**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6515 of 2014**

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1. Smt. Kishori Devi W/O Late Bhagwat Prasad Sinha Resident Of Village - Anwarpur Chowk, P.O. And P.S. Hajipur, District - Vaishali

.... .... Petitioner/s

Versus

1. The State Of Bihar Through The Director, Primary Education, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna - 800001
2. The Director, Primary Education, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna - 800001
3. The Enquiry Officer, Primary Education, Govt. Of Bihar, Vikash Bhawan, Bailey Road, Patna - 800020
4. The Regional Deputy Director Of Education, Saharsa
5. The District Superintendent Of Education, Supaul, District - Supaul
6. The Area Education Officer, Pipra, District - Supaul

.... .... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr. Sachida Nand Kishore Pd. Sinha
For the Respondent/s : Mr. Ajeet Kumar SC-28

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**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL**
ORAL ORDER

2 30-01-2016 Heard both sides.

The widow of Late Bhagwat Prasad Sinha has filed the writ application questioning the legal pregnability of the office order dated 17.07.2006 (Annexure-5) passed by Director Primary Education. She has also prayed for a direction upon the respondents to release the full pension and gratuity amount in her favour.

It is stated that pursuant to order dated 27.06.2000 passed in C.W.J.C. No. 9057 of 1999, the respondents were directed to pay 90% (provisional) pension as well as the gratuity amount. The husband of the petitioner was getting 90% of the pension as well as 90% of the gratuity amount. While in service, the husband of the petitioner was proceeded against both departmentally and judicially. An FIR was lodged against him which led to initiation of departmental proceeding also. Since the husband of the petitioner upon his superannuation from service on 31.07.1998 was not getting any pension even provisional or the gratuity amount the said writ was filed in which the order was passed. It is stated that during the pendency of the criminal proceedings the husband of the petitioner died on 25.10.2013. The death certificate of the husband is enclosed as Annexure-1. It has, thus, been argued that after the death of the accused no punishment can be imposed on her husband. In so far as the departmental proceeding is concerned, it has been contended that an order was passed in the said proceeding by the respondents which was challenged in another writ petition vide C.W.J.C. No. 11176 of 2004. This Court by an order dated 05.10.2005 passed the following order:

> "Considering all the facts & circumstances it appears just & proper that petitioner should be given a chance to file second show cause after examining the contents of the enquiry reports. Hence the impugned order contained in annexure-3 is quashed and the matter is remitted back to the respondent No.-2, Director of Primary

> Education, Bihar. Petitioner shall appear before respondent no. 2 with copy of this order within four weeks. In that event, respondent no.-2 shall make available of a copy of enquiry reports against the petitioner without any delay on the day petitioner appear before him."

The respondents, by the impugned order, has disposed of the departmental proceeding, observing that the payment of the remaining amount of gratuity shall abide by the final verdict in the criminal proceeding/trial. Since the trial stands terminated, in so far as the husband of the petitioner is concerned, the petitioner being the widow is entitled to full payment of pension/gratuity.

Mr. Ajeet Kumar, the counsel for the State, having regard to the statements made in the writ petition, and on perusal of the diverse orders passed by the respondents, fairly states that once the accused is dead the criminal proceeding, in so far as the said accused is concerned, shall, stand terminated since no punishment can be imposed on a dead person.

In the case of the State of **Jharkhand &Ors. Vs. Jitendra Kumar Srivastava & Anr. reported in 2013 (12) SCC 210**, the Apex while considering issue(s) akin to the present case, in the context of the rule provisions appearing in the Bihar Pension Rules which are in pari materia to the provisions made in this regard by the State of Jharkhand having examined in detail the relevant provisions of the Rules and also considering the various judgments on the subject held as under in paragraph nos. 12, 13, 14 and 16 of the report :-

> **12.** There is also a proviso to Rule 43(*b*), which provides that:
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> "(*a*) such departmental proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment;
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> (*i*) shall not be instituted save with the sanction of the State Government;
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> (*ii*) shall be in respect of an event which took place not more than *four* years before the institution of such proceedings; and
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> (*iii*) shall be conducted by such authority and at such place or places as the State Government may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made—
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> (*b*) judicial proceedings, if not instituted while the government servant was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (*ii*) of clause (*a*); and
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> (*c*) the Bihar Public Service Commission, shall be consulted before final orders are passed.
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> It is apparent that the proviso speaks about the institution of proceedings. For initiating proceedings, Rule 43(*b*) puts some conditions i.e. departmental proceeding as indicated in Rule 43(*b*), if not instituted while the government servant was on duty, then it shall not be instituted except:
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> (*a*) With the sanction of the Government,
>
> (*b*) It shall be in respect of an event which took place not more than four years before the institution of the proceedings.

(*c*) Such proceedings shall be conducted by the enquiry officer in accordance with the proceedings by which dismissal of the services can be made.

Thus, insofar as the proviso is concerned that deals with condition for initiation of proceedings and the period of limitation within which such proceedings can be initiated.

**13.** A reading of Rule 43(*b*) makes it abundantly clear that even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. ***only*** when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/gratuity when such departmental proceedings or judicial proceedings are still pending.

**14.** The right to receive pension was recognised as a right to property by the Constitution Bench judgment of this Court in *Deokinandan Prasad* v. *State of Bihar*[5], as is apparent from the following discussion: (SCC pp. 342-43, paras 27-33)

"*27.* The last question to be considered, is, whether the right to receive pension by a government servant is property, so as to attract Articles 19(1)(*f*) and 31(1) of the Constitution. This question falls to be decided in order to consider whether the writ petition is maintainable under Article 32. To this aspect, we have already adverted to earlier and we now proceed to consider the same.

*28.* According to the petitioner the right to receive pension is property and the respondents by an executive order dated 12-6-1968 have wrongfully withheld his pension. That order affects his fundamental rights under Articles 19(1)(*f*) and 31(1) of the Constitution. The respondents, as we have already indicated, do not dispute the right of the petitioner to get pension, but for the order passed on 5-8-1996. There is only a bald averment in the counter-affidavit that no question of any fundamental right arises for consideration. Mr Jha, learned counsel for the respondents, was not prepared to take up the position that the right to receive pension cannot be considered to be property under any circumstances. According to him, in this case, no order has been passed by the State granting pension. We understood the learned counsel to urge that if the State had passed an order granting pension and later on resiles from that order, the latter order may be considered to affect the petitioner's right regarding property so as to attract Articles 19(1)(*f*) and 31(1) of the Constitution.

*29.* We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of qualifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules. The rules, we have already pointed out, clearly recognise the right of persons like the petitioners to receive pension under the circumstances mentioned therein.

*30.* The question whether the pension granted to a public servant is property attracting Article 31(1) came up for consideration before the Punjab High Court in *Bhagwant*

*Singh* v. *Union of India*[7]. It was held that such a right constitutes 'property' and any interference will be a breach of Article 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in letters patent appeal by the Union of India. The Letters Patent Bench in its decision in *Union of India* v. *Bhagwant Singh*[8] approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is 'property' within the meaning of Article 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as 'property' cannot possibly undergo such mutation at the whim of a particular person or authority.

The matter again came up before a Full Bench of the Punjab and Haryana High Court in *K.R. Erry* v. *State of Punjab*[9]. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

*32*. This Court in *State of M.P.* v. *Ranojirao Shinde* had to consider the question whether a ‘cash grant’ is ‘property’ within the meaning of that expression in Articles 19(1)(*f*) and 31(1) of the Constitution. This Court held that it was property, observing ‘it is obvious that a right to sum of money is property'.

*33*. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(*f*) and it is not saved by clause (5) of Article 19. Therefore, it follows that the order dated 12-6-1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Articles 19(1)(*f*) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable. It may be that under the Pension Act (23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of writ of mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law.

***16.***The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in "property". Article 300-A of the Constitution of India reads as under:

"*300-A*. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law." Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."

Indisputably, after the death of the delinquent (husband of the petitioner) no punishment can be inflicted on him. In the departmental proceeding an order was passed and the payment of the remaining dues of the employee was made subject to result of the criminal proceeding. If that be the case, then considering the law laid down in this regard, in my considered view, the case do not merit to be remitted back to the respondents for fresh consideration of her claim for payment of the remaining dues under the head(s) of gratuity or pension payable to her husband upon superannuation.

The application stands allowed by directing the concerned respondent to ensure authorization of 100% of the gratuity and the pension along with statutory interest, if any, if not already released and paid in favour of the petitioner, within 08 weeks from the date of receipt/production of a copy of this order before those respondents for compliance.

**(Kishore Kumar Mandal, J)**

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