

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 16203 of 2011

=====

Jagiya Devi @ Jagia Devi, W/o Late Surendra Paswan Resident of Village-
Laghuraon, P.S. Mahna, District-Vaishali aged about 45 years.

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Bihar, Patna.
2. Commandent General, Bihar Home Guard Force, Patna.
3. Deputy Commandent General, Bihar Home Guard Force, Patna.
4. Commandent, H.Q. Bihar, Home Guard Force, Patna.
5. District Commandant, Bihar Home Guard Force, Saharsa.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 13-10-2015

Heard learned counsel for the parties.

The petitioner is aggrieved by Letter No. 1713 dated 13.07.2011 by which the respondent no. 4 has directed for correctly fixing the pay scale of the late husband of the petitioner and then, after recovery, making payment of family pension and gratuity.

Learned counsel for the petitioner submits that her husband died in the year 2010 as Company Commander in the Bihar Home Guard and thereafter when the petitioner applied for family pension, suddenly the respondents have taken a plea that the petitioner's late husband not having cleared the departmental examination relating to 'Hindi Noting and Drafting', his promotion and payment in the revised scale was irregular and it has been ordered that correction be made in his service record



and after recovery of excess amount drawn by the late husband of the petitioner, the family pension and gratuity be determined. It is submitted that there was no role of the late husband of the petitioner in getting either promotion or the scale which he has got and further after his death, which was in harness, the authorities cannot take a plea of wrong fixation of pay scale/promotion and direct for recovery. It is further submitted that the Hon'ble Supreme Court has also held such recovery to be impermissible. For such proposition, learned counsel has relied on a decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015) 4 SCC 334**.

Learned counsel for the State submits that as the husband of the petitioner died in harness and subsequent to the application made for family pension, such irregularity was detected and thus the respondents cannot be faulted in the action taken by them. It is further submitted that in any view of the matter, for payment of family pension and gratuity, the correct scale to which the late husband of the petitioner was entitled should be the basis for computation.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** (supra), the Court holds that recovery due to excess payment made to the late husband of the petitioner is impermissible and accordingly, the said direction of

the State being unsustainable is set aside. However, with regard to fixing of entitlement to family pension and gratuity, as admittedly the late husband of the petitioner, not having cleared the departmental examination, could not have been substantively promoted or given the revised scale, the authorities shall be within their rights to compute family pension and gratuity based on the notional correct pay scale which was admissible to the late husband of the petitioner when he died. Let all due payment in the aforementioned terms be made to the petitioner within one month from the date of production of a copy of this order before the respondent no. 4.

The writ petition stands disposed off.

(Ahsanuddin Amanullah, J.)

P. Kumar

U		T	
---	--	---	--