

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14376 of 2015

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Indu Devi, wife of late Pratap Narain Yadav, resident of Village Bhupatti,
P.S. Babubarhi, Dist. Madhubani.

.... Petitioner/s

Versus

1. General Manager, Central Bank of India, Central Bank of India Building, 2nd Floor, M.G. Road, Fort, Mumbai 400023.
2. The Zonal Manager, Central Bank of India, Zonal Office, Muzaffarpur.
3. Disciplinary Authority cum the Regional Manager, Regional Office, Central Bank of India, Alalpatti, Darbhanga.
4. Appellate Authority cum Assistant General Manager, Central Bank of India, Zonal Office, Muzaffarpur.
5. The Branch Manager, Central Bank of India, Khutauna Branch, Dist. Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gopal Jha

For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 11-09-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:-

- "(i) To issue a writ in the nature of certiorari for the quashing of order dated 12.10.07 by which husband of the petitioner was dismissed from service (Ann.-2) and as well as for the quashing of order dated 29.12.08 passed by appellate authority by which he has confirmed the punishment awarded by Disciplinary Authority (Ann-4)
- (ii) To hold and declare the order dated 12.10.07 and order dated 29.12.08 as illegal, malafide, capricious full of bias and colour exercise of power because the same has been awarded without considering the merit and circumstances of the case, and even after

knowing this fact that the husband of the petitioner had already deposited the amount which he credited in his own account.

(iii) For a direction to the respondents authorities to release all the retiral dues in favour of the petitioner and fix the family pension of the petitioner after quashing the order dated 12.10.07 and order dated 29.12.08."

Admittedly, the husband of the petitioner was an employee of the Central Bank of India. Again it is true that he was dismissed from service by an order dated 12.10.2007 and such order of dismissal was also affirmed in appeal on 29.12.2008 vide Annexure-2 & 4 respectively to this writ application. These orders become final as there was no further challenge by the husband of the petitioner. The petitioner, thereafter, after death of her husband, had filed a writ application, CWJC No. 24861 of 2013 in which her prayer was that she should be paid all her retiral benefit and this Court had found the same to be not admissible by recording as follows:-

"Heard learned counsel for the petitioner and learned counsel for the Bank.

The husband of the petitioner was an employee of the Central Bank of India.

Learned counsel for the Bank submits that services of the petitioner were dispensed with on account of his dismissal on the charge of misconduct. As he was dismissed from service in terms of Regulation 46 of the

Officers Service Regulation the husband of the petitioner or petitioner is not entitled to the pension or family pension, gratuity and leave encashment. He was only entitled for the amount of provident fund. As per the Bank provident amount has been paid to the petitioner but she is not satisfied with the aforesaid amount and that amount should be in higher side.

In view of the dismissal of the husband of the petitioner, petitioner is not entitled to benefit under the heading of pension, gratuity and leave encashment but certainly if the petitioner is not satisfied with the provident fund amount she will be at liberty to file a representation before the appropriate authority and the authority will examine the same and pass an appropriate order in accordance with law within a period of three months from the date of filing the representation. Petitioner will also be at liberty to challenge the order of dismissal.

With the aforesaid observation this writ petition is disposed of."

Learned counsel for the petitioner, however, has relied on last sentence of the order dated 14.11.2014 to make out a case that since the petitioner was given a liberty to challenge the order of dismissal of her husband, this writ application, despite delay of more than seven years, will still be maintainable. This Court does think so. The cause of action with regard to dismissal of the husband of the petitioner had arisen on 12.10.2007 and, therefore, after re-affirmation on 29.12.2008 by way of dismissal of the appeal, cannot be now allowed to be raised by the petitioner if the

husband of the petitioner in her lifetime did not challenge the same.

Mere observation by giving liberty to the petitioner to file writ application will not mean that the writ application will also be maintainable. As a matter of fact, whatever has been stated in the writ application with regard to payment of retirement benefit has already been answered by the learned single Judge in the aforesaid earlier order wherein she had been held entitled to only amount of provident fund while denying her any other retirement benefit on account of the order of dismissal of her husband.

In that view of the matter, this writ application fails, both on account of delay and laches as also on the ground of principle of constructive res judicata. It is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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