all the heads of departments for its strict compliance. The office is directed to send a copy of this order directly also to the Chief Secretary, Government of Bihar and as to the Director, G.P. Fund, Bihar for circulation and its strict compliance.

19. Let a copy of this order be also given to Mrs. Renuka Sharma, learned Standing Counsel for Union of India appearing for the Accountant General, Bihar and a copy of the same be also directly forwarded to the Accountant General, Bihar for its strict compliance.

20. The office is directed to prepare the required number of copies of this order for sending them to the aforementioned official authorities.

21. In the instant case, as it is submitted by Mr. Jainandan Singh, learned Addl. Standing Counsel for the Accountant General, Bihar that the Accountant General's office has not received the details of the sanction order. I direct that the petitioner should raise her claim before the concerned Head of Department and the concerned authorities will act in terms of the aforesaid general directions within the time fixed.

22. The writ application accordingly stands disposed of.

पत्र संख्या-सं०सं० 103/90 का० - 3132

बिहार सरकार

कार्मिक एवं प्रशासनिक सुधार विभाग

प्रेषक, श्री आर०बी० झा, सरकार के संयुक्त सचिव ।

सेवा में,

सभी विभागीय सचिव / सभी विभागाध्यक्ष / सभी प्रमण्डलीय आयुक्त ।

पटना-15, दिनांक 24 मार्च, 1990 ।

विषय :- सहायक संयुक्त संवर्ग में प्रोन्नति के पश्चात् एक विभाग के पदाधिकारी को दूसरे विभाग में पदस्थापन के पश्चात् उनकी सेवा-निवृत्ति पेंशन, उपादान, ग्रूप बीमा आदि का भुगतान ।

महाशय,

उपर्युक्त विषय पर निर्देशानुसार मुझे कहना है कि विभिन्न विभागों द्वारा यह प्रश्न उठाये जा रहे हैं कि सहायक संयुक्त संवर्ग में प्रोन्नति के पश्चात् एक विभाग के पदाधिकारी को दूसरे विभाग में पदस्थापन के पश्चात् उनकी सेवानिवृत्ति के पश्चात् उनके पेंशन, उपादान, ग्रूप बीमा एवं अन्य भुगतान किस विभाग से होगा । इस प्रश्न पर भली-भाँति विचार कर यह निर्णय लिया गया है कि तत्काल जिस विभाग से जो पदाधिकारी सेवानिवृत्त होंगे उनका पेंशन, उपादान एवं अन्य भुगतान की कार्यवाई उसी विभाग से की जायगी ।

विश्वासभाजन

ह०/- आर० बी० झा।

सरकार के संयुक्त सचिव ।

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