IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1581 of 2008

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Deopati Devi, wife of Late Arjun Prasad, resident of village- Rajendra Nagar, Near Indu Bala Press, P.S. Town, Nawada, District- Nawada

.... Petitioner

Versus

1. The State of Bihar
2. Accountant General (A& E)-II, Bihar, Patna
3. Commissioner-cum- Secretary, Rural Engineering Organization, Bihar, Patna
4. District Magistrate, Nawada
5. Executive Engineer, Rural Engineering Organization, Works Division, Nawada
6. Treasury Officer, Nawada

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajan Ghoshrave, Advocate

For the Respondent/s : Mr. Chandra Shekhar Singh, AC to GP-16

Mr. Dhanendra Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 30-03-2015

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Heard Sri Rajan Goshrave, learned counsel for the petitioner, learned AC to GP-16 and Sri Dhanendra Choubdey, learned counsel for Respondent no.2/ Accountant General, Bihar, Patna.

2. The petitioner, whose husband died in a road accident on 21.07.2004, while returning after inspecting the site of Rajauli, was again constrained to approach this Court by filing the present writ petition under Article 226 of the Constitution of India.

3. Earlier, due to non-payment of death-cum-retiral dues, the petitioner had filed a writ petition vide C.W.J.C.No. 4690 of 2005, in which interim order was passed for payment of entire retiral dues of the husband of the petitioner and since the same was not complied with, the petitioner was constrained to file M.J.C.No. 2365 of 2006, which was disposed of on 04.12.2007. This Court, while disposing of the contempt petition, had granted liberty to the petitioner to assail the order dated 25.08.2006, which was brought on record in contempt proceeding on behalf of the State, which suggested recovery of huge amount from the arrears of husband of the petitioner. Accordingly, the petitioner has filed the present writ petition with a prayer to quash the order, contained in Memo No.849 dated 25.08.2006 (Annexure-4 to the writ petition). By the said order, total amount of Rs. 4,34,677/- was directed to be recovered from the amount of leave encashment and arrears of salary of the husband of the petitioner.

4. Learned counsel for the petitioner submits that the order impugned is liable to be set aside firstly on the ground that without affording any opportunity to the petitioner to explain regarding advance taken by husband of the petitioner for executing certain works of the Department and secondly on the ground that the amount of encashment of unutilized leave is not covered under Rule-27 of the Bihar Pension Rules, which is pension. He has further argued that of course, the Respondents had taken a plea that the husband of the petitioner had taken huge amount as advance for executing certain works, till the date of death of husband of the petitioner no enquiry was conducted and once the husband of the petitioner died in a road accident, at subsequent stage the Respondent State was not at all authorized to affect any recovery in absence of any judgment or decree of the competent court. In support of his submission, he has placed reliance on a Judgment of this Court reported in 2004 (1) PLJR 162; Smt. Indu Devi Vs. State of Bihar. He has specifically relied on paragraph-5 of the said Judgment, which is quoted herein below:

> "5. I find that the so-called committee constituted by the Director submitted its report after one and half year since the death of the employee and on that basis deduction of the aforementioned amount is sought to be made in the facts and circumstances aforementioned, I find it difficult to accept any valid justification for deduction of the said amount on the basis of the so – called report of the committee with respect to which the deceased was never informed during his life time and obviously no opportunity has been availed by the deceased to ascertain the correctness of the report. I am unable to appreciate as to how the Director expects from the widow to meet the questions raised in the report pursuant to which recovery has been sought to be made after one and half year of the death of the employee. Learned counsel for the petitioner has rightly pointed out that earlier the Director issued letter on 23.01.2002 for recovery of only Rs.39,515.00 and now when this Court took serious view of the matter on account of non-payment of death-cum- retiral dues to the widow, he has

> sought to recover a sum of Rs.1,39,282 from the retiral dues. In my opinion, after the death of employee/Government servant recovery in such manner is not permissible. **It is only permissible by getting a decree of Civil Court of competent jurisdiction otherwise it would be violative of principles of natural justice and fair play, moreso, because it is not possible for the widow to dispute such recovery on merit for want of proper opportunities** . In the facts and circumstances aforementioned, this court finds that the attitude of the Director in discharging liability of paying death-cum- retiral dues to the widow is gross callous and this Court strongly deprecates his such attitude."

5. The second limb of argument is that the amount of encashment of unutilized leave being not pension was not required to be recovered in view of Rule-43(b) of the Bihar Pension Rules. Moreover, he has argued that without affording any opportunity such recovery was not at all justified and the petitioner is entitled to get recovered amount refunded.

6. Learned State Counsel has opposed the prayer of the petitioner and referring to averments made in the counter affidavit filed on behalf of Respondent nos. 3 and 5, which was filed on 23.03.2011 as well as one another counter affidavit, which was filed on 19.05.2011 on behalf of Respondent nos. 3 and 5, submits that recovery order is justified in view of the fact that there was outstanding amount to the tune of Rs. 44,09, 139/- against the husband of the petitioner, who had taken advance for executing the different schemes of the State Government. It has also been pleaded that though outstanding amount was to be adjusted from the husband of the petitioner but, in the meanwhile, he died in a read accident and, as such, whatever amount has been recovered is justified.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the affidavits filed by both sides. In reply to the counter affidavit, the petitioner has made specific averment that as per provision, contained in Bihar Public Works Accounts Code, only temporary advance is to be given to the Junior Engineer that, too, amount should be minimum as fixed by the Superintending Engineer in execution of the work/schemes. It has also been indicated that temporary advance must be adjusted within a period 15 days. Of course, in this case, thereafter, again a counter affidavit was filed and learned State Counsel referring to said affidavit has tried to justify that the husband of the petitioner was informed. The husband of the petitioner was not properly informed within time for adjusting the amount. Moreover, this Court has already laid down law that in such cases recovery can be affected after death of an employee only by getting a decree of the civil court of competent jurisdiction. In the entire record, there is nothing to indicate that any opportunity was not given to the petitioner to explain regarding advance taken by her husband nor there is any order of the competent court for recovery of such amount. In such a situation, it would be difficult for the State to justify the adjustment of outstanding amount. Moreover, recovery of amount of leave encashment being no pension may not be ordered to be recovered from the petitioner.

8. Accordingly, in view of facts and circumstances, particularly in view of law laid down by this Court as well as since no proper opportunity was given to the petitioner, the impugned order is liable to be set aside and, as such, the impugned order is hereby set aside with a direction to the Respondents to refund the recovered amount to the petitioner within a period of two months from the date of receipt /production of a copy of this order. If such amount is not repaid within a period of two months from the date of receipt/production of a copy of this order, the petitioner shall be entitled to get the said amount with interest @ 9 % per annum, which shall be calculated from the date of recovery of the amount.

9. With above observation and direction, the writ petition stands allowed.

NKS /-

(Rakesh Kumar, J)

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