IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5865 of 2014

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Sarwari Begum, Wife of late Shekh Sami, Resident of Village - Bartara, P.O. Barahara, P.S. Halsi, District – Lakhisarai, Presently Residing at Indrapuri B.M.P. -7, Post B.M.P.-7 Camp, District - Katihar - Pin – 854106

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Director General cum Inspector General of Police, Bihar, Patna.
3. The D.I.G., B.M.P. (Uttari Mandal) Muzaffarpur.
4. The Commandant, B.M.P. -7, Katihar.
5. The Accountant General, Bihar, Patna
6. Finance Commissioner, Bihar, Patna

.... Respondents

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Appearance:

For the Petitioner/s	:	Mr. Md. Helal Ahmad, Advocate.
For the State	:	Mr. M. N. H. Khan, SC-1.
For A.G	:	Mr. Raj Nandan Pd., Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 08-09-2016

Heard learned counsel for the parties.

2. The husband of the petitioner, Shekh Sami attained the age of superannuation on 31.12.2007 while working as a constable. He died on 02.09.2012. While making payment of retiral benefits, the respondents have deducted a sum of Rs. 2,21,842/- from the amount of gratuity and leave encashment payable to the deceased

husband of the petitioner. Such deduction has been made for the reason that her husband has not passed departmental examination. Earlier the petitioner filed a writ petition bearing C.W.J.C No. 11531 of 2008 for payment of retiral benefits including the amount deducted. This Court directed the petitioner to submit a representation to the respondents for such payment. Such representation was declined on 15.02.2014. The petitioner has prayed for quashing of the said order as well.

3. The consequences of not passing the departmental examination cannot result in deduction from the amount of gratuity and leave encashment. Once the employee has completed his service and attained the age of superannuation, the consequences of not passing the departmental examination cannot continue after attaining his superannuation. The consequences of not passing the departmental examination could be fallen on the employee when he was in active service and not after his retirement.

4. In view thereof, I find that the action of the respondents to withhold the amount of Rs. 2,21,842/- from gratuity and leave encashment payable to the deceased husband is unjustified.

5. Consequently, the respondents are directed to pay the said amount within three months. If the amount is not paid within

three months, the petitioner shall be entitled to interest at the rate of 9% per annum from the date the amount shall due till its payment. In that event, for the delay, the liability of interest shall be fastened on the person delaying payment.

6. Thus, the writ petition is allowed.

7. If the petitioner has any subsistent grievance, he may submit a representation to the respondents, which the respondents shall consider the same in accordance with law.

(Hemant Gupta, J.)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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