

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4136 of 2015

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Kanti Devi, Wife of Late Dr. Bipin Bihari Singh (Retired Touring Veterinary Officer), resident of village- Purainia, Police Station - Bihta, District- Patna, presently residing at Club Road, Katira, Police Station- Nawada, District- Bhojpur at Ara.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary, Animal Husbandry & Fisheries Department, Bihar, Patna
3. The Director, Animal Husbandry & Fisheries Department, Bihar, Patna
4. The Commissioner-cum- Secretary, Department of Finance, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.

For the Respondent/s : Mr. Syed Arshad Alam, SC3

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 30-04-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:-

- "1(i) *For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondent authorities to sanction family pension to the petitioner as the husband of the petitioner superannuated on 31.7.1996 from the post of Animal Husbandry Officer, Kundhit (Jamtara) and he died on 19.07.2013.*
- (ii) *For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to pay arrears of pension to the petitioner as the husband of the petitioner had been granted provisional pension to him after his*

superannuation and he died on 19.07.2013.

- (iii) *For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondent authorities to release entire admissible dues of retiral benefits or other benefit in favour of the petitioner for which her husband was entitled.*
- (iv) *For holding that the petitioner is entitled for the family pension under provisions of Bihar Pension Rules since her husband died on 19.07.2013 after his retirement from post of touring animal husbandry officer, Kundhit (Jamtara) and only provisional pension was issued to her husband vide memo no. 188 dated 12.10.1996."*

Mr. Vindhyachal Singh, learned counsel for the petitioner, in support of the aforesaid prayer, has basically concentrated on the aspect that when the issue had already been decided by the learned single Judge in the writ application filed by the husband of the petitioner earlier, there could not have been any further delay in finalization of the payment of retirement benefit of the husband of the petitioner as also the family pension.

Noticing similar submission on an earlier occasion, this Court had directed the respondent State to file counter affidavit framing the following three questions:-

"Learned counsel for the State prays for and is allowed four weeks' time to file counter affidavit explaining as to why:-

- (i) The provisional pension of the husband of the petitioner was not finalized despite dropping of the departmental*

proceeding in January, 1997.

(ii) What is the difficulty in finalizing the full and final pension of the husband of the petitioner?

(iii) Why the petitioner is being deprived of the amount of family pension that she would become entitled after the death of her husband?"

Learned counsel for the State has filed counter affidavit

wherein the following stand has been taken by them.

"4. That petitioner's husband remained on unauthorized leave from 4.10.1978 to 8.5.1994 because of his prolong illness. The petitioner's husband, Dr. Bipin Bihari Singh had filed CWJC No. 7928 of 2000 for direction to the Respondents to regularize the aforesaid period of leave. The said writ petition was heard and disposed of by order dated 25.5.2000 and the matter was remitted back to the Secretary, Animal and Fisheries Resources Department, Bihar, Patna to determine the question as to how the period from 4.10.1978 to 9.9.1987 to be counted and what salary which the petitioner will be entitled as contained in Annexure-2 to the writ petition.

5. That in view of the aforesaid order dated 25.8.2000 after receipt of representation given by the petitioner's husband Dr. Bipin Bihari Singh by Department Notification no. 2581 vide memo no. 2582 dated 13.6.2003 the period from 4.10.1978 to 8.5.1994 was sanctioned as earned leave/half salary leave/extra ordinary leave.

6. That against the aforesaid vide memo no. 2582 dated 13.6.2003, the petitioner's husband again filed CWJC No. 12612 of 2004. The aforesaid

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writ application was disposed of by an order dated 27.8.2007 by this Hon'ble Court whereby the impugned notification was quashed partly and respondents were directed to pay the salary for period of waiting for posting i.e. from 10.9.1987 to 8.5.1994. the petitioner's husband also filed M.J.C. No. 1582 of 2014 for initiating a contempt proceeding against the respondent.

7. That it is stated that provisional pension and gratuity of petitioner's husband were sanctioned by District Animal Husbandry Officer, Dumka by order memo no. 188 dated 12.10.1996 and 189 dated 12.10.1996 respectively.
8. That after death of the petitioner's husband, the petitioner filed the representation before authority concerned and the same has been considered, and pension/Family pension/Gratuity has been sanctioned vide memo no. 1373 dated 17.4.2015 the Accountant General, Bihar, Patna has been requested to issue the authority slip in favour of Kanti Devi (petitioner).
9. That so far questions raised in order dated 31.3.2015 by this Hon'ble Court it is concerned, it is stated and submitted that only due to pendency of L.P.A. No. 22/2008 the full pension of the petitioner's husband could not be finalized and now the grievance of the petitioner's has been redressed, which is clear from Annexure-A herewith."

In the considered opinion of this Court, the payment of full and final pension, gratuity, leave encashment would largely remain dependent on the determination of such salary to be drawn

or drawn by the petitioner. Such calculation, however, is not possible on account of the issue being still subjudice before the Division Bench in LPA No. 22 of 2008.

Thus, the husband of the petitioner and now the petitioner will have to continue with the benefit of the provisional pension and provisional gratuity, which was sanctioned and paid to the husband of the petitioner.

The reliance placed by Mr. Singh on the latter communication dated 17.4.2015 has to be also read in that manner only because till the issue gets finally adjudicated in LPA No. 22 of 2008, neither the sanctioning authority nor the Accountant General can come to the accurate amount of such salary drawn by the husband of the petitioner. In absence of the same, the payment of full and final pension is, therefore, also not possible.

Nonetheless, the widow, the petitioner, cannot be deprived the amount of family pension and, therefore, a decision has to be taken by the office of the Accountant General for authorizing pension/family pension in accordance with law.

For the time being, the petitioner however will be only entitled to received the payment of arrear and current amount of family pension till the disposal of LPA No. 22 of 2008 and as soon as the said appeal is decided, the respondents, officials of the

Animal Husbandry Department as also the office of the Accountant General, will redo the account of the petitioner for making payment of subsequent amount of arrear of full pension and gratuity.

For the time being, the petitioner, being the widow, must be paid the amount of family pension to which she is entitled in law.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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