

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.147 of 2023

In

Civil Writ Jurisdiction Case No.15574 of 2022

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Most. Usha Barla, Female, Wife of Late Sheikh Mehmoood Alam, Retired
Principal, C/o-Mr. John Bodra, near Fire Brigade Colony, East Side, Jail
Road, P.O.- Khunti, District-Khunti.

... .. Appellant/s

Versus

1. The State of Bihar Through, Chief Secretary, Main Secretariat, Patna, Bihar-800015.
2. The Principal Secretary, Human Resource Development, New Secretariat, Baily Road, Patna, Bihar-800015.
3. The Additional Chief Secretary Education Department, New Secretariat, Vikas Bhawan, Patna-800015.
4. The Director of Secondary Education, Bihar, New Secretariat, Vikas Bhawan, Patna-800015.
5. The Deputy Director of Education Service, New Secretariat, Vikas Bhawan, Patna-800015.
6. The Deputy Director of Secondary Education, New Secretariat, Vikas Bhawan, Patna-800015.
7. The District Education Officer, Jail Road Kaghzi Mohalla, Biharsharif, Nalanda-803101.
8. The Accountant General, Veerchand Patel Road Area, Patna. Bihar-800001.
9. The District Provident Fund Officer, GPF Office, Nalanda.
10. The Principal, Government High School, Rana Bigha Bihar Sharif, District-Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Mrs. Anima Loisa Topno, Advocate

For the Respondent/s : Mr. Apurva Kumar, AC to GA 12

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 14.10.2026

The present appeal has been filed against the order dated 24.11.2022 passed by the Ld. Single Judge of this Court in CWJC No.15574 of 2022, whereby and whereunder the writ petition has been dismissed on the ground of gross delay and laches.

2. The brief facts of the case according to the appellant, are that the husband of the appellant was appointed on a substantive post against a permanent post of Teacher in Physics in Subordinate Education Service (Upper Division) and was posted at Government Multipurpose Higher Secondary School, Kharsawan, where he joined on 15.03.1961. The husband of the appellant was transferred six times, hence he had resigned but he withdrew his resignation, whereafter he was directed to join Rajkiya Sarvodaya Multipurpose School, Kanke, District-Ranchi *vide* Notification dated 09.11.1971 but his joining was not accepted leading to there being break in service from August, 1968 to 17.07.1978. The husband of the appellant had then applied for being appointed on the post of Teacher of Mathematics, which was advertised by the



Board of Secondary Education, Bihar and pursuant to his selection, he had joined as a Teacher of Mathematics in Lower Division Cadre on 18.07.1978 at the Girls High School, Khunti, District-Ranchi, which was nationalized along with other private schools with effect from 02.10.1980 and all the teachers working in the nationalized school became government employees. In the meantime, on consideration of the representation of the husband of the appellant for giving him seniority from the date of his initial appointment *i.e.* 15.03.1961 in Subordinate Education Service (Upper Division), he was given fresh appointment in Bihar Subordinate Education Service (Lower Division) and it was further mentioned in the appointment letter that his seniority would count from the date of joining, however since he was already working in a nationalized school since 18.07.1978, offer of this fresh appointment was meaningless, thus he did not join, therefore his services were terminated by an order dated 29.11.1988.

3. The husband of the appellant had then challenged the order of termination dated 29.11.1988 before the Ranchi Bench of this Court by filing a writ petition bearing CWJC No.2359 of 1991 (R) which was allowed *vide* judgment dated 03.12.1992 and the order of termination was quashed as also the respondents were directed to grant consequential benefits to the husband of the appellant.



Thereafter, the husband of the appellant had filed a representation before the Director of Secondary Education, Bihar for implementation of the aforesaid order dated 03.12.1992, however no action was taken leading to the husband of the appellant filing a contempt petition bearing MJC No.298 of 1993 (R) which was disposed of by an order dated 10.02.1994 with a direction to the respondents to pass appropriate order within ten days for implementation of the said judgment dated 03.12.1992.

4. The respondents had then filed a review petition bearing Civil Review No.14 of 1994 (R), however the same was dismissed by an order dated 10.01.1995. The husband of the appellant had to again file a contempt petition bearing MJC No.158 of 1994 (R) which was disposed of by an order dated 20.12.1995, since the representation of the husband of the appellant had been disposed of by a Notification dated 03.07.1995, whereby and whereunder decision was taken to give seniority to the husband of the appellant in Subordinate Education Service with effect from 15.03.1961 as also it was decided to give him all benefits of Subordinate Education Service treating him to be in service since 15.03.1961. The said Notification was issued when the husband of the appellant was working at Bal Krishna High School, however he was relieved immediately to join at Government High School,



Biharsharif where he joined on the post of Principal on 18.07.1995 in his existing pay-scale and just after six months, he retired on 31.01.1996 on completing the age of 58 years.

5. The husband of the appellant had then prepared a statement of arrears of salary for the period August, 1968 to 31.01.1996 totaling to a sum of Rs.9,62,341.18 and had sent it to the Office of the Director, Secondary Education, Bihar Patna on 25.04.1996, whereafter he had filed several representations for payment of arrears of salary but to no avail. This led to filing of yet another writ petition bearing CWJC No.2344 of 1997 (R) for payment of arrears of salary and other reliefs including grant of promotion and arrears of retiral benefits, for proper fixation of pay and for refixation of pension on the basis of revised salary etc. The said writ petition was disposed of *vide* order dated 01.01.1997 with a direction to the respondents to pay the admitted dues including retiral benefits and consider the case of the husband of the appellant for regular promotion etc.

6. Since, the order dated 01.01.1997 was not complied with, the husband of the appellant had filed a contempt petition bearing MJC No.436 of 1999 (R), which was disposed of by an order dated 12.02.2003, wherein it was recorded that the retiral benefits have been paid, the authorities have issued orders of time bound



promotion, inasmuch as the husband of the appellant has been granted first time bound promotion with effect from 01.04.1981 and second time bound promotion with effect from 15.03.1986. In the said order dated 12.02.2003, it was also recorded that the Court is not inclined to pass any further order with regard to promotion of the husband of the appellant, inasmuch as there is nothing on record to show that a person junior to the husband of the appellant has been promoted to a higher post giving rise to a claim in his favour for consideration of his case for promotion and moreover, the husband of the appellant had a right for consideration of his case for time bound promotion, which has already been granted *vide* Notifications dated 9th and 10th of February, 2001. Finally, the Ld. Single Judge by the aforesaid order dated 12.02.2003, in nutshell issued the following directions:-

“(i) The respondents are directed to fix the pay of the husband of the appellant in the light of Notification of promotion dated 9th and 10th of February, 2001.

(ii) The respondents are accordingly directed to re-fix the retiral benefits of the husband of the appellant on the basis of such fixation of pay, as aforesaid and pay the consequential benefits of arrears of salary on revision, pension, gratuity & leave encashment within three months.

(iii) The husband of the appellant was granted liberty to approach the District Provident Fund Officer concerned in



case he has any grievance with regard to provident fund amount.”

7. After a series of representations to all concerned by the husband of the appellant to fix his pension @ Rs.4100/- per month, his pension was fixed @ Rs.984/- per month which was even less than the provisional pension of Rs.1192/- per month. The husband of the appellant had filed several representations, whereupon his pension was revised to Rs.1325/- per month. On further representation, the Accountant General, Bihar had revised the pension of the husband of the appellant to Rs.2050/- for the period from 01.02.1996 to 31.03.1997 and converted his pension in the revised scale of Rs.5000-9000/-, to be effective from 01.04.1997. The husband of the appellant had then filed yet another writ petition bearing WP (S) No. 4208 of 2003, *inter alia* praying therein for the following reliefs:-

“(i) To pay 12% interest on the arrear of salary of the period from August 1968 to January 1996 which has been paid on 06.05.2003 after 11 years of the order dated 03.12.1992 passed by this Hon’ble Court in C.W.J.C. No.-2359/1991 (R) for making such payment and that too after the petitioner’s husband pursued the matter by filing a series of writ and contempt petitions.

(ii) To revise the pension, gratuity and other retiral benefits on the basis of pay, in the replacement scale of Rs. 7500/12500- for Principal Zila School as has been



done by the Accountant General in case of other retired Principals and to pay the arrear to the petitioner's husband with interest.

(iii) To pay reasonable penal interest on the entire claim of arrear of salary and other retiral benefits as the Hon'ble Apex Court and other Hon'ble High Courts have been pleased to allow from time to time in suitable cases of undue delay or on wrong/lower fixation of pensionary benefits.

(iv) To pay exemplary cost to compensate the heavy expenses, hardships, harassment and mental agony suffered by the petitioner's husband, and lastly he died during the pendency of the litigation before this Hon'ble Court in pursuing the matter for more than long 26 years after his retirement in getting his rightful claims."

8. The aforesaid writ petition was admitted *vide* order dated 02.07.2009 and subsequently the husband of the appellant had prayed before the Hon'ble Jharkhand High Court at Ranchi that he was not pressing relief Nos. (ii) and (iv), as aforesaid which was allowed by the Court by an order dated 02.09.2009. The aforesaid writ petition bearing WP(S) No. 4208 of 2003 was finally disposed of by an order dated 22.12.2011, while recording that all the consequential benefits/arrears of salary/retiral dues have been paid, however the respondents were directed to make payment of interest at the rate of simple interest of 5 % per month from the date on which the amount became due till the actual payment is



made, within a period of 12 weeks of receipt of a copy of the said order dated 22.12.2011. It appears that the aforesaid order dated 22.12.2011 was not complied with, hence the same led to the husband of the appellant filing a contempt petition bearing Cont. Case (Civil) No.663 of 2012 which was dismissed *vide* order dated 25.04.2014 in view of a sum of Rs.6,81,356/- having been paid to the husband of the appellant by means of a demand draft on the head of interest. It may be relevant to mention here that the husband of the appellant had earlier filed one Cont. (Civil) Case No. 87 of 2004, which was disposed of by an order dt. 25.07.2006 and it was recorded therein that since the balance amount of the GPF, *i.e* Rs.57,619/- was paid on 13.03.2002 & the chart enclosed with the show cause shows that the statutory interest has been calculated up to the month of January, 2000, hence the District Provident Fund Officer, Nalanda, Bihar Sharif shall calculate the statutory interest of the remaining amount, if any, within 2 months.

9. The husband of the appellant had then filed yet another writ petition before this Court bearing CWJC No.13119 of 2016, *inter alia* praying therein for the following reliefs:-

“1. That through this writ petition, the petitioner prays for issuance of an appropriate writ(s), rule(s), order(s), direction(s) commanding the respondents to give following relief to the petitioner who was promoted to Education



Service Cadre II subject to his regular promotion by Bihar Public Service Commission in his own pay scale and transferred from Bal Krishna High School, Ranchi to Government High School, Bihar Sharif, Nalanda on the post of Principal (Annexure-4) on which post petitioner joined on 18.07.1995 and superannuated at the age of 58 years on 31.01.1996:-

A. To issue fresh Pay Slip in prescribed Performa to petitioner w.e.f. 01.01.1996 fixing his pay in revised scales in the pay scales prescribed to employees of Bihar Education Service Class-II as on 01.01.1996 by revising his previous pay successively on 01.04.1978 (by giving 5 increments pursuant to departmental memo no 217/78 dated 4/5 June 1982, 01.04.1981, 01.01.1986 & 01.01.1996 as per recommendation of Successive Pay revision Committee Reports and taking into consideration the merger of Subordinate Education Service into Bihar Education Service class- II w.e.f 01.01.1977 and grant of First Time Bond Promotion w.e.f 01.01.1987 in Pay Scale of Rs 3000- 4500 admissible to employees of Bihar Education Service Class-II. Pursuant to Notification Memo no 435 dated 10.02.2014 issued by Deputy Secretary- cum- Deputy Director (Administration), Education Department, Government of Bihar contained in Annexure-10.

B. To pay to petitioner difference of salary from 01.01.1977 to 21.01.1996 pursuant to aforesaid revision in his pay scale due to such merger in Bihar Education Service Class-II w.e.f 01.01.1977 and grant of First Time Bond Promotion w.e.f. 01.01.1987.

C. To revise the pension gratuity and leave encashment of petitioner pursuant to aforesaid revision in his pay scale



due to aforesaid merger into Bihar Education Service Class-II w.e.f 01.01.1977 and grant of First Time Bond Promotion w.e.f 01.01.1987 and pay the revised pension and difference of pension gratuity and leave encashment to petitioner.

D. To pay up-to-date interest on "interest amount of Rs 6,81,350" paid at belated stage on 25.04.2014 which 'interest amount of Rs 6,81,350' petitioner was legally entitled to be paid along with arrear of salary paid on 06.05.2003 without interest.

E. To calculate statutory interest from February 2000 and pay up-to-date remaining statutory interest on balance GPF i.e Rs 57,619/- pursuant to order dated 25.07.2006 passed in Cont. (Civil) Case no 87 of 2004 by this Hon'ble Court vide Annexure-9.

F. To pay reasonable penal interest on the entire claim of arrear retiral benefit as the Hon'ble High Courts and Apex Court have been pleased to allow in suitable cases of undue delay.

G. To pay exemplary cost of compensate the heavy expenses, hardships, harassment and mental agony suffered by the petitioner in pursuing the matter from 1991 onwards for redressal of his rightful claims before this Hon'ble Court."

10. It is a matter of record that in the said writ petition bearing CWJC No.13119 of 2016 an interlocutory application bearing I.A. No. 10022 of 2016 was filed for substituting the legal heirs of the deceased petitioner of the said writ petition who had died on 26.11.2016. Nonetheless, the learned Single Judge of this Court by



an order dated 09.03.2017, passed in the said writ petition *i.e.* CWJC No.13119 of 2016, had disposed of the said writ petition, upon the learned counsel for the writ petitioner having sought leave of the Court to withdraw the said writ application as also I.A. No.10022 of 2016. Thereafter, the appellant had filed a contempt petition bearing MJC No. 1618 of 2017, however the same had stood dismissed for default on account of non-compliance of the peremptory order dated 11.09.2019. The appellant had then filed a restoration petition bearing MJC No. 188 of 2020 for restoration of the aforesaid contempt petition bearing MJC No.1618 of 2017, however the Ld. Single Judge of this Court by a judgment dated 06.07.2022 had dismissed the said petition on the ground that though the contempt petition bearing MJC No. 1618 of 2017 has been filed by the petitioner for initiating contempt proceedings against the opposite parties for non-compliance of the order dated 09.03.2017 passed in CWJC No.13119 of 2016, by which the writ petition was allowed to be withdrawn, but no relief can be granted to the petitioner in the contempt petition even if the same is restored since there is nothing in the order dated 09.03.2017 passed in C.W.J.C. No.13119 of 2016 which would give rise to any contempt application.



11. The wife of the deceased employee had then filed the connected writ petition bearing CWJC No.15574 of 2022 to issue fresh pay-slip in the prescribed *pro forma* to the husband of the appellant with effect from 01.01.1996, fixing his pay in the revised scale prescribed to the employees of Bihar Education Service Class II as per recommendation of Successive Pay Revision Committee reports and considering the merger of Subordinate Education Service into Bihar Education Service Class II with effect from 01.01.1997 and accordingly grant first time bound promotion with effect from 01.01.1987, to pay the dues of salary from 01.1.1977 to 31.01.1996, pursuant to the aforesaid revision in pay scale, to revise the pension, gratuity and leave encashment and pay the differential amount, to pay up-to-date interest on interest amount of Rs 6,81,350/- paid belatedly, to calculate and pay statutory interest from February, 2000 on balance amount of GPF, i.e. Rs.57,619/-, to fix the pay and pension in the pay scale of Rs. 7500-12000, to pay reasonable penal interest on the entire claim of arrear retiral benefit & pay exemplary cost to compensate heavy expenses, hardships, harassment and mental agony suffered by the petitioner in pursuing the matter from 1991 onwards for redressal of his rightful claims. At this juncture, it would be relevant to reproduce herein below the prayer made by the appellant in the



connected writ petition filed before this Court bearing CWJC
No.15574 of 2022, which is reproduced herein below:-

“1. That through the writ petition the petitioner prays for issuance of an appropriate writ(s), rule(s), order(s), direction(s) commanding the respondents to give following relief to the petitioner whose husband was promoted to Education service cadre II subject to his regular promotion by Bihar Public Service Commission on his own pay scale and transferred from Bal Krishna High School Ranchi to Government High School, Bihar Sharif, Nalanda on the post of Principal on which post he joined on 18.07.1995 and superannuated at the age of 58 years on 31.01.1996.

(A) To issue fresh pay slip in prescribed Performa to the petitioners husband w.e.f. 01.01.1996 fixing his pay in revised scales in the pay scales prescribed to employees of Bihar Education Service class II as on 01.01.1996 by revising his previous pay successively on 01.04.1975 by revising his previous pay successively on 01.04.1978 (by giving 5 increments pursuant to departmental memo no 217/78 dated 4/5 June 1982, 10.04.1981, 01.01.1986 and 01.01.1996 as per recommendation of Successive Pay Revision Committee Reports and taking into consideration the merger of Subordinate Education Service into Bihar Education Service Class II w.e.f. 01.01.1977 and grant of first time bond promotion w.e.f. 01.01.1987 in pay scale of Rs. 3000-4500 admissible to employees of Bihar Education Service Class II. Pursuant to notification memo no 435 dated 10.02.2014 issued by Deputy Secretary cum Deputy Director (Administration), Education Department, Government of Bihar Contained in



(B) To pay to the petitioners husband difference of salary from 01.01.1977 to 31.01.1996 pursuant to aforesaid revision in his pay scale due to such merge in Bihar Education Service class II w.e.f. 01.01.1977 and grant of First Time Bond promotion w.e.f. 01.01.1987.

(c) To revise the pension, gratuity and leave encashment of petitioner's husband pursuant to aforesaid revision in his pay scale due to aforesaid merger into Bihar Education Service class II w.e.f. 01.01.1977 and grant of First Time Bond Promotion w.e.f. 01.01.1987 and pay the revised pension and difference of pension, gratuity and leave encashment to him.

(D) To pay up to date interest on "interest amount of Rs. 6,81,350" paid at belated stage on 25.04.2014 which 'interest amount of Rs. 6,81,350' petitioner's husband was legally entitled to be paid along with arrear of salary paid on 06.05.2003 without interest.

(E) To calculate statutory interest from February 2000 and pay up-to-date remaining statutory interest on valance GPF i.e. Rs. 57,619/- pursuant to order dated 25.07.2006 passed in cont.(Civil) Case No.-87 of 2004 by the Hon'ble Mr. Justice R.K. Merathia of the Hon'ble High Court of Jharkhand at Ranchi.

(F) To fix the pay in the pay scale of Rs. 7500-12000 and also fixt the pension on the basis of enhanced scale.

(G) To pay reasonable penal interest on the entire claim of arrear, retiral benefit as the Hon'ble High Courts and Apex Court have been pleased to allow in suitable cases of undue delay and lower pension.

(H) To pay exemplary cost to compensate the heavy expenses, hardship, harassment and mental agony suffered



by the petitioners husband in pursuing the matter from 1991 onwards for redressal of his rightful claims before this Hon'ble Court.

Any other relief or reliefs for which the petitioner may be found to be entitled or which your Lordships may deem fit and proper in this case."

12. The aforesaid writ petition bearing CWJC No.15574 of 2022 has been dismissed by the Ld. Single Judge of this Court on the ground of gross delay and laches, hence the present appeal has been filed by the appellant.

13. The learned counsel for the appellant has submitted that after the decision rendered by the Hon'ble Apex Court in Civil Appeal No.8226-8227 of 2012 on 23.11.2012, the respondents *vide* Resolution No.687 dated 02.04.2013 have cancelled the Notification dated 19.11.2007 and restored the Notification No.1209 dated 07.07.2006, whereby and whereunder the Teachers of the Subordinate Education Service (Teaching Branch), Male and Female Cadre were merged into the Bihar Education Service Class II with effect from 01.01.1977 as per the Finance Department Notification dated 11.04.1977. Thus, on account of the aforesaid merger with effect from 01.01.1977, the respondents had issued Notification dated 10.02.2014 wherein it has been stated that the merger has taken place with effect from 01.01.1977, hence the merged officers named in the said Notification are being given



first time bound promotion provisionally from the date mentioned against their name in the pay scale of Rs.3000-4500/-. As far as the husband of the appellant is concerned, it is submitted that he was granted first time bound promotion with effect from 01.01.1987, however he is not only entitled to the monetary benefits upon grant of first-time bound promotion with effect from 1.1.1987 but his pay is required to be revised with effect from 1.1.1996. At this juncture itself we may state that even as per the arguments advanced by the Ld. counsel for the appellant, the husband of the appellant has been granted first time bound promotion with effect from 01.01.1987, *vide* Notification dated 10.02.2014, issued by the Department of Education, Government of Bihar, Patna. All these issues being now belatedly raised by the appellant have already stood concluded and the connected writ petition has been filed by way of camouflage, inasmuch as the actual purpose is to somehow extract illicit and unjustified sums from the respondents by way of claiming preposterous amount in the form of interest on interest amount and exemplary cost to compensate heavy expenses, hardships, harassment and mental agony suffered by the appellant.

14. The learned counsel for the appellant has further submitted that the Hon'ble High Court of Jharkhand at Ranchi *vide* order dated 12.02.2003 had granted liberty to the husband of the



appellant to approach the concerned District Provident Fund Officer in case he has got any grievance with regard to the provident fund, who in-turn would hand-over to the husband of the appellant a chart showing details of payment to which he is entitled and the payment already made. In fact the husband of the appellant being aggrieved, had filed a contempt petition bearing Cont. (Civil) Case No. 87 of 2004 which was disposed of by an order dated 25.07.2006 with an observation that from the chart enclosed with the show cause, it is apparent that the balance amount of GPF *i.e.* Rs.57,619/- was paid on 13.03.2002, however statutory interest has been calculated only up to the month of January, 2000, thus the District Provident Fund Officer, Nalanda, Bihar Sharif, Bihar was directed to calculate the remaining statutory interest, if any and pay the same.

15. At this juncture, we may note that since the Hon'ble High Court of Jharkhand at Ranchi by the an order dated 12.02.2003 passed in MJC No. 436 of 1999 (R) had observed that the grievance of the husband of the appellant with regard to provident fund would be resolved by the District Provident Fund Officer concerned, which had also led to filing of a contempt case bearing Cont. (Civil) Case No. 87 of 2004 and passing of an order dated 25.07.2006, the husband of the appellant/appellant was/is required



to agitate the grievances emanating from the said orders dated 12.02.2003 and 25.07.2006 before the Hon'ble High Court of Jharkhand at Ranchi by taking recourse to appropriate remedy, in case the said Orders have not stood complied with fully.

16. The learned counsel for the appellant has submitted that the Hon'ble High Court of Jharkhand at Ranchi *vide* order dated 22.12.2011 passed in Writ Petition (S) No.4208 of 2003 had directed for making payment of interest at the rate of simple interest of 5% per annum from the date on which the arrear amount became due till the actual payment is made, however the same has not been complied with. In this regard we find that the husband of the appellant had filed a contempt petition bearing Cont. Case (Civil) No. 663 of 2012 which has been dismissed by an order dated 25.04.2014 for the reason mentioned therein to the effect that the State of Bihar has paid the legally payable amount on 06.05.2003, hence simple interest @ 5 % per annum has been calculated from the date from which the amount became due till the date of actual payment, *i.e.* 06.05.2003 and a demand draft for a sum of Rs.6,81,356/- has been paid to the deceased-husband of the appellant, thus there is due compliance of the order dated 22.12.2011, passed in WP (S) No. 4208 of 2003. Now the learned counsel for the appellant has submitted that since the simple



interest @ 5 % was paid after some delay in the Court on 25.04.2014, interest is required to be paid on the delayed payment of the interest amount. At this juncture itself, we may record our displeasure over the type of prayer being made and the kind of argument being advanced on behalf of the appellant inasmuch as the learned counsel for the appellant has neither pleaded nor made us aware of any statutory provision much less any law which mandates grant of interest over interest although the learned counsel for the appellant has referred to a judgment dated 01.05.1991 rendered by a Division Bench of this Court in **CWJC No. 1575 of 1990 (R) (*Hari Pada Tiwari vs. the State of Bihar & Others*)** to contend that since the retiral dues were not paid despite lapse of four years of retirement, the Court had directed to make payment of all the dues of the employee along with penal interest @ 25 % per annum, however we find that in the present case this prayer of the appellant has already being considered in the writ petition filed by the husband of the appellant bearing WP (S) No. 4208 of 2003, wherein *vide* order dated 22.12.2011, the Hon'ble High Court of Jharkhand at Ranchi had directed to make payment of interest at the rate of simple interest of 5% per *annum* from the date on which the arrear amounts became due till the date of actual payment, hence the said judgment is of no help to the appellant.



17. Another judgment referred to by the appellant is the one dated 26.06.1990 passed by the Ld. Single Judge of this Court in **CWJC No. 3950 of 1999 (*Syed Sarwar Ali vs. Union of India and Others*)**, whereby the respondents were directed to refix the pension of the petitioner, as indicated therein within three months of receipt of the order and pay the arrears within one month therefrom, however it was further directed that in case any delay occurs in making payment beyond the time fixed in the said order, the petitioner would be entitled to interest @ 75 % per annum till the actual payment is made but we find from the order dated 22.12.2011 passed by the Hon'ble High Court of Jharkhand at Ranchi in WP (S) No. 4208 of 2003 that simple interest at the rate of 5% per *annum* from the date on which the arrear amount became due till the date of actual payment has already been directed to be paid, hence the said judgment is also of no avail to the appellant. Thus, we find that this chapter has already stood closed before the Hon'ble High Court of Jharkhand at Ranchi, hence the same does not require any further consideration, specially for the foregoing reasons.

18. Yet another aspect of the matter which we might dwell upon is that the present writ petition is barred by the principles of *res judicata* and constructive *res judicata*. The principle of



constructive *res judicata* is an extension of principle of *res judicata*. In this regard we may gainfully reproduce hereinbelow Section 11 & Order 2 Rule 2 of the Code of Civil Procedure, 1908:-

“Section 11. Res judicata- *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I. - The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II. - For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. - The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. - Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. - Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.



Explanation VI. - Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[Explanation VII. - The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. - An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

“Order 2, Frame of Suit, Rule 2. Suit to include the whole claim. - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim. -** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs. -** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits,



except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

Thus, as far as the proceedings of a suit where the Code of Civil Procedure 1908 is applicable, it is amply clear that if any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit, thus any subsequent suit will not be maintainable on account of being barred by the principle of *res judicata* & constructive *res judicata*.

19. It is well settled law that the principle of *res judicata* and constructive *res judicata* as provided for in the Code of Civil Procedure, 1908 are also applicable to writ petitions. Reference in this connection be had to the Constitution Bench judgment of the Hon’ble Apex Court rendered in the case of ***Direct Recruit Class II Engineering Officers’ Association vs. State of Maharashtra & Others***, reported in (1990) 2 SCC 715 and the judgment rendered by the Hon’ble Apex Court in the case of ***Devilal Modi vs. Sales Tax Officer, Ratlam & Others*** reported in 1964 SCC OnLine SC 17 as also the judgment rendered by the Hon’ble Apex Court in the case of ***M. Nagabhushana vs. State of Karnataka & Others***



reported in (2011) 3 SCC 408. In this regard we would also gainfully refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Bharat Amritlal Kothari & Another vs. Dosukhan Samadkhan Sindhi & Others*** reported in (2010) 1 SCC 234, Paragraph Nos.29 to 32, whereof are reproduced herein below:-

“29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.

30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.

31. In Krishna Priya Ganguly v. University of Lucknow [(1984) 1 SCC 307], overlooking the rule relating to grant of admission to postgraduate course in Medical College, the



High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that:

“26. ... in his own petition in the High Court, the respondent had merely prayed for a writ directing the State or the college to consider his case for admission yet the High Court went a step further and straightaway issued a writ of mandamus directing the college to admit him to the MS course and thus granted a relief to the respondent which he himself never prayed for and could not have prayed for.”

32. Again, in Om Prakash v. Ram Kumar [(1991) 1 SCC 441], this Court observed: (SCC p. 445, para 4)

“4. ... A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party & deprive him of the valuable rights under the statute.”

20. Thus, considering the reliefs sought for by the husband of the appellant/the appellant in the writ petitions filed earlier, either before the Hon’ble High Court of Jharkhand at Ranchi or this Court, a subsequent writ involving the same issues which were directly and substantially in issue in the said writ petition would definitely be barred by the principles of *res judicata* and moreover, if any issue which ought to have been raised or made a ground for defence or attack in a previous writ petition but was not raised shall be deemed to have been an issue that directly and



substantially in issue in such a writ petition, hence any subsequent writ petition will not be maintainable being barred by the principles of *res judicata* and constructive *res judicata*. In such view of the matter, we find that the prayers made in the present writ petition could have very well been raised in the earlier writ petition, however the deceased husband of the appellant/the appellant has omitted to make such prayers in the earlier round of litigations, thereby has voluntarily relinquished this part of his/her claim hence, the appellant is now debarred from filing the present writ petition with respect to such relief/claim which he/she had voluntarily relinquished and omitted to claim in the earlier round of litigation which would definitely be barred by the principles of constructive *res judicata*, inasmuch as if the claim being now raised by the petitioner is permitted, there will be no end to litigation.

21. We further find from a bare perusal of the reliefs sought for by the deceased employee in the aforesaid writ petition bearing CWJC No.13119 of 2016 as also the connected writ petition bearing CWJC No.15574 of 2022 that the prayer made therein are absolutely identical *ad verbatim*, hence the appellant is precluded from again filing the connected writ petition *i.e.* CWJC 15574 of 2022 for the same reliefs as were prayed for in the earlier writ



petition, since the earlier writ petition, *i.e.* CWJC No. 13119 of 2016 had stood disposed of as withdrawn by an order dated 09.03.2017, however without any liberty to the appellant to file a fresh writ petition, thus the connected writ petition *i.e.* CWJC 15574 of 2022 is definitely barred by the principle of constructive *res judicata* and therefore, the writ petition being not maintainable is liable to be dismissed, resultantly the present appeal is also sans any merit.

22. Having regard to the facts and circumstances of the case and for the foregoing reasons, we do not find any infirmity in the impugned order dated 24.11.2022 passed by the Ld. Single Judge in CWJC No. 15574 of 2022, hence the present appeal stands dismissed.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	29.07.2026
Uploading Date	14.10.2026
Transmission Date	

