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**Court :** Patna

**Decided On :** Jan-11-2000

**Judge :** Radha Mohan Prasad, J.

**Appeal No. :** C.W.J.C. No. 2394 of 1997

**Appellant :** Arya Devi

**Respondent :** State of Bihar and ors.

**Disposition :** Appeal Allowed

**Judgement :**

**Radha Mohan Prasad, J.**

1. The petitioner who is widow of late Shyam Sundar Prasad Singh who was in the State Government service and died on 25.1.1972 while working as Assistant Teacher in the Primary School, Pindora Saraihat in the District of Dumka, has prayed for issuance of appropriate writ/order/direction commanding the respondents to pay her family pension and other post-retiral benefits after death of her husband.

2. In short, the relevant facts are that initially the petitioner's husband was appointed as Assistant Teacher in the said primary school on 19.3.1950 by the then Sub-divisional Officer of the Notified Area Committee, Jamtara vide letter No.

5 dated 9.3.1950. The said school was controlled and managed by the then Notified Area Committee, Jamtara. Later the said school was taken over by the State Government with effect from 1.1.1971 vide Government Resolution No. 763 dated 9.2.1973 and consequently the management and control of the said school came under the State Government with effect from 1.1.1971 and the deceased teacher became a Government servant.

3. A counter-affidavit has been filed on behalf of the respondents, in which the facts aforementioned have not been disputed. However, according to the learned Counsel for the State the cut-off date for granting each benefits was fixed on 1.4.1976 vide Government Circular Nos. 1069 dated 23.6.1977 and 2348 dated 26.12.1977 under the 1964 Rules. In the present case, as the petitioner's husband dead before the said cut-off date, the benefit of family pension is admissible to the petitioner under the 1964 Rules. In this regard, the learned Counsel for the State placed reliance on the decision of the Division Bench of this Court in the case of Sona Devi v. State of Bihar and Ors. reported in 1998 (1) PLJR 668. Similar question came tip for consideration in the case of Lalita Devi v. State of Bihar and Ors. reported in 1999 (3) PLJR 236, and this Court while explaining the Division Bench judgment and relying upon the decision of the Supreme Court, held that once after the takeover of the schools with effect from 1.1.1971 by 1976 Act such teachers became Government servant with effect from 1.1.1971, on which date 1964 Rules for grant of family pension was in force, the family of such teachers, who died in harness after 1.1.1971, became entitled for grant of family pension and they cannot be denied this benefit under 1977 Instructions of the State Government. The said decision is reported in 1999 (3) PLJR 236 (supra).

4. Admittedly, the husband of the petitioner died in harness much after 1.1.1971 which was the effective date of take over of the schools by the Government by virtue of which the teachers and employees of the schools became Government: servants and thus, in my opinion, the petitioner cannot be denied in the matter of grant of pensionary benefits by issuing aforesaid executive instruction.

5. In the result, this writ application is allowed and the Secretary-cum-Commissioner, Department of Primary and Adult Education, Government of Bihar,

Patna is directed to take immediate steps to release the family pension and other pensionary benefits of the petitioner within two weeks from the date of receipt/production of the copy of this order. Having regard to the fact that the petitioner has been kept deprived of such payment now for 28 long years, she shall be entitled for interest, at the rate of 10% per annum to be calculated from the due date till the payment is made, which shall be calculated and paid along with the aforesaid dues within the aforesaid time. In the circumstances of the case, however, there shall be no order as to costs.

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