IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2123 of 2015

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Yasmin Hoda, wifer of Late Dr. Md. Najmul Hoda, resident of village + P.O. Kamrauli, P.S. Kamtaul, District Darbhanga.

.... Petitioner/s

Versus

1.The State of Bihar.
2.The Principal Secretary, Department of Health and Medical Education, Government of Bihar, Patna.
3.The Additional Secretary, Health, Government of Bihar, Patna.
4.The Director, health and Medical Education, Government of Bihar, Patna.
5.The Deputy Secretary, Health, Government of Bihar, Patna.
6.The Accountant General, Bihar, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Rakesh Narayansingh, Adv
For the Respondent/s : Mr. Ajoy Kumar Singh, AC to SC-2

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 03-02-2015 Heard learned counsel for the parties.

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

> *"That the order bearing memo no. 647 dated 09.05.2012 contained in Annexure-16 may be quashed.*
>
> *That the respondents may be directed to make payment of entire post retrial dues of the petitioner i.e. gratuity, GIC, provident fund leave encashment and other dues amount.*
>
> *That the respondent may be directed to regularize the services of the petitioner for the purpose of pension from 11.11.1995 to 31.08.2000.*
>
> *That the respondents may be directed to make payment of salary of the petitioner from 01.06.2004 to till date of his retirement on 31.07.2007 since the husband of petitioner who was in critical condition confined to his bed and had requested for leave was entitled for his salary in accordance with rules.*
>
> *That the respondents may be directed to make payment of pension of the petitioner in correct scale.*
>
> *That the respondents may be directed to make payment of interest at the rate of 9% on entire dues to the*

petitioner."

Learned counsel for the petitioner in support of the aforementioned prayer has submitted that though the husband of the petitioner may not be strictly entitled for grant of extraordinary leave and consequential benefit for the period from 11.11.1995 to 31.08.2000, on account of the fact that he was happily employed at Libiya, the same cannot be said as with regard to the period of 01.06.2004 to 31.03.2007, inasmuch as, there are unimpeachable documents to show that the husband of the petitioner was seriously ill.

In this case, it is now the widow, the petitioner, who wants to claim certain in-service benefit of her husband. Her husband ought to have retired on 31.03.2007, but then he remained unauthorisedly absent from duty without sanction of prior leave from 01.06.2004 to 31.03.2007. When the husband of the petitioner had applied for medical leave that cannot be considered for a simple reason that leave is not a matter of right. The petitioner initially proceeded on leave and thereafter remained on leave for a long period. Therefore, all that the petitioner could have expected by way of settlement of the extraordinary leave of her husband was a grace by way of grant of extraordinary leave for the period he was absent from duty in between 01.06.2004 to 31.03.2007. There is no leave admissible under the Bihar Service Code which would give the person stretch of three years period as paid sanctioned leave.

The plea that the huband of the petitioner had asked for voluntary retirement and the same was not granted cannot be raised now because it was open for him to come to this Court and question the decision of the authority rejecting the same on the ground of pending purported departmental proceeding. In that view of the matter, this Court is not at all impressed with the submission of learned counsel for the petitioner that the decision taken by the authorities in the impugned order of treating the period from 01.06.2004 to 31.03.2007, as a period of unauthorized absence.

Let it be noted that the husband of the petitioner has already died in the year 2009 and now the wife (petitioner) only wants certain benefit of retirement benefit to which she would become entitled after the death of the her husband. In fact the impugned order dated 09.05.2012, would only authorize her for such payment after excluding the period in which the husband of the petitioner was unauthorizedly absent from duty i.e. from 11.11.1995 to 31.08.2000 and again from 01.06.2004 to 31.03.2007. On the basis of these exclusions the petitioner at best would still be entitled for benefit of family pension and therefore, the cause of auction either of the year 2007 or of the impugned order which was passed some three years earlier on 9.5.2012 cannot be made subject matter of this writ application filed on 2.2.2015.

In the result, this writ application fails and is, accordingly, dismissed with a clarification that the dismissal of this writ application however will not come in the way of the petitioner in getting her legitimate dues to which she would be entitled by way of family pension and/or other retirement benefits as per the impugned order.

(Mihir Kumar Jha, J)

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