

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3325 of 2015
In
Civil Writ Jurisdiction Case No. 83 of 2015



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1. Nagina Khatoon Wife of Late Afzal Hussain Resident of village + P.O.-
Kakan, P.S. - Jokihat, District - Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Public Health Engineering Department Bihar, Patna.
2. The Secretary, Department of Public Health Engineering Department, Bihar, Patna.
3. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
5. The Engineer-in-Chief-cum-Special Secretary, PHED, Bihar, Patna.
6. The Chief Engineer, Department of PHED (Mechanical), Bihar, Patna.
7. The Superintending Engineer, Public Health Engineering Department, Purnea-Circle, District - Purnea.
8. The Executive Engineer, Public Health Division, Araria.
9. The District Magistrate, Araria.
10. The Accountant General (A & E), Bihar, Patna.
11. The District Accounts Officer, District - Purnea.
12. The Treasury Officer, Araria.

.... Respondent/s

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with

Civil Review No.210 of 2015
IN

Civil Writ Jurisdiction Case No. 83 of 2015

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State Of Bihar Through The Secretary Department Of Public Health Engineering Bihar & Ors

.... Petitioner/s

Versus

Nagina Khatoon

.... Respondent/s

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Appearance :

(In MJC No.3325 of 2015)

For the Petitioner/s : Mr. Siyaram Pandey

For the Respondent/s : Mr. Ga9 A.K. Sinha

(In C. REV. No.210 of 2015)

For the Petitioner/s : Mr. Yashraj Bardhan

For the Respondent/s : Mr. Sanjay Kumar(Asg)

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER
(Per: **HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**)

2 16-02-2016

Heard learned counsels for the petitioners in both the matters who are respectively the Opposite Parties in the two cases.

Both the modification petition and the civil review application are with respect to the judgment and order dated 21.04.2015 passed in CWJC No.83 of 2015. By the said order, this Court had allowed the writ petition and directed the respondents to sanction and pay the family pension and gratuity to the petitioner with effect from 01.05.2015, specifically denying the arrears to the writ petitioner since the writ petitioner had filed the petition at a belated stage as to her entitlement.

Learned counsel for the writ petitioner who has filed the modification petition submits that the Court has found that the petitioner was entitled to family pension and gratuity and ought not to have been denied the arrears which are lawfully due to the petitioner on the death of her husband and there is no justification for the same.

Learned counsel for the State in civil review petition on the other hand relies upon the decision of the Supreme Court in the case of State of Haryana and Ors. v. Shakuntala Devi: (2008) 15 SCC 380, relying upon paras 45 and 46 of the said judgment.

In our opinion, this Court has assigned reason for not granting the arrears to the petitioner since the writ petition itself was filed at a belated stage. It is not open in application for modification or even a civil review application to override the said reasoning mentioned in the judgment and if at all the petitioner is aggrieved by the decision of this Court, the remedy of the petitioner would lie elsewhere and not by way of modification petition. Doing so would amount to sitting in appeal over the earlier order of the Court.

So far as the stand of learned counsel for the State is concerned, the same does not appear to be acceptable as the order dated 27.11.2013 passed in CWJC No.21724 of 2012 had been passed on the basis of various rules and circulars of the State Government itself, hence there is no occasion for us to entertain the civil review application in the matter.

Both the applications are, accordingly, found to be devoid of merit and are dismissed.

(Ramesh Kumar Datta, J)

(Sudhir Singh, J)

B.Kr./-Sudip

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