

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.240 of 2014

=====

Akash Devi Widow Of Late Jethan Prasad, The Then Circle Inspector, Block - Deo
District - Aurangabad Resident Of Village - Ghuriyawan, Police Station -
Wazirganj, District - Gaya

.... Petitioner

Versus

1. The State Of Bihar, Through Chief Secretary, Government Of Bihar, Patna
2. Principal Secretary, Department Of Revenue And Land Reforms, Government Of Bihar, Patna
3. Commissioner, Magadh Division, Gaya
4. Collector, District Aurangabad At Aurangabad
5. Block Development Officer, Block Deo, District - Aurangabad
6. Accountant General, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Kailash Behari Verma, Adv.

For the Respondent/s : Mr. Anjani Kumar, AAG6

Mr. Shailendra Kumar Singh, AC to AAG6

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 03-02-2015

Heard learned counsel for the parties.

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

“(i) Enhanced family pension with existing rate of D.A. on revised pay scale of her husband with effect from 1.1.1986, 1.1.1996 and 1.1.2006 who died on 6.3.2005;

(ii) gratuity payable after retirement of her husband, Circle Inspector, who retired on 31.7.1985 during his suspension period;

(iii) arrears of pension with the then existing rate of D.A. due to her husband, Jethan Prasad;

(iv) arrears on account of Medical Allowances;

(v) arrears of salary due after deduction of subsistence

allowance paid to Jethan Prasad, who retired on 31.7.1985 during period of his suspension, as he was finally acquitted in criminal case on 19.12.2011 and there being no departmental proceeding whatever against him;

(vi) refund of security worth Rs.500/- deposited during service;

(vii) arrears due to difference of payable encashment of unutilized earned leave and already paid encashment of unutilized earned leave;

(viii) reasonable interest on the entire dues on account of delay, at least after date of acquittal i.e. 19.12.2011.”

3. Learned counsel for the petitioner submits that once the husband of the petitioner was acquitted of the criminal charge he would be entitled for all the consequential benefit including those which have been claimed by the petitioner in this writ application.

4. This Court would find it very difficult to accept such submission for more than one reason. The husband of the petitioner had a chequered past inasmuch as he got suspended when he was caught red-handed by the Vigilance party taking bribe. Such suspension of the petitioner was continued till the date he completed his age of superannuation i.e. 31.7.1985. As a matter of fact the petitioner, therefore, was getting only the benefit of subsistence allowance till the date of his suspension in between 5.9.1979 to 31.7.1985.

5. After the petitioner had retired from service he was



convicted by the trial court by a judgment dated 19.12.1998 passed by the Special Judge (Vigilance), South Bihar in Special Case No. 64/1987 arising out of Vigilance P.S.Case No. 64/1978. Such conviction of the petitioner to undergo Rigorous Imprisonment for a period of one year with a fine of Rs.500/- was all along there till the date the husband of the petitioner died i.e. 6.3.2005. It is only after his death that in the pending criminal appeal filed by the husband of the petitioner being Cr.Appeal No. 74/1999 that this Court had given the husband of the petitioner the benefit of doubt and had set aside the order of conviction and sentence.

6. The effect of such finding of the appellate court only by way of giving the benefit of doubt will never mean that the husband of the appellant could acquire glorious past so as to claim full retirement benefit. In such a situation the authorities were under obligation to consider the effect of such conviction by the trial court and the acquittal recorded by the appellate court by only giving the petitioner benefit of doubt. The petitioner being the wife of the convicted employee if she could prosecute the appeal she could also have gone in appeal against that portion of the appellate order giving her husband the benefit of doubt because she was aware that the benefit of doubt could be used by the employer for the purposes of withholding of certain payment of pension. It is this aspect of the matter which

would require reconsideration and therefore, this Court will not be in a position to issue a direction for payment of full retirement benefit to the petitioner. Thus whatever payment has been made to the petitioner must be duly scanned in the light of the fact that her husband initially convicted by the trial court in a serious charge of taking bribe and later on giving only a benefit of doubt would be entitled in law to get some portion of pension or family pension as per the fresh decision to be recorded by the authorities.

7. Thus, for the present this Court is not inclined to grant any relief to the petitioner but at the same time it would direct the competent authority to finalize the claim of the petitioner for payment of full and final pension and gratuity because the learned counsel for the respondents has taken a stand that only provisional pension and provisional gratuity was sought to be paid to the petitioner after the death of her husband.

8. This Court hopes and believes that this exercise would be completed within a period of four months from the date of receipt of this order.

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

surendra/-

U			
---	--	--	--

(Mihir Kumar Jha, J)