

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17348 of 2016

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Rashda Khatoon, Wife of Late Ekbal Ahmad, Resident of Mohalla- Meer Mohalla,
Ward No. 18, Barh, P.S.- Barh, District- Patna.

.... Petitioner

Versus

1. The State of Bihar, through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna.
3. The Accountant General of Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer, (Establishment), Patna.
7. The Provident Fund Officer, Patna.
8. The Treasury Officer, Mokama, District- Patna.
9. The Head Master-cum- Drawing & Disbursing Officer, Middle School, Gosai Village- Ghoswari, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s	:	Md. Irshad, Advocate
For the Respondent No.9	:	Mr. Dharmendra Kumar Raju, Advocate
For the Respondent-State	:	Mr. Sameer Kumar, AC to SC-16

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 10-03-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel appearing for the
respondent no.9.

2. Late Ekbal Ahmad, husband of the petitioner, was
appointed as Assistant Teacher on 22.04.1982 at Middle School,
Sirsi, Bakhtiyarpur. He died while being posted at Middle School,
Kurmichak, Gosai, Goswari, Patna on 27.07.2012. After his death,
the petitioner, being his wife, submitted representation before the
authorities for grant of death-cum-retiral benefits and family



pension pursuant to which she has been paid death-cum-retirement gratuity, general provident fund and group insurance amount. Even, provisional pension was also sanctioned in her favour and she was receiving the same upto 31.01.2014.

3. It is contended by the learned counsel for the petitioner that till date leave encashment amount has not been paid to the petitioner and even the provisional family pension which was being paid to her has been stopped by the respondents since February, 2014 without any justifiable reason.

4. A counter affidavit has been filed on behalf of the respondent no.6, the District Programme Officer (Establishment), Patna, wherein it is stated that pursuant to a letter issued by the Headmaster-cum-Drawing and Disbursing Officer, Middle School, Gosai, Ghoswari, Patna, to adjust the amount of Rs.4,85,000/- of the school building construction, the payment of provisional pension of the petitioner has been stopped.

5. Similarly, in the counter affidavit filed on behalf of the respondent no.9, it is stated that the deceased husband of the petitioner was advanced Rs.4,85,000/- for construction of building, but no construction work was made, as a result of which, a letter was sent to the Treasury Officer whereafter the payment of provisional pension to the petitioner has been stopped.



6. In reply, learned counsel for the petitioner submitted that the entire service record of the petitioner was clean. He was never proceeded against either departmentally or criminally while in service. He submitted that an amount which is disputed in nature cannot be recovered from the death-cum-retiral dues of a deceased employee. In support of his contention, he has placed reliance on a decision of this Court in the matter of **Smt. Indu Devi vs. State of Bihar & Ors. [2004(1) PLJR 162]**. He submitted that on inquiry the petitioner learnt that taking advantage of the sudden death of her husband the respondents are trying to illegally fix responsibility upon the deceased employee.

7. Learned counsel for the State and learned counsel for the respondent no.9 submitted that the petitioner's husband was advanced a substantial amount for construction of school building but he died suddenly on 27th July, 2012, as a result of which, neither the construction work could commence nor the amount could be recovered from him. They submitted that under such circumstance the respondents would be competent to recover the amount from the retiral dues of the employee.

8. On query, learned counsel for the State conceded that during lifetime the petitioner was not proceeded against either departmentally or judicially.



9. I find substance in the argument of the learned counsel for the petitioner.

10. Admittedly, the husband of the petitioner, who died while in harness on 27th July, 2012 was neither prosecuted in a criminal case nor any disciplinary proceeding was initiated against him during his lifetime. The subsequent action of the respondents whereby they have stopped provisional pension of the petitioner in January, 2014 is a glaring example of executive arbitrariness and administrative high-handedness.

11. It is well settled that any recovery of amount from the pensionary benefit of an employee can only be made in accordance with the provisions prescribed under rules 43(b) and 139 of the Bihar Pension Rules, 1950. The aforesaid rules cannot be attracted in the present case, as the employee is already dead. It is also not the case of the respondents that the service of the petitioner was not satisfactory.

12. The petitioner has rightly placed reliance on the decision of this Court in **Smt. Indu Devi** (supra). In the said case, a Bench of this Court has held that after the death of government servant recovery is only permissible by getting a decree of Civil Court of competent jurisdiction else it would be violative of principles of natural justice and fair play, because it would not be



possible for the widow of the deceased employee to dispute such recovery on merit for want of proper opportunities. The Bench further held that recovery sought for after one and half year of the death of an employee, which the deceased was never informed during his lifetime and no opportunity was given to him to ascertain the correctness of the report for recovery would be impermissible.

13. Recently, while dismissing the appeal of Jharkhand Government against the State's High Court order directing it to release the retiral dues of retired employee in the matter of **State of Jharkhand & Ors. vs. Jitendra Kumar Srivastava & Anr. [(2013) 12 SCC 210]**, the Supreme Court observed that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus hard earned benefit which accrues to an employee and is in the nature of "property". It further observed that this right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India. It held that by mere executive order, the State had no power to withhold the pension of the retired employee.

14. In view of the decision of this Court in **Smt. Indu Devi** (supra) and the ratio laid down by the Supreme Court in **State of Jharkhand vs. Jitendra Kumar Srivastava** (supra), the



action of the respondents in withholding the family pension of the petitioner and leave encashment is wholly unjustified.

15. Accordingly, the application is allowed with cost of Rs. 25,000/- (rupees twenty five thousand) to be paid to the petitioner along with arrear of full family pension and current family pension as also leave encashment within a period of three months from the date of receipt/communication of the order.

16. In case of any further delay beyond the period stipulated hereinabove, the petitioner would be entitled to receive interest at the rate of 8% per annum from the date the amount became due till the date of actual payment. The respondent-State shall be at liberty to realize the amount of cost from the officer(s) responsible for obstructing the payment of family pension to the petitioner in accordance with law.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.03.2017
Transmission Date	NA

