

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19581 of 2014

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Sima Sinha wife of Late Subodh Kumar resident of Mohalla - Pant Nagar,
Madanpur Bye-Pass, Police Station - Civil Line, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department,
Govt. of Bihar, Patna.
3. The District Education Officer, Establishment Branch, Rohtas (Sasaram).
4. The District Programme Officer, Establishment, Rohtas, (Sasaram).
5. The Treasury Officer, Sasaram, Rohtas.
6. The Principal, Nauhatta High School, Sasaram (Rohtas).
7. The Director General, Provident Fund Directorate Department of
Finance, Patna, Bihar.
8. The Accountant General, Birchand Patel Path, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kr. Sinha, Adv & Mr. Rajiv Ranjan Jha, Adv
For the State	:	Mr. Sanjeev Kumar Singh, AC to SC-12 Mr. Prabhat Kumar Singh, SC12
For the A.G. Bihar	:	Mr. S.M. Ehtesam, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 06-07-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

*".... to pay the death-cum-retiral dues including
Pension, Gratuity, Leave Encashment, G.P.F. and the
amount deducted in Compulsory Insurance Scheme
Account etc. and issuance of appropriate writ or writs
directing the Respondents to pay statutory as well as
penal interest thereon..."*

2. The facts giving rise to this writ application lie in a
narrow compass. The husband of the petitioner was working as a
Clerk at Nauhatta High School, Sasaram (Rohtas) (hereinafter



referred to as 'the School') and had died in harness on 26.06.2013. The widow of the petitioner claims that she had filed repeated representations for payment of death-cum-retirement benefit of her husband, but the same had not been paid to her in a period of almost one and half year and as such she was compelled to file this writ application on 17.11.2014, when her representations dated 03.07.2013, 19.09.2013, 01.07.2014 and 16.09.2014 had made no impact on the respondents. In this regard, the petitioner has brought on record a letter written by the District Programme Officer (Establishment), Sasaram (Rohtas) (respondent no. 6) whereby and whereunder the Headmaster of the aforesaid School was directed to submit an application of the petitioner for payment of amount of Group Insurance, Pension, Gratuity, Provident Fund and other service benefits.

3. This writ application was taken up on 23.06.2015 when this Court had noted the averment made in the counter affidavit filed only on behalf of the Accountant General stating that the office of the Accountant General was not negligent in not paying the death-cum-retirement benefit of the husband of the petitioner to the petitioner and in this regard, reliance had been placed by the office of the Accountant General on its letter



dated 15.01.2015 whereby and whereunder the District Education Officer, Sasaram (Rohtas) was requested to transmit necessary and proper sanction order in favour of the petitioner for taking appropriate steps in the matter of authorization of the pension and other retirement benefits of the husband of the petitioner.

4. This Court, having noticed the aforementioned stand of the office of the Accountant General and in absence of any counter affidavit by rest of the respondents, had passed an order on 23.06.2015, which reads as follows:

"Having regard to the fact that it is the widow of late Subodh Kumar, a Clerk in Nauhatta High School, Sasaram in the district of Rohtas, who is running around for payment of death-cum-retirement benefit of her husband and that there seems to be a defiant attitude on the part of the headmaster of the High School in not even forwarding the pension papers as is apparent from reading of the letter of the District Programme Officer (Establishment), Rohtas (Sasaram) dated 01.07.2014 (Annexure-2), this Court, on being informed that not a single paisa of retirement benefit has been paid to the widow till date even after expiry of almost two years from the date of death of her husband on 29.06.2013 and in absence of any counter affidavit filed by the respondents in this writ application filed on 17.11.2014, would direct the District Education Officer, Rohtas (Sasaram), District Programme Officer (Establishment), Rohtas (Sasaram) and the Headmaster of Nauhatta High School, Sasaram (Rohtas) to appear in person on 6th July 2015 to explain as to why they should not be

subjected to a suitable departmental proceeding for harassing the petitioner.

Put up this case on 6th July 2015 at the top of the list.

5. It is only thereafter the counter affidavit was filed on behalf of the respondent no. 3, namely, District Education Officer, Sasaram (Rohtas), wherein it was stated that the husband of the petitioner was appointed on the post of Typist on 29.06.2000 and subsequently, he was transferred to different high schools including in the High School Taj, and High School Maner and finally, in the High School Nauhatta, Sasaram. It has also been stated that the husband of the petitioner had been placed under suspension for the period 2005 to 2007 and even thereafter the husband of the petitioner was found absent from duty ever since 05.01.2012 without giving any information to the authorities. It has also been alleged that the husband of the petitioner had misappropriated a sum of Rs. 1,94,627/- earmarked for payment to one Narendra Kumar Dubey, the Acting Headmaster of the School on the head of Leave Encashment and for which an F.I.R. being Nauhatta P.S. Case No. 06 of 2012 had been registered against him for offence under Sections 406, 409 and 420 of the Indian Penal Code.

6. As with regard to the retirement benefit, the respondent no. 3 had stated that neither the service book of the



husband of the petitioner nor details of G.P.F. deductions were available in the School and a guideline was sought in this respect by the Headmaster of the School from the office of the District Education Officer, Sasaram vide his letter dated 18.11.2013 and in reply, thereof, the respondent no. 3, vide his letter no. 3641 dated 09.12.2013, had directed the Headmaster to obtain the service book and details of deductions from the previous school where the husband of the petitioner was posted and also take steps for payment of death-cum- retirement benefit of the husband of the petitioner.

7. In the similar fashion, the respondent no. 3 also stated to have issued orders to the Headmaster of the School vide his another letter dated 01.07.2014 for taking effective steps for making payment of the retirement benefit and also to make available necessary papers relating to pensionary benefits of the husband of the petitioner. It has been emphasized in the said counter affidavit that the respondent Headmaster did not comply his aforesaid order dated 01.07.2014, whereafter a show cause in form of explanation was sought by him from the Headmaster by his letter dated 13.12.2014.

8. The District Education Officer, Sasaram has also explained that the Headmaster of the School remained defiant



and did not submit the required information or documents relating to payment of retirement benefit of the husband of the petitioner despite his letter dated 15.05.2015. The respondent no. 3, in his counter affidavit, further has explained that the Headmaster of the School, for the first time, had made available the necessary papers along with his application of the petitioner and details of G.P.F. deductions of the husband of the petitioner only on 27.06.2015 whereafter the order was passed fixing the amount of provisional pension and provisional Gratuity on 29.06.2015 and another letter was sent on the same day i.e. 29.06.2015 to the District Provident Fund Office, Sasaram for payment of the amount of the G.P.F., barring for wanting details of the deductions from the High school Taj and High School Maner.

9. In the show cause reply, which has been filed by the respondent no.-4 today, pursuant to the order of this Court dated 23.06.2015, the respondent no. 4, the District Programme Officer (Establishment), Sasaram (Rohtas) has also given almost the same facts, save and except, that on 04.07.2015, the Group Insurance amount of the petitioner to the tune of Rs. 30,505/- had been sanctioned by him. In another show cause notice, the respondent no. 3, who has already filed the aforesaid counter

affidavit, he has sought to shift the entire blame on the office of the District Programme Officer (Establishment) stating that District Programme Officer (Establishment) was the controlling officer to sanction the provisional pension.

10. The Headmaster of the School, on the other hand, having filed his show cause reply on 06.07.2015, had claimed that the husband of the petitioner had defaultated a sum of Rs. 6,00,000/- and fled away from the School and in respect of such defaultation, two criminal cases, being Nathnagar P.S.Case No. 6/2012 dated 01.03.2012 and Nathnagar P.S.Case No. 1919/2012 dated 14.04.2012, were filed against the husband of the petitioner. He has also alleged that the husband of the petitioner has also run away with many documents of the school including his service book. He has further tried to explain that he had joined as an Incharge Headmaster only in the month of February, 2014 and, therefore, the delay has occurred in collecting details and preparing pension papers. He has also stated that the amount of leave encashment and G.P.F. will be paid to the petitioner after obtaining required details of deduction from the places where the husband of the petitioner was posted and to that effect, he was making efforts to gather information and papers.



11. On the other hand the District Provident Fund Officer, Rohtas in his counter affidavit has produced letters dated 21.01.2015, 20.02.2015, 27.03.2015 and 15.06.2015, all addressed to District Programme Officer (Establishment), Sasaram (Rohtas) as with regard to details of the contribution of the husband of the petitioner in the G.P.F. account as also the final application for withdrawal and according to him when the letter dated 29.06.2015 has been received containing some information with regard to deduction of the amount of G.P.F., they were found to be wholly insufficient inasmuch as the details of deduction of the amount of the G.P.F. from the husband of the petitioner for the period 2001 to 2002 and 2004-05 to 2009-10, were not made available. The District Provident Fund Officer, Sasaram (Rohtas) accordingly has taken a plea that as soon as the deduction statement for the aforesaid period of the husband of the petitioner would be made available the entire amount of G.P.F. with up-to-date statutory interest shall be paid.

12. All these facts have been noted to show the callous and negligent attitude of all the authorities in the matter of payment of death-cum-retirement benefit of the husband of the petitioner to the widow petitioner. In fact, had this Court not passed the order dated 23.06.2015, even the steps taken for

payment of provisional family pension and provisional Gratuity, would not have been taken by the respondents.

13. From the aforesaid discussion it appears that the main culprit is the Headmaster of the School who is the drawing and disbursing authority as thus even if he had joined in the month of February, 2012 and had found the husband of the petitioner to have embezzled a sum of Rs. 6,00,000/- for which two F.I.Rs were already lodged by him, it was his duty to take steps for initiation of departmental proceeding as also making recovery from the husband of the petitioner as he was definitely alive till 26.06.2013 when he has stated to have died in harness on account of accident. The net result is that the two criminal cases, on account of death of the husband of the petitioner, has abated and there being no departmental proceeding against the husband of the petitioner for the alleged embezzlement of Rs. 6,00,000/- its recovery from him also has become impossible.

13. Reverting back to the facts of this case this Court also is of the view that whatever amount of provisional pension and provisional Gratuity were ultimately calculated and sanctioned by the District Education Officer on 29.06.2015 and by the District Programme Officer (Establishment), Sasaram (Rohtas) vide his order contained in memo no. 1369 dated 29.06.2015



could have been done even earlier, had the Headmaster of the School not slept over the repeated communications being made to him by the office of the District Education Officer, Sasaram (Rohtas) and District Programme Officer (Establishment), Sasaram (Rohtas) as with regard to forwarding the pension papers and other details of the husband of the petitioner. Though the main person appearing guiding on this score is the Headmaster, but even the District Programme Officer (Establishment), Sasaram (Rohtas) cannot fully absolve himself because he being the sanctioning authority had found the Headmaster of the School not responding to his repeated orders passed by him and his the superior authority, disciplinary action should have been taken against him (Headmaster).

15. As noted above, the Headmaster of the School, however, appears to be the main villain of the piece who cannot absolve himself merely by seeking a guideline by his letter dated 18.11.2013 inasmuch as the said letter was also replied by the District Education Officer, Sasaram (Rohtas) vide his letter dated 19.12.2013 directing him to obtain the service book and details of deductions from the previous schools where the husband of the petitioner was posted and also make payment of death-cum-retirement benefit of the husband of the petitioner to

the petitioner.

16. Considering all these aspects, this Court would now direct the District Education Officer, Sasaram (Rohtas) and District Programme Officer (Establishment), Sasaram (Rohtas) and the Headmaster of the School to ensure that whatever retirement benefit has already been sanctioned, must be paid to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

17. Additionally, it will be responsibility of the Headmaster of the School, namely, Mr. Nagendra Nath Mishra to ensure that the full details of deduction of the G.P.F. amount of the husband of the petitioner from the other two schools, namely, High School Taj and High School Maner is collected by him and send to the office of the District Programme Officer (Establishment), Sasaram (Rohtas) for its being checked and also send to the District Provident Fund Officer, Sasaram (Rohtas) for making full and final payment of the G.P.F. amount of the husband of the petitioner to the petitioner within a maximum period of four weeks from the date of receipt of a copy of this order.

18. The District Provident Fund Officer, Sasaram (Rohtas) is also directed to ensure that whatever amount of



G.P.F. of the husband of the petitioner is found payable, its actual payment is also tendered to the petitioner with statutory up-to-date interest must be paid to the petitioner within a period of two weeks from the date of receipt of all the remaining calculation from the Headmaster of the School or from the District Programme Officer (Establishment), Sasaram (Rohtas).

19. Having regard to the fact that the provisional family pension and provisional Gratuity has been sanctioned by the District Programme Officer (Establishment), Sasaram (Rohtas) on 29.06.2015 and the final sanction of the amount of the pension and Gratuity has not been made as yet for want of service book of the husband of the petitioner, this Court would direct the District Programme Officer (Establishment), Sasaram (Rohtas) to take steps for reconstruction of service book of the husband of the petitioner so that the final sanction amount of pension and Gratuity is made to the petitioner after its being authorized by the office of the Accountant General. It shall be the duty of both, the Headmaster of the School and the District Programme Officer (Establishment), Sasaram (Rohtas), to ensure that after reconstruction of the service of the husband of the petitioner and sanction of the final pension and Gratuity payable to the husband of the petitioner, the same is sent to the



office of the Accountant General within a maximum period of four weeks from the date of receipt of the order so that the authorization by the office of the Accountant General is made in next four weeks and the remaining payment on the head of pension and Gratuity is made to the petitioner within next four weeks of the authorization made by the office of the Accountant General.

20. Keeping in view that the husband of the petitioner had roughly rendered the service of only 13 years in which he is said to be absent from duty from the month of January, 2012, the issue of payment of Leave Encashment will be separately examined by the District Programme Officer (Establishment), Sasaram (Rohtas) upon reconstruction of the service and if any amount is found payable on the head of Leave Encashment, its payment shall be made to the petitioner, but, on the other hand, if nothing is found payable on the head of Leave Encashment of the husband of the petitioner as because of his being suspended for the period 2005 to 2007 as well as his remaining absent from duty from January 2012 onwards, till his death, an intimation to this effect shall be sent to the petitioner as early as possible but in any event, not beyond the period of eight weeks from the date of receipt of a copy of this order.



21. This Court, keeping in view that the husband of the petitioner is said to have embezzled a sum of Rs. 6,00,000/- for which two criminal cases were lodged against him, is not inclined to award any penal interest on the amount of retirement benefit which was withheld for the period of two years but then as the Headmaster of the School, for no justifiable reasons, had kept silence and did not comply the order of the disciplinary authority, namely, District Education Officer, Sasaram (Rohtas) and District Programme Officer (Establishment), Sasaram (Rohtas), this Court would direct for payment of cost with quantified at Rs. 35,000/- (Thirty five thousand which would be actually less than Rs. 43,000) 5% (the rate of interest fixed by the Government for delayed payment on retirement benefit) of the withheld amount of Rs. 4,30,000/- approximately for a period over two years being the withheld amount of provisional pension, provisional Gratuity and the amount of Group Insurance now being sought to be paid to the widow petitioner. Such amount of Rs. 35,000/- shall be paid by the Headmaster of the School from his own pocket within a period of four weeks by a bank draft in the name of the petitioner from the date of receipt of a copy of the order.

22. Before parting with, this Court would direct the

District Education Officer, Rohtas to fix the responsibility on the erring persons on whose lapse and/or negligence, a sum of Rs. 6,00,000/- approximately allegedly embezzled by the husband of the petitioner could not be recovered in his lifetime even after institution of two criminal cases.

23. With the aforementioned observation and direction, this writ application is disposed of.

24. Let a copy of this order be sent to the Principal Secretary of the Education Department for taking appropriate action against all the erring persons in the matter to have causing delay in payment of death-cum-retirement benefit of the husband of the petitioner as well as for taking no effective steps for recovery of Rs. 6,00,000/- of the Government fund allegedly embezzled by the husband of the petitioner.

25. The personal appearance of Mr. Ashok Kumar Singh, District Education officer, Sasaram, Mr. Rajdeo Ram, District Programme Officer (Establishment), Sasaram and Mr. Nagendra Nath Mishra Headmaster of Nauhatta High School, Sasaram is hereby dispensed with.

(Mihir Kumar Jha, J)

Ranjan/Sujit-

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