IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3200 of 2015

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Dayanand Thakur, Son of Mostt Katki Devi, wife of Late Ballav Kumar Shashtri, Resident of Mohalla Jibu Jha Lane Chhotki Khanjerpur, P.S. Barari District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development Department, Bihar, Patna.
2. The Accountant General, Bihar, Patna
3. Director, Primary Education, Bihar, Patna.
4. Treasury Officer Bhagalpur, Bhagalpur.
5. State Bank of India Main Branch Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mrs. Pravina Kumari, Advocate.
For the Respondent/s	:	Mr. Yogendra Pd. Sinha, AAG-15
For the A.G.	:	Mr. Kumar Priya Ranjan, Advocate.
For the SBI	:	Mr. Kaudhlendra Kr. Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 20-04-2015 Heard learned counsel for the parties.

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

> *"1. .. directing to the respondents to pay admissible interest on arrear of family pension Rs. 361984/- from 27.9.99 to 3.6.2010 till May 2014 and medical allowance from 11/9 to 6/10 and deducted amount 20000/- of income tax."*

3. Learned counsel for the petitioner submits that since the amount of family pension including arrears and current was paid to the petitioner on 1.06.2014, the petitioner will also be entitled for payment of interest on the total amount of family pension to the tune of Rs. 3,61,984/-. Additionally, learned

counsel for the petitioner has submitted that the medical allowance also has not been paid to the petitioner. She has further highlighted the grievance that a sum of Rs. 20,000/- deducted on the head of Income Tax should be directed to be refunded to the petitioner

4. In this case, a counter affidavit has been filed wherein firstly, in paragraph no. 8, it has been clarified that medical allowance for the period November 2009 to 3rd June 2010 has already been paid by the Treasury Officer after issuance of necessary authority by the Accountant General, Bihar and the same reads as follows :- .

> "8. That so far as medical allowance from 11/2009 to 03.06.2010 is concerned, the widow has already been paid the admissible amount for the said period by the Treasury Officer after issuance of necessary authority by the Accountant General, Bihar and the respondent is nothing to do with the alleged claim of the petitioner raised in the instant writ application."

5. There is no denial to this averment made in para-8 of the counter affidavit and, therefore, this Court must hold that whatever amount of medical allowance was payable to the petitioner as per the rules, has already been paid to her.

6. Reverting back to the issue of deduction of the income tax, the respondents again have clarified in para-7 of the

counter affidavit that there has been no deduction on the head of the income tax from the petitioner and as such there would be no occasion for its being refunded to the petitioner. To that extent, para-7 of the counter affidavit being relevant is quoted hereinbelow:-

> *"7. That with regard to claim of the petitioner regarding deduction of any amount in respect of income tax is concerned, the claim of the petitioner appears to be misdirected as the petitioner himself is not aware about any deduction in respect of income tax. In the writ application it has been claimed that Rs. 20,000/- has been deducted where as in the representation contained I annexure 4 it has been mentioned as Rs. 19795/- and somewhere as Rs. 1895/-. The said claim has been relief on the calculation charge furnished by the Bank as stated by the petitioner in para no. 13 of the writ petition and careful perusal of the calculation chart which has also been annexed as annexure 4, it would be evident that there has been on mentioning of any deduction in respect of income tax. In fact, the Bank had initially calculated payment of 15% of revised pension w.e.f. April, 2007 to October 2009 amounting to Rs. 18795/- whereas the widow was entitled to 100% revised pension i.e. Rs. 1,25,3000/- and accordingly, payment was revised and intimation to that effect was sent to the office of the Accountant General Bihar by the Treasury Officer, Bhagalpur vide letter no. 1884 dated 31.10.2013 and now the petitioner has been mischievously claiming that Rs. 18795/- has been deducted as income tax where as no such deduction appears to ahs been made."*

7. Yet again, there is no denial to the aforementioned averments made in para-7 of the counter affidavit by the petitioner

by filing any rejoinder to that effect.

8. That apart, if certain amount of income tax , as claimed by the petitioner, has been deducted, which, according to her, was not payable, she has always liberty to approach the authorities of the income tax to claim refund in accordance with law.

9. Now coming to the issue of payment of interest over the amount of family pension, this Court must record that both the parties will be bound by the inter parte order passed earlier in CWJC No. 17957 of 2009 wherein the petitioner had made a prayer for payment of pension, arrear of pension and also penal interest. That writ application was disposed of by an order dated 22.03.2010 in which this Court had only directed the petitioner to file a representation so that the admitted dues of her pension could be paid with admissible interest as per rule. The petitioner thereafter had filed a contempt application, MJC No. 1504 of 2011 wherein after perusing the supplementary show cause reply of the respondents, an order was passed on 29.04.2014, relevant portion whereof reads as follows:

> *"From the materials on record, it appears that direction issued by the court on 22.3.2010 in C.W.J.C. No.17957 of 2009 has not been complied with. It is admitted position that arrears of family pension for a period of about eleven years has not been paid. Further, from the calculation*

chart enclosed in the show cause of the Treasury Officer, Bhagalpur, it also appears that there has been no payment of the head Medical Allowance and also totalling of the amounts is incorrect.

In view of the fact that entire payment has not been made and the matter is still pending, this Court has no hesitation to hold that the opposite parties are in contempt.

Learned counsel for the State disputes the exact period for which family pension has not been paid to the petitioner.

At this juncture, learned counsel for State prays for indulgence and submits that all admitted dues shall be paid to the petitioner along with interest, if applicable, after verifying the calculation.

This court in view of the aforesaid, grants one last indulgence to the opposite parties to make full payment to the petitioner in terms of the order dated 22.3.2010 passed in C.W.J.C. No.17957 of 2009. A supplementary show cause be filed on behalf of the Treasury Officer, Bhagalpur, indicating that full payment has been made to the petitioner enclosing chart of such payment, failing which he shall appear in person.

10. Thereafter, on 16.05.2014, when a supplementary show case was filed by the respondents, this Court again had recorded an order, relevant portion whereof reads as follows:

"From the order dated 29.04.2014, it is clear that supplementary show cause was required to be filed on behalf of the Treasury Officer, Bhagalpur indicating full payment, failing which he was to appear in person on 15th May, 2014. Neither any supplementary show cause was filed nor did he appear before the Court on 15th May, 2014 nor his presence was recorded before the Registrar General of the Court.

In that view of the matter, the Treasury Officer, Bhagalpur has committed further contempt by violating the order dated 29.04.2014 for filing supplementary show cause, *failing which he was to appear in person before the Court on 15th May, 2014.*

At this juncture, learned counsel for the State submits that he had talked to the Treasury Officer, Bhagalpur on 15th May, 2014 when the Treasury Officer informed that he was not aware of the order of the Court. However, learned State Counsel clarified that the order was communicated to the Treasury Officer, Bhagalpur on 30.04.2014 through the Collector, Bhagalpur by Fax.

In view of the aforesaid, let the Collector, Bhagalpur explain the circumstances why the letter of the learned counsel dated 30.04.2014 was not conveyed to the Treasury Officer, Bhagalpur, if what has been stated by the Treasury Officer to learned counsel for the State is correct. If he finds that the letter was not communicated to him, the Collector, Bhagalpur shall take appropriate action against the person(s) concerned after fixing responsibility. The Collector, Bhagalpur shall be obliged to file affidavit in the aforementioned terms on the next date.

As far as merits are concerned, it appears that the Treasury Officer, Bhagalpur is trying to play games inasmuch as the authority letter issued in favour of the original petitioner in 2012 was not implemented and thereafter the stand is that some further clarification has been sought from the Accountant General, Bihar. The Court at this juncture would not like to fix responsibility in the matter on any of the parties and gives them one last opportunity to ensure full compliance of order dated 22.03.2010 passed in C.W.J.C. No. 17957 of 2009. Accordingly, let the matter be solved at the level of the Accountant General, Bihar and the Treasury Officer, Bhagalpur and full payment be ensured to the petitioner as per order dated 22.03.2010 passed in C.W.J.C. No. 17957 of 2009, failing which the said two officers shall be personally present in Court when the case be listed on 24th June, 2014 under 'Admission-I'.

11. Finally, the aforementioned contempt application, MJC No. 1504 of 2011 got disposed of by an order dated 26.06.2014, relevant portion whereof again being quoted hereinbelow:

> *The present petition has been filed with a prayer to initiate contempt proceeding on an allegation of wilful disobedience to the order dated 22.03.2010 passed in C.W.J.C.No.17957 of 2009. By the said order, the writ petition of the petitioner's mother was disposed of granting liberty to file representation before the respondent no.3 and the concerned respondent was directed to examine the same and settle the grievances of the petitioner within specified time.*
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> *In this case, number of show cause have been filed. Earlier by order dated 16.05.2014, the Accountant General, Bihar and the Treasury Officer, Bhagalpur were directed to examine regarding dues of the petitioner. In compliance with the order of this Court, show cause on behalf of Accountant General(Opp.Party no.2) and the Treasury Officer (Opp.Party no.4 have been filed and it has been categorically indicated that remaining amount i.e. Rs. 3,43, 189/- has already been paid to the petitioner after receipt of authorization by the Accountant General.*
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> *Learned counsel for the petitioner raised dispute regarding interest. The Court is of the opinion that since in compliance with the earlier order, entire payment has already been made, there is no need to keep the matter pending. If the petitioner feels aggrieved regarding the interest on the amount, he would be at liberty to avail appropriate remedy.*

12. Thus the present writ application, in fact, seems to be wholly misconceived inasmuch as in view of the aforementioned observations, wherein the petitioner even though

had claimed payment of interest but the same was not allowed by this Court.

13. As noted above, there was no direction for payment of interest for the period till September 2010 and this aspect of the matter was again gone into by an order of this Court dated 19.03.2015 wherein addressing to this very question, it was held as follows:

> *Having regard to the fact that prima facie the petitioner was not allowed any payment of interest despite a prayer made to this effect in her earlier writ application CWJC No. 17957 of 2009 disposed of on 22.3.2010, this Court would not be inclined to grant interest to the petitioner for the period till September, 2010 by which time the representation of the petitioner for payment of admissible dues was to be disposed of but, then, the respondent would be liable to explain as to why the petitioner's provisional pension was paid in June, 2014 which in turn will also entitle her to claim 5% interest as per the government decision at least from October, 2010 till the date of its payment i.e. June, 2014. Additionally, the respondents would be also liable to explain as to why the medical allowance payable to the petitioner along with family pension has not been paid to the petitioner as yet.*

14. In the backdrop of the aforementioned earlier inter parte order, the issue with regard to payment of interest, as claimed in this writ application, has to be examined. The respondents have miserably failed as to why the payment of family pension of the petitioner for the period 27.09.1999 to 03.06.2010, amount to Rs. 3,43,189/-, was not paid within the

prescribed time under the order of this Court dated 22.03.2010 wherein a period of six months was given for making payment of admitted dues. That order dated 22.03.2010, already quoted above, would mean that the petitioner was required to be paid all the admitted amount of family pension on or before 22.09.2010. That however, has been done only on 11.06.2014. The petitioner therefore would be legally entitled for payment of interest for the delay caused in payment of her family pension, despite the order of this Court, for the aforesaid period of September 2010 to 11.06.2014.

15. The Government circular, as with regard to payment of interest contained in memo no. P.C.-2-1-46/79/3155 dated 7.11.1981, would also leave nothing for speculation that payment of interest @ 5% per annum on delayed payment on all kinds of pension including family pension and death-cum-retirement Gratuity is payable. To that extent, it would be also relevant to quote the circular of the Government dated 07.11.1981, which reads as follows**:**

> *"*Subject: - Payment of interest on delayed payment of all kinds of pension (including Family Pension and Death-cum-Retirement Gratuity).*
>
> *In spite of the various measures taken so far in checking delay in the disposal of pension cases, Government are distressed to find that the delay has not yet been altogether eliminated resulting in financial distress and pecuniary loss*

to pensioners and families of deceased Government servants. In view of the above and considering the desirability of paying compensation to sufferers by way of interest and imposing monetary punishment to Government servants responsible for delay the State Government have decided as follows:-

(a) Interest shall be allowed on delayed payment of all kinds of pension (including Family Pension) and D.C.R Gratuity @ 5% per annum for the period beyond three months after the pension/D.C.R. Gratuity becomes due and shall be payable till the end of the month preceding the month in which the payment of final pension actually begins and/or the payment of D.C.R. Gratuity is actually made. The interest shall be allowed only where it is clearly established that the payment of pension/ D.C.R. Gratuity was delayed on account of administrative laps or for reasons beyond the control of the retired Government servants. Each case of payment of interest shall be considered by the concerned Administrative Department in consultation with the Finance Department and the payment of interest must be authorized through a Government order. In all cases, where interest is paid the entire amount of interest shall be realized from the Government servants responsible for the delay.

(b) Only provisional pension is authorized to Government servants who are under suspension or against whom Departmental proceedings or enquiries have not been concluded on date of their compulsory retirement vide Finance Department's memo No. 9144 F. dated 22.8.74. According to this circular no final pension and D.C.R. Gratuity is paid in such cases until the conclusion of the proceedings and the issue of final orders thereon. Therefore, in such cases the final pension and the D.C.R. Gratuity if allowed to be drawn by the competent authority on the conclusion of the proceedings; would be deemed to have fallen due on the date of issue of orders by the competent authority and if payment is not made immediately after three months of the finalization interest shall be allowed.

(c) The payment of interest, however, would not apply in

cases of payment of arrears of pension/gratuity which become due as a result of enhancement of the emoluments after retirement/death or liberalization of Bihar Pension Rules from a date prior to the date of retirement/death of the Government servant.

2. These orders shall take effect in cases of Government servants who retire/die on or after the date of issue of this order. The cases of those Government servants who retired/died before this date shall also be covered by these orders, if, in their cases pension/ D.C.R. Gratuity is not paid within three months from the date of issue of these orders, but in such cases interest should be payable only from three months after this date."[Memo no. P.C.-2-1-46/79/3155, dated 7.11.1981].

(underlining for emphasis)

16. The underlined portion in Circular in Clause-(a) itself makes a specific provision for payment of interest on all kinds of pension including family pension and, therefore, the stand of the respondents that there is no provision for payment of interest on family pension, has to be only noted for its being rejected. The petitioner thus is entitled for payment of simple interest @ 5% per annum over the admitted amount of family pension of Rs. 3,43,189/- for the period 22.09.2010, the date on which the period of six months, for making payment of admitted amount under the order of this Court dated 22.03.2010 in CWJC No. 17957 of 2009, had expired to the date of its actual payment i.e. 11.06.2014. Such payment of interest @ 5% per annum on the

amount of family pension of Rs. 3,43,189/- for the period of 22.9.2010 ti 11.6.2014 must be paid to the petitioner within a period of one month from the date of receipt of a copy of this order.

17. Let it be noted that after making of this payment, the entire issue of family pension gets resolved inasmuch as the petitioner herself, for the first time, had approached this Court by filing this writ application on 17.12.2009 and, therefore, her opening of a very wide mouth claiming interest from the period 1999, which also did not find favour from this Court on the earlier occasion, must be restricted to the aforesaid extent only as per the order of this Court.

18. With the aforementioned observations and direction, this writ application is disposed of.

19. Before parting with, this Court must make it clear that it would be open for the competent authority to recover this amount of interest from the pocket of the erring official who, despite the order of this Court, did not make payment of family pension of the petitioner in this period of September 2010 to 11.06.2014.

(Mihir Kumar Jha, J)

Sujit/-

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