

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.10 of 2015

In
Civil Writ Jurisdiction Case No. 2412 of 2011

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1. Bhikha Devi W/o Late Vijay Pandit Resident of Mohalla / Village
Sahebganj (Sarobar Lane), Post Office Sahebganj, Police Station
University, District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Personnel and Administrative Dept. Bihar,
Patna, at present Department of General Administration, Bihar, Patna.
3. The Accountant General, Bihar.
4. The Commissioner, Bhagalpur Division, Bhagalpur.
5. The District Magistrate, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra

For the Respondent/s : Mr. Gp9- A.N. Sinha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

7 06-04-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

In this case, the petitioner is seeking review of the
order dated 10.10.2014 passed in CWJC No. 2412 of 2011 by
this Court.

From perusal of the order, it appears that this Court
has rejected the application on the ground that after lapse of 31
years, the petitioner has approached this Court for relief. At the
sametime, it was contended by the petitioner that husband of
petitioner was a regular employee whereas in the counter
affidavit it was shown

that the husband of the petitioner was a temporary employee.

Learned counsel for the petitioner submits that the husband of the petitioner was a regular employee and it was the duty of the State to bring on record the material to show that he was a temporary employee. It has further been argued that the respondents are not very fair in making such statement that the husband of the petitioner was not a regular employee without appending any documents to that effect because the onus is upon the marker of such statement who chooses to contend facts for the purposes of believing the same. It has further been submitted that the respondents have not been able to show as the appointment of the petitioner's husband was made in that particular establishment or was brought from other services because only after completion of one year of service, the records of benefits under the group insurance provident fund and other incidental benefits are made applicable to the Government employee which admittedly was applicable in the case of the husband of petitioner. It has further been contended that the respondents conduct would go to show that the appointment letter as well as the service book of the petitioner's husband has deliberately not been provided to the petitioner for the purposes of jeopardizing the right of the petitioner in receiving the pension



on account of the death of the petitioner's husband which is a civil right accrued to the petitioner immediately upon the death of the deceased and the authorities having not passed an appropriate order obliged under the statute cannot be allowed to blow hot and cold at the sametime. It has further been stated that the respondents are under obligation to satisfy this Court in the given situation where the widow has no means to procure the documents to ensure compliance of the statutory obligation and as such once the respondents have chosen to contend that the documents are missing in such event, the contention of the respondents that the petitioner's husband was temporary employee goes in conflict with the statement made without there being any supportive materials to make such statement to deny the benefits having accrued to her. It has further been submitted that the petitioner could obtain under RTI are well within their possession of the respondents but without bringing the same on record, such bald statement was made by the respondents, avoiding the obligation to explain as to from where, such conclusion was arrived by the respondents that the petitioner's husband was temporarily employed. It has further been submitted that the respondents do accept in their counter affidavit filed initially that only on account of non filing of application for

compassionate appointment within two years as per the Government resolution, the said request could not be entertained as the application was filed in the year 2010, is sufficient enough to show that the Government is not very clear in their stand, and as such the matters deserves to be considered by the authorities for deciding her claim. It has further been submitted that it is well settled in law that even though the right of regularization or other claims accruing to the petitioner's husband may not be surviving but the right of the petitioner to enforce her right for grant of family pension cannot be denied merely on ground of delay as the delay has been caused on the part of the State in not deciding the claim of the petitioner which is a civil right and the family pension has been declared to be property within the meaning of Article 300A of the Constitutional mandate and the person cannot be deprived of this right without the authority of law which is the Constitutional Mandate enshrined in Article 300A of the constitution and as such, the authorities are obliged to pass a reasoned order taking into consideration all such materials which would be essential in passing the order to this effect and further if the situation so arises, the petitioner may accordingly be paid with all such benefits. It has further been submitted that the stand of the State has taken the records are



missing then without there being supportive material to support the contention, the valuable right of the petitioner cannot be taken away, because the records are said to be missing from their custody and the State cannot be allowed to blow hot and cold at the sametime just to jeopardize the right of the person. It has further been submitted that the service of the petitioner's husband was taken in the interest of State and public exchequer and therefore, the death having been occurred while discharging the duties of the State, the deceased family is required to be duly compensated monetarily and with all such benefits accruing to the petitioner on account of death caused to the husband dying in harness. It has further been submitted that the respondent in para 8 of the initial counter affidavit by taking a contradictory stand do State that the process of appointment was not followed in such appointment and as such the husband of petitioner was not appointed rather entrusted to work as a driver on temporary basis, if that be the position then in terms of the settled position in law as well as directives of the Hon'ble Apex Court, the State who is considered to be model employer cannot be allowed to exploit the misery of poor people by leaving the families to their fate after the sole bread earner dies While discharging the duty of the welfare State and in terms of the directions of the Hon'ble

Division Bench. This Court is not sitting in appeal but exercising the power of review of earlier order in terms of order 47 R-1 of Code of Civil Procedure.

This Court does not find the present case fall under the four corners of order 47 Rule 1 and as such does not find any merit in the present case. Accordingly, the present case is dismissed. The petitioner, if so advised, may take legal course as available in law.

(Shivaji Pandey, J)

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