IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10652 of 2006

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1. Meera Sinha wife of Late Saryu Prasad Sinha, resident of Mohalla East Ashok Nagar, Road No. 13-A Kankarbagh, P.S.Kankarbagh, District Patna -20, at present posted as Assistant, Commercial Taxes, Finance Department, Government of Bihar, Patna
2. Sharmila Sinha wife of Late Shashi Bhushan Pd.Singh, resident of Mohalla Sheopuri, Udan Tola, Anisabad, P.S.Anisabad, District Patna, at present posted as Upper Division Clerk, Department of Health, Bihar, Patna
3. Radha Kanti wife of Late Param Hans Bharti, resident of Gardanibagh, Road No. 29, Quarter No. 16, P.S.Gardanibagh, District Patna, at present posted as Under Secretary, Department of Art, Culture and Youth, Department, Bihar, Patna
4. Poonam Sinha wife of Late Dr.Shailesh Kumar, resident of Quarter No.8, Road No. 2 'A', Gardanibagh, P.S.Gardanibagh, District Patna, at present posted as Upper Division Clerk, Department of Health, Govt. of Bihar, Patna
5. Meera Vanshikar wife of Late Prakash Vanshikar, resident of Nilkanth Colony, Sector II, Ashiana Nagar, P.S.Ashiyana Nagar, District Patna
6. Rita Tiwari wife of Late Dr.Arun Kumar, resident of 52, Patliputra Colony, P.S.Patliputra, District Patna- 800023, at present posted as Upper Division Clerk, Department of Heath, Bihar, Patna
7. Lalmani Agrawal wife Late Dr.Gauri Shankar Agrawal, resident of Durga Asthan, Shradha Puja Bhandar, Phulwarisharif, P.S.Phulwari, District Patna, at present posted as Bill Clerk, Department of Health, Govt. of Bihar, Patna
8. Manjusha wife of Late Tarun Kumar Ambastha, C/o Dr.Narsingh Narain, Balmichak, Behind Punit Gas Godown, Anishabad, P.S.Anisabad, District Patna-800002.
9. Pramila Kumari wife of Late Dr.Rama Shankar Ram C/o Sita Ram (Ex-C.I.T.Railway), Padarath Lal Road, Danaput Cantt. P.S.Danapur, District Patna 801503, at present posted as Upper Division Clerk, Department of Health, Bihar, Patna
10. Ripu Devi wife of Late Krishna Ram, resident of New Etwarpur, P.S.Parsa Bazar, Mohalichak, District Patna, at present posted as Orderly, Department of Health, Bihar, Patna
11. Sharda Kumari wife of Late Ashok Kumar, resident of Sheikhpura, Brahm Asthan, P.S.Shastri Nagar, District Patna, at present posted as Clerk, Department of Health, Bihar, Patna
12. Bimla Devi wife of Late Nand Kishore Pandit, resident of Vishnupuri, Chitkohra, Behind Purani Bhatti, P.S.Chitkohra, District Patna, at present posted as Orderly, Department of Health, Bihar, Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Department of Finance, Govt. of Bihar, Patna
3. The Additional Secretary, Department of Finance, Govt. of Bihar, Patna
4. The Deputy Secretary, Department of Finance, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr.Advocate
For the Respondent/s : Mr. Prashant Pratap, GP 6
Mr. Gyan Shankar, AC to GP 6

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
CAV JUDGMENT
Date: 06 -08-2015

The only issue involved in the present proceeding is whether the petitioners, being the compassionate appointees, are entitled to receive dearness allowance on the family pension, being paid to them on account of death of their respective husbands in harness.

2. The petitioners, 12 in numbers, have filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to consider their case for grant of dearness allowance on the family pension being paid to them, as also for a direction to pay them current as well as arrears of such dearness allowance.

3. It is not in dispute that respective husbands of the petitioners were the State Government employees in different Departments and on account of their death in harness, these petitioners were appointed on compassionate ground on different dates and on different posts, as indicated in the main writ petition. It is also not in dispute that since the date of their respective appointment, all these petitioners are being paid their salary and dearness allowance besides other admissible allowances.

4. The grievance of the petitioners is that, though they are being paid their family pension on account of death of their respective husband in harness, but they are not being paid dearness allowance on the aforesaid family pension in view of Government circular/letter dated 09.05.1991 (Aannexure-1) issued by the

Department of Finance, Government of Bihar, Patna.

5. Learned senior counsel appearing on behalf of the petitioners submits that action of the respondents in not paying the dearness allowance on the family pension being paid to them is arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India as also violative of judicial pronouncements of this Court as also the Hon'ble Apex Court. It is further submitted that in the factual matrixes of the case, a direction may be issued to the State Government and its functionaries to consider the case of the petitioners for grant of dearness allowance on the family pension being paid to them. To buttress the aforesaid submissions, he has placed reliance on a judgment/order dated 26.07.2002 passed in LPA No. 717 of 2002 (Annexure-3) by a Division Bench of this Court. He has also placed reliance on the judgments of the Hon'ble Apex Court in the cases of **Union of India Vs. G. Vasudevan Pillay [(1995) 2 SCC 32]** and **H.S.E.B. Vs. Azad Kaur [(2000) 2 SCC 227]**.

6. Apart from above, learned senior counsel has strenuously argued that by Office memorandum dated 2nd July, 1999 issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare, Government of India, it has been provided that all family pensioners, in receipt of family pension from the Central Government, who were/are employed under the Central Government or the State Government or a Corporation/Company/Body/Bank under them in India or abroad, shall be eligible to draw dearness relief, at rates applicable from time to time, on the amount of family pension with effect from July 18, 1997. It is also pointed out that by the aforesaid office memorandum dated 2nd July, 1999, which has been brought on the record as Annexure-5 to the supplementary affidavit filed on behalf of the petitioners, it has been directed that the arrears of dearness relief, if any, shall be paid to the aforesaid category of employees with effect from July 18, 1997. It is further pointed out that the State Government vide resolution dated 08.02.1999 has adopted the pay scales and all other benefits payable to the Central Government employees, for its own employees. Therefore, according to him, the State Government was obliged to consider the claim of the petitioners for payment of dearness allowance on the family pension being paid to them; yet, despite representations filed by the petitioners for redressal of their valid grievances, they are being denied their lawful dues. Hence the present writ petition.

7. The matter has been contested by the learned Government Pleader No.6, appearing on behalf of the respondents. According to him, the petitioners were appointed on compassionate ground on account of death of their respective husbands and accordingly they are being paid their salary and dearness allowance. It is contended that the petitioners are also being paid their family pension on account of death of their respective husbands in harness, though the petitioners are still in government service. It is next contended that Government circular/letter dated 09.05.1991 (Annexure-1 to the writ petition), on the basis of which, dearness allowance is not being paid to the petitioners on their family pension is legal, valid and finds support from the judicial pronouncements of the Hon'ble Apex Court in the cases of **Union of India Vs. G.Vasudevan Pillay (Supra), H.S.E.B.Vs. Azad Kaur (Supra) as also Union of India Vs.Rekha Majhi (AIR 2000 SC 1562)**. It is the case of the respondents that the petitioners, being the compassionate appointees as also family pensioners, cannot claim two dearness reliefs simultaneously i.e. one for the salary being paid to them and other for the family pension being paid to them separately.

8. Learned GP 6, appearing on behalf of the respondents, by referring to the averments made in the counter affidavit as also supplementary counter affidavits filed on behalf of the respondents further submits that dearness allowance is not being paid to the petitioners on their family pension, as they are already being paid dearness allowance on their salary. However, by referring to letter dated 04.02.2002 (Annexure-B to the counter affidavit) filed on behalf of the respondent no.1 as also the averments made in that counter affidavit and supplementary counter affidavits filed on behalf of the respondent no.2, it is contended that after retirement from service, the petitioners would be entitled to receive dearness allowance on their own pension as also on their family pensions already being paid to them. It is being asserted on behalf of the respondents that the Office memorandum dated 2nd July, 1999 (Annexure-5) issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare, Government of India, whereby it has been provided that all family pensioners, in receipt of family pension from the Central Government who were/are employed under the Central Government or the State Government or a Corporation/Company/Body/Bank under them in India or abroad shall be eligible to draw dearness relief, at rates applicable from time to time, on the amount of family pension with effect from July 18, 1997, has not been adopted by the State Government and therefore on the basis of the aforesaid office memorandum dated 2nd July, 1999 (Annexure-5) the petitioners cannot claim payment of dearness allowance on the family pension being paid to them.

9. After having heard the parties and on consideration of the materials available on the records, this Court finds that the petitioners, who all are compassionate appointees, are being paid their salary as also dearness allowance for the post on which they are working. They are also being paid their family pension on account of death of their respective husbands in harness, but they are not being paid dearness allowance on the family pension simply in view of the Government circular/letter dated 09.05.1991 (Annexure-1) issued by the State Government, but no specific rule in this regard has been framed. The plea taken by the respondents that the petitioners cannot claim two dearness allowance simultaneously; one for their salary and other for their family pension while they are in government service, but the similar benefit shall be restored to them after their retirement, does not appear to be reasonable or having any rationale. If dearness allowance can be paid to the petitioners or similarly situate other employees after their retirement, for their own pension as also for their family pension, then this Court fails to appreciate as to why similar facilities cannot be granted to the petitioners while they are in Government service, particularly, in absence of any specific rule framed by the State Government.

10. It is true that question of payment of two dearness relief to the pensioners, who are re-employed or appointed afresh came for consideration before the Hon'ble Apex Court in the case of **Union of India Vs. G.Vasudevan Pillay (supra)** with respect to ex-servicemen and the decision of the Central Government debarring the ex-servicemen dearness relief on their pension after they are re-employed to any civil post was upheld in view of the provisions contained in Rule 55-A (ii) of the Central Civil Services (Pension) Rules, 1972 as amended in 1991.Similarly, in the case of **Union of India Vs.Rekha Majhi (Supra)** dearness allowance/dearness relief on pension was held to be not available to widow of the deceased employee on being re-employed in view of provisions contained in Railway Services (Pension) Rules (1993), but so far as the present case is concerned, there is no such rule framed by the State Government. Dearness allowance on the family pension is being denied to the petitioners on the basis of the circular/letter of the Finance Department, but the stand of the respondent-State denying the dearness allowance on the family pension is quite strange and without any rational basis. If the petitioners can receive dearness allowance after their retirement on their own pension as also on the family pension, and so, they would be enjoying two dearness allowance after their retirement, then why such benefit cannot be granted to them while they are still in service. Furthermore, Central Government has taken a policy decision by issuing office memorandum dated 2nd July, 1999 (Annexure-5) for payment of dearness relief/allowance to even such family pensioners, who have been re-employed. They are also held to be entitled to receive arrears of dearness allowance with effect from July 18, 1997. Though aforesaid office memorandum dated 2nd July, 1999 (Annexure-5) has not been adopted by the State Government, as has been claimed by the respondents in their counter affidavit, but facts remain that the State Government vide Resolution dated 08.02.1999, for its own employees, has adopted the pay scale and other benefits payable to the Central Government employees. If that is the factual position, then the entire matters are required to be re-looked and re-decided by the State Government, particularly, in absence of any rule debarring the compassionate appointees from receiving the dearness allowance on their family pension.

11. For the reasons recorded above, the State Government and its functionaries including the respondents are hereby ordained to consider the claim of the petitioners and similarly situate other compassionate appointees for grant of dearness allowance on their family pension, while they are still in service. A clear cut rule must be framed for solution of entire dispute regarding payment of dearness allowance on the family pension payable to the compassionate appointees, after taking into consideration the factual matrixes noticed in the preceding paragraphs. The entire exercise must be completed within a maximum period of four months from the date of receipt/production of a copy of this order.

12. The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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