IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12527 of 2011

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Usha Devi W/o-Late Mithilesh Kumar Dubey resident of Village-Jmaoir Dhaba Niwas P.O-Jmaoir ,Dist-Aurangabad

.... Petitioner/s

Versus

1. The Madhya Bihar Gramin Bank Meena Plaza South To Patna Museum Patna Bihar
2. The Chairman Madhya Bihar Gramin Bank Meena Plaza South To Patna Museum Patna Bihar
3. The Senior Manager Madhya Bihar Gramin Bank A.P. Colony Gaya
4. The General Manager Madhya Bihar Gramin Bank Katari Hill Gaya
5. The Regional Managing Director Madhya Bihar Gramin Bank Regional Office Gaya
6. The Branch Manager Madhya Bihar Gramin Bank Branch Office Jmaoir Aurangabad
7. The Board Of Director Madhya Bihar Gramin Bank H/O-Meena Plaza South To Patna Museum Patna Bihar

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mukesh Kumar
For the Respondent/s : Mr. Sharad Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 15-07-2016

Heard Sri Mukesh Kumar No. 1 , learned counsel for the petitioner and Sri Sarad Kumar Sinha, learned counsel for all the respondents / Madhya Bihar Gramin Bank (hereinafter referred to as "the Bank").

The petitioner, who is widow of the Bank employee has approached this court invoking its writ jurisdiction under Article 226 of the Constitution of India with a prayer to quash an order dated 19.11.2010 issued by the respondent no. 2 (Annexure – 12 to the writ petition) whereby petitioner was intimated regarding the decision of the Board of Directors of the Bank whereby claim of petitioner for *ex gratia* payment was rejected.

Short fact of the case is that the petitioner's husband was employed in the Bank in the capacity of Clerk - cum –Cashier and during his service period a fraud was detected. It was noticed that the Branch Manager of the Bank with connivance of the husband of the petitioner had misappropriated about rupees sixteen lakhs Bank's fund and an F.I.R. was lodged on 12.5.2005. However, during pendency of investigation itself the husband of the petitioner died. After the death of the husband of the petitioner, within the prescribed time i.e. within twelve months from the date of death, on 27.11.2006 an application was filed on behalf of the petitioner for grant of *ex gratia* as well as for appointment of her son on compassionate ground. Since there was a criminal case pending against the husband of the petitioner as per policy decision the matter was referred to the Board of Directors of the Bank and finally the Board of Directors in its meeting dated 28.12.2010 did not approve the claim for *ex gratia* in favour of the petitioner. The said decision of the Board was communicated to the petitioner by the respondent no. 2 by its order dated 28.1.2011 vide Annexure – '12' to the writ petition.

Learned counsel for the petitioner submits that it is true that the husband of the petitioner was named as one of the F.I.R. named accused , however during investigation itself the husband of the petitioner died and as such police after investigation submitted charge sheet against the Branch Manager and name of the husband of the petitioner was shown in column no. 12 of the charge sheet who was not sent up for trial due to the reason that petitioner's husband had already died. After submission of the police report the leaned Chief Judicial Magistrate took cognizance of offence under sections 409, 420, 467, 468, 471, 120(B), 201 of Indian Penal Code against the Branch Manager. He submits that after the death of the husband of the petitioner the criminal case had already abated and as such the ground which has been shown for rejection by the Board is not tenable. He submits that the Board of Directors while rejecting the claim of the petitioner had observed that criminal case was pending whereas fact remains that during investigation the husband of the petitioner died and he was not sent up for trial and as such it is a fit case for setting aside the impugned order and directing the Bank to pay *ex gratia* to the petitioner.

Sri Sarad Kumar Sinha has vehemently opposed the prayer of the petitioner. He by way of referring to the counter affidavit submits that it was a case of misappropriation of Bank's money by the husband of the petitioner as well as the Branch Manager and as such the Board of Directors has rightly rejected the claim of the petitioner.

However, after hearing the parties and going through the impugned order the court is satisfied that the Board of Directors had primarily rejected the claim of the petitioner on the ground that case was still pending whereas fact remains that after death before submission of charge sheet the case had already abated so far the husband of the petitioner is concerned and as such the order appears to be erroneous. In view of the facts and circumstances the impugned order i.e. the order contained in Annexure - ‘12’ is set aside and the matter is remitted back to the Bank to examine the case in the light of the fact that husband of the petitioner had already died prior to filing of the charge sheet and no case was pending against her husband and pass order in accordance with law preferably within a period of two months from the date of receipt /production of a copy of this order.

It goes without saying that in a criminal case after death of an accused case comes to an end as abated.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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