

## IN THE HIGH COURT OF JHARKHAND AT RANCHI

## L.P.A. No. 236 of 2014

State of Bihar through the Secretary, Food and Consumer Protection Department, Government of Bihar, Patna, at Old Secretariat, P.O. & P.S.- Sachivalaya, Patna, Bihar.

.... Appellant/Respondent No.2

## Versus

1. Savitri Devi, wife of Late Joy Kumar Mahto, resident of village-Mahtoindih, P.O. Malhara, P.S. Mohanpur, District-Deoghar, Jharkhand.  
.... Respondent/ Petitioner
2. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Ranchi at Project Bhawan, P.O. & P.S. Dhurwa, District-Ranchi, Jharkhand.  
.... Respondent/Respondent No.1
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Ltd. Sone Bhawan, Bir Chand Patel Path, P.O. and P.S. Patna, District-Patna, Bihar.  
.... Respondent/Respondent No.4
4. The Deputy Commissioner, Dumka, P.O. + P.S. & District-Dumka.  
.... Respondent/Respondent No.5
5. The Deputy Commissioner, Deoghar, P.O. + P.S. & District-Deoghar.  
.... Respondent/Respondent No.6
6. The Accountant General, Bihar, Patna at Bir Chand Patel Marg, P.O. & P.S. Patna, District-Patna, Bihar.  
.... Respondent/Respondent No.7
7. The District Supply Officer, Deoghar, P.O. + P.S. & District-Deoghar, Jharkhand.  
.... Respondent/Respondent No.8
8. The District Manager, State Food and Civil Supplies Corporation Ltd., P.O. + P.S. & District-Dumka, Jharkhand.  
.... Respondent/Respondent No.9
9. Chief Secretary, Government of Bihar, Patna, at Old Secretariat, P.O. & P.S. – Sachivalaya, Patna, Bihar.  
.... Proforma Respondent/Respondent No.2

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**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD  
 HON'BLE MR. JUSTICE RAJESH KUMAR**  
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For the Appellant

: Mr. S.P. Roy, GA (Bihar)  
 Mr. Ranjit Kumar, Advocate

For the Resp. No.1

: Mr. A.K. Verma, Advocate

For the Resp.-BSFC	: Mr. Jitendra Shankar Singh, Advocate
For the Resp.-JSFC	: Mr. Mrinal Kanti Roy, Advocate
For the Resp.-State	: Mr. Gaurang Jadodia, AC to GP-II

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**CAV/Reserved on 29.10.2025**

**Pronounced on 06/11/2025**

**Per Sujit Narayan Prasad, J.**

1. Learned counsel for the appellant-State of Bihar, at the outset, has submitted that one interlocutory application being I.A. No. 3134 of 2016 had been filed on 12.05.2016 for accepting the supplementary affidavit dated 12.05.2016 to rely upon the fact that the deceased employee, original petitioner, had shifted to EPF Scheme.
2. It has also been submitted that one supplementary affidavit had also been filed on 08.01.2015 for relying upon the service book of the deceased employee since the same was not brought to the notice of the learned writ court.
3. Learned counsel for the appellant-State of Bihar has submitted that the service book since is not a disputed document and the same is having bearing upon the issue, hence, the same may be taken into consideration for proper consideration of the issue.
4. No rebuttal reply has been filed to the said interlocutory application as also to the supplementary affidavit.
5. We have heard the learned counsel for the parties and after going through the same, has found that the service book has been brought on record by filing supplementary affidavit dated 08.01.2015 for the purpose of consideration of the *lis*. Service book having not a disputed document and having bearing upon the issue since the date of entry in the service under the Food, Supply and Commerce Department, Government of Bihar or posting of the deceased employee under the Bihar State Food and Civil Supplies Corporation and getting benefit of MACP or other allied service benefits including the terminal benefits found mentioned in the service book.

6. This Court, applying the principle as provided under Order XLI Rule 27 of CPC is of the view that the said document is just and proper to be considered.
7. We are conscious that the provision of Civil Procedure Code is not applicable herein but the principle enshrined in the CPC is applicable. Therefore, the supplementary affidavit dated 08.01.2015 which has been filed for relying upon the service book of the deceased employee, since the same was not brought to the notice of the learned writ court, is hereby accepted for its consideration.
8. Further the interlocutory application being I.A. No. 3134 of 2016 which had been filed on 12.05.2016 for accepting the supplementary affidavit dated 12.05.2016 to rely upon the fact that the deceased employee, original petitioner, had shifted to EPF Scheme is being allowed and accordingly, disposed of.

**Prayer:**

9. The instant appeal under Clause 10 of the Letters Patent is directed against the order/judgment dated 25.10.2013 passed by learned Single Judge of this Court in W.P.(S) No. 5874 of 2007, whereby and whereunder, the learned Single Judge while allowing the writ petition has directed the respondent-State of Bihar to grant pension to the writ petitioner along with simple interest @ 6% w.e.f. 01.08.1991.
10. The brief facts of the case as per the pleading made in the writ petition requires to be enumerated, which is as under:

The original writ petitioner-deceased employee was initially appointed as Chowkidar (Class-IV) in Food Supply and Commerce Department under the then Bihar State Government on 02.05.1967, thereafter he was sent on deputation in the State Food and Civil Supplies Corporation on 01.10.1973 and was posted in S.F.C. Depot, Dumka from where he retired on 31.07.1991 on attaining the age of superannuation.

It is the case of the original writ petitioner that after retirement, he had submitted representation for payment of retiral dues but the same had not been paid in his favour.

It is also the case of the original writ petitioner that the case of similarly situated person, namely, Sri. Sonalal Poddar who also retired as Godown Operator from S.F.C., Godown was forwarded to the Office of the Accountant General, Bihar by the Office of the District Supply Officer, Deoghar vide letter no. 347 dated 11.08.2000 for fixation of pension as well as gratuity with full details of service history and he had also been paid with the pension but the pension of present original writ petitioner-deceased employee has not been paid in his favour.

The deceased employee, being aggrieved with the same, had preferred writ petition being W.P.(S) No. 5874 of 2007 before this Court which had been allowed by directing the respondent-State of Bihar to calculate and pay pension to the deceased employee within a period of eight week with simple interest @ 6% from 01.08.1991.

Thereafter, the appellant herein, State of Bihar, has preferred the present appeal against the order/judgment passed by the learned Single Judge.

11. It is evident from the aforesaid factual aspect that the petitioner-deceased employee was initially appointed as Chowkidar (Class-IV) in Food Supply and Commerce Department under the then Bihar State Government on 02.05.1967, thereafter he was sent on deputation in the State Food and Civil Supplies Corporation on 01.10.1973 and was posted in S.F.C. Depot, Dumka from where he retired on 31.07.1991 on attaining the age of superannuation.

It is the case of the original writ petitioner that the case of similarly situated person, namely, Sri. Sonalal Poddar who also retired as Godown Operator from S.F.C., Godown had been considered for fixation of pension as well as gratuity and he had also been paid with the pension but the pension of present original writ petitioner-deceased employee has not been paid in his favour.

12. The original writ petitioner, deceased employee, after being superannuated from service has approached to this Court in the year 2007 by filing a writ petition being W.P.(S) No. 5874 of 2007 seeking a

direction upon the respondent for payment of retiral dues, including arrears of pension.

13. The ground was taken that although the deceased employee was appointed as Chaukidar (Class-IV) in the Food, Supply and Commerce Department, Government of Bihar on 02.05.1967 and remained upto 01.10.1973 in service under the establishment of the State Government but subsequent thereto he had been deputed in the Bihar State Food and Civil Supplies Corporation and was posted at Dumka from where he superannuated from service w.e.f. 31.07.1991.
14. The deceased employee, the original writ petitioner, although was received all the retiral benefits but he has claimed the benefit of pension solely on the ground that while deputing his service to the Bihar State Food and Civil Supplies Corporation in the year 1973, no option was sought for from him, therefore, he is entitled for the pension.
15. The learned Single Judge has accepted the version of the original writ petitioner saying that pension not to be a bounty rather it is the constitutional right to hold the property and has allowed the writ petition with a direction upon the appellant-State of Bihar to calculate the entire pensionary benefit w.e.f. 01.08.1991 to be paid along with simple interest @ 6% in favour of the original writ petitioner.
16. The original writ petitioner had died during pendency of the appeal, thereafter, one interlocutory application being I.A. No. 282 of 2024 for substituting the wife as legal heir of the deceased employee and vide order dated 17.01.2024, the said interlocutory application was allowed and since then, the appeal is being pursued by the widow of the deceased employee, namely, Sabitri Devi.

**Submission on behalf of the Appellant:**

17. The present appeal has been preferred by the appellant-State of Bihar on the following grounds:
  - (i) The original writ petitioner, deceased employee, has approached this Court after lapse of about 16 years that too by raising the ground of non-disbursement of pension once he has already

obtained the benefit as was available to be taken while working under the Bihar State Food and Civil Supplies Corporation.

- (ii) It has been contended that the original writ petitioner has also switched over to the employees' provident fund scheme and a new account had also been opened and he has started subscribing the money and on retirement, on attaining the age of superannuation, he has also received the dues deposited in the EPF.
- (iii) The ground has been taken that the learned Single Judge has only considered the fact that there is no document of handing over the services to the Bihar State Food and Civil Supplies Corporation but the other aspect of the matter has been ignored, i.e., switching over of the original writ petitioner to the EPF Scheme accepting all the benefits as admissible to be paid and further the filing of the writ petition after lapse of about 16 years.
- (iv) The learned counsel for the appellant-State of Bihar has submitted by referring to the service book, which has been appended by way of supplementary affidavit, that the original writ petitioner has got all the service benefits while working under the Bihar State Food and Civil Supplies Corporation and hence, now he cannot be allowed to retract back to get the benefit as admissible to the employee of the State Government merely because he was appointed in the year 1967 as Chaukidar in the Food, Supply and Commerce Department, Government of Bihar and remained there for about 06 years.
- (v) It has been contended that even the principle of parity has not been taken into consideration properly since one instance has been taken of an employee, namely, Sonalal Poddar. The case of that employee is quite different to that of the present original writ petitioner since Sonalal Poddar has come to litigation for the purpose of disbursement of proportionate pension since he had rendered service for more than 10 years and being qualified under the qualifying service of 10 years for the purpose of getting pensionary benefit and the proportionate pension was given on the ground of

rendering the minimum qualifying service to get the pension but herein, the original writ petitioner has only completed 06 years of service in the Food Supply and Commerce Department, State of Bihar and as such, he is not entitled to get the minimum pension being not qualified by virtue of not getting the qualified period of service for getting the pensionary benefits.

18. Learned counsel appearing for the appellant, based upon the aforesaid ground, has submitted that the learned Single Judge since has not considered all these aspects of the matter, hence, the order passed by the learned Single Judge is fit to be interfered with.

**Submission on behalf of the Respondent:**

19. *Per contra*, learned counsel for the respondent-deceased employee, has taken the following grounds in defending the impugned order:

- (i) The learned Single Judge has appreciated the factual aspect, more particularly, the fact which goes to the root of the issue that the service of the deceased employee has not been handed over by the Food, Supply and Commerce Department, Government of Bihar in favour of the Bihar State Food and Civil Supplies Corporation.
- (ii) It has been submitted that since there is no decision taken by the appointing authority in handing over the services of the deceased employee to the Bihar State Food and Civil Supplies Corporation even if the services of the deceased employee has been deputed to the Bihar State Food and Civil Supplies Corporation then by way of compulsive measure, the right to get the pension cannot be taken away that too without any option of transferring his services from the establishment of the State to that of the Bihar State Food and Civil Supplies Corporation.
- (iii) Learned counsel has further submitted that the learned Single Judge has taken into consideration the issue of non-handing over of the services in favour of the Bihar State Food and Civil Supplies Corporation and if on that basis, the writ petition has been allowed by directing the appellant-State of Bihar to disburse the pensionary benefits from 01.08.1991, i.e., from the date of his superannuation,

the same cannot be said to suffer from error and as such, the impugned judgment needs no interference.

**Analysis:**

20. We have heard the learned counsel for the parties and gone through the finding recorded by the learned Single Judge in the impugned judgment as also the pleading made in the writ petition as incorporated in the memo of appeal as also including the supplementary affidavit which contains the entire service extract of the deceased employee.
21. The question which requires consideration herein are:
  - (i) Whether the deceased employee is entitled to get the pension once he has accepted all the retiral benefits by accepting his natural employment to be of an employee of Bihar State Food and Civil Supplies Corporation.
  - (ii) Whether the finding so recorded by the learned Single Judge in the impugned judgment solely on account of the fact that no decision has been brought on record before the writ court in handing over the services of the deceased employee to the Bihar State Food and Civil Supplies Corporation, the right to hold the pension be taken away and snatching of such right can be assailed after lapse of more than 16 years.
22. Since both the issues are interlinked, as such, they are being taken into consideration together.
23. We are aware of the fact that pension is not a bounty rather it is a right to hold the property as has been held by the Hon'ble Apex Court in the case of ***Deokinandan Prasad vs. State of Bihar & Ors. reported in (1971) 2 SCC 330***, wherein at paragraph-33 it has been held which reads as under:

*“33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order, dated June 12, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (Act 23 of 5 1871) there is a bar against a civil*

*court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.”*

24. The said principle has again been reiterated by the Hon’ble Apex Court in the case of ***State of Jharkhand and Ors. Vs. Jitendra Kumar Srivastava and Anr., (2013) 12 SCC 210***. Relevant paragraph of the said judgment is being referred as under:

*“8. It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara v. Union of India [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] by D.A. Desai, J. who spoke for the Bench, in his inimitable style, in the following words: (SCC pp. 319-20, paras 18-20)*

*“18. The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?*

*19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.*

*20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar [(1971) 2 SCC 330 : 1971 Supp SCR 634] wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : (1976) 2 LLJ 377].”*

*It is thus a hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India.”*

25. Adverting to the factual aspect of the present case, it is the admitted case of the original writ petitioner-deceased employee that he has been inducted in the service as *Chaukidar* on 02.05.1967 and remained under

the establishment of the State Government for a period of about 06 years, i.e., upto 01.10.1973. The services of the deceased employee, the original writ petitioner was said to be deputed under the Bihar State Food and Civil Supplies Corporation which was accepted by him where he started discharging his duty. The deceased employee superannuated from service on attaining the age of superannuation w.e.f. 31.07.1991. The deceased employee got all the terminal benefits as would be evident from the statement made in the supplementary affidavit.

26. It is also evident from the statement made in the supplementary affidavit that the deceased employee shifted to the EPF Scheme and an independent account was opened in which the amount has was deducted from his salary, has been paid. The deceased employee has also got the amount deposited in the head of the EPF to the tune of Rs.11580/-.
27. The claim of the deceased employee that he is entitled to get the pensionary benefit is the core issue and on the ground that the services of the deceased employee has not been handed over to the Bihar State Food and Civil Supplies Corporation.
28. There is no doubt that if the deceased employee is appointed in one establishment and if the services is being placed to the other department, then the consent is required but the said consent is also to be taken into consideration with the conduct of the concerned employee. The conduct of the concerned employee is necessary to be seen which is the core of the argument in the instant case. The reason of this is that the deceased employee although was appointed in the year 1967 and remained there upto 1973, thereafter, he has been deputed in the Bihar State Food and Civil Supplies Corporation at Dumka (now in the State of Jharkhand). The deceased employee thereafter had started discharging his duties and not only that, he has also opened his EPF account. The EPF account was opened in terms of the provision of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The reference of the Act, 1952 is necessary herein since if an establishment is covered under the fold of the EPF then the employee working in the said establishment will automatically come under the fold of the Act, 1952 and thereafter, the

status of the concerned employee will be of an employee within the meaning of Section 2(f) of the Act, 1952.

29. There is no doubt that once an employee has opened the account under the EPF Scheme then no claim will be admissible to such employee under the fold of the Pension Rule applicable to the State Government employee.
30. The deceased employee has retired from service in the year 1991 and while he was in service under the Bihar State Food and Civil Supplies Corporation, he has opened his EPF account and amount was also subscribed in the account opened under the provision of the Act, 1952. The deceased employee, after retirement, had got all the terminal benefits including the EPF benefits.
31. The question herein is that the deceased employee, the day when he had switched over by opening EPF account, he had not made any objection rather month to month was subscribed in the EPF account and after retirement, he has got the said amount and not only that, all the terminal benefits including the gratuity etc. has also been obtained.
32. The deceased employee, after superannuation w.e.f. 01.08.1991 has remained silent and after lapse of more than 16 years, a writ petition being W.P.(S) No. 5874 of 2007 has been preferred seeking a direction upon the respondents for payment of retiral benefits including the arrears of pension.
33. The question of delay although in the matter of pension being recurring cause of action has been held to be not applicable but herein the fact is to be assessed since the deceased employee has already accepted his nature of employment to be part of the Bihar State Food and Civil Supplies Corporation by opening his EPF account and also got terminal benefits after retirement and after considerable period of lapse, i.e., after 16 years, the writ petition has been filed for getting the retiral benefits claiming it to be a right.
34. The learned Single Judge has accepted the plea of the deceased employee by holding that the pension is not a bounty rather it is a right to hold the property and thereby, allowed the writ petition with a direction upon the

respondent-State of Bihar to disburse the amount alongwith simple interest @ 6% w.e.f. 01.08.1991.

35. The deceased employee since has not objected either to the disbursement of the amount or even at the time when the EPF account was being opened and the amount so deducted month to month basis in the respective EPF account of the deceased employee, which the deceased employee has also got the day when he got retired from service which has duly been accepted and it is only after 16 years, the writ petition has been filed.
36. Therefore, in the facts and circumstances of the aforesaid case, the principle of estoppel will certainly be applicable since the deceased employee has accepted the terminal benefits and waived its right to get the pension by accepting him to be a part of the establishment of the Bihar State Food and Civil Supplies Corporation where there is no applicability of pension since the pension rule is not applicable rather EPF rule is applicable.
37. This Court, after discussing the aforesaid fact is now adverting to the judgment passed by the learned Single Judge wherein the learned Single Judge has taken into consideration the non-handing over of the services to the Bihar State Food and Civil Supplies Corporation as also no option having been sought for from the deceased employee.
38. The said finding, according to our considered view, cannot be said to be just and proper due to non-consideration of other allied factors as has been discussed herein, i.e.:
  - (i) Pension although is a right but that depends upon the wish of the concerned employee and once other alternative arrangement has been accepted by switching over to EPF Scheme, then subsequently the concerned employee cannot be allowed to turn back and seek claim for the purpose of getting pensionary benefits by seeking a direction under Article 226 of the Constitution of India.
  - (ii) The original writ petitioner, deceased employee, has approached this Court after lapse of about 16 years from the date of his retirement that too by raising the ground of non-disbursement of pension once he has already obtained the benefit as was available to

be taken while working under the Bihar State Food and Civil Supplies Corporation. Admittedly, the original writ petitioner-deceased employee has gone under the EPF Scheme after his deputation under the Bihar Food and Supply Corporation in the year 1973 and if that was the case, the said ground ought to have been raised at that time itself but the original writ petitioner-deceased employee kept mum and in the year 2007, the said grievance has been raised, i.e., after the delay of about 34 years.

- (iii) It is the admitted fact that the original writ petitioner-deceased employee had already got the terminal benefits in different heads under the EPF Scheme which has been mentioned by the learned Single Judge in the impugned judgment also.
- (iv) Further, no objection has been raised by the original writ petitioner-deceased employee while in service and even after retirement of his contribution under the EPF Scheme.

39. This Court, in view of the aforesaid discussion, is of the view that the finding so recorded by the learned Single Judge in the impugned judgment cannot be said to be just and proper and as such, the same is fit to be quashed and set aside.

40. Accordingly, the impugned judgment dated 25.10.2013 passed in W.P.(S) No. 5874 of 2007 is hereby quashed and set aside.

41. In the result, the instant appeal stands allowed.

42. Consequently, the writ petition being W.P.(S) No. 5874 of 2007 stands dismissed.

43. Pending interlocutory application(s), if any, also stands disposed of.

**I agree**

**(Sujit Narayan Prasad, J.)**

**(Rajesh Kumar, J.)**

**(Rajesh Kumar, J.)**

6<sup>th</sup> November, 2025

Saurabh/A.F.R.

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