

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11879 of 2015

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Mostt. Nagjadi Devi W/o late Shaligram Sharma R/o village -Chatar, P.O. Hati,
P.S.- Kako, District-Jehanabad.

.... Petitioner

Versus

1. The State of Bihar
2. The District General of Police, Govt. of Bihar, Patna.
3. The Inspector General of Police, Govt. of Bihar, Patna region, Patna.
4. The Senior Superintendent of Police, Darbhanga.
5. The Inspector General of Police, Darbhanga region, Darbhanga.
6. The Superintendent of Police, Saharsa.
7. The Accountant General, Bihar, Patna.
8. Trasury Officer, Jahanabad.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinesh Jha, Advocate

For the Respondent/s : Mr. Manish Kumar, GP-8

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-01-2017

Paragraph no.1 of the writ petition reads as under:-

“1. That the petitioner seeks the indulgence of the Hon’ble Court for issuance of an appropriate writ/writs, order/orders, command/commands for the following relief:-

(a) For quashing the order issued by the Senior Superintendent of Police, Darbhanga vide letter no. 2147 dated 22.08. 14 issued by Treasury Officer,



Jehanabad whereby they was directed to seized the pension of the petitioner.

(b) For direction to Respondents to produce memo no.730/P-3 dt. 24.02.14, memo no. 463/P-2 dt. 04.03.14, memo no. 429/P-2 dt. 18.06.14 issued by Inspector General of Police (Welfare), Bihar, Patna and be further pleased to quash the same.

(c) For direction to respondent authority to continue family pension to the petitioner.

(d) For any other relief or reliefs as your lordships seem fit and proper in the facts and circumstances of this case.

2. The case of the petitioner is that her husband Shaligram Sharma retired from post of Sub-Inspector of Police, Darbhanga on 30th November, 1993 after completing full length of service. He was given post-retiral benefits and was getting pension regularly till his death on 7th of May, 2012. After death of Shaligram Sharma, the petitioner was given family pension, but in the year 2014, the family pension of the petitioner was suddenly stopped. On inquiry the petitioner came to know that her family pension has been stopped in the light of the order passed by the Inspector General of Police (Welfare), Government of Bihar, Patna issued vide Memo No. 739 dated 24.2.2014. On further inquiry, she learnt that during the service period her husband was made accused



in Vigilance P.S. Case No. 31 of 1979 registered under Section 5(1)(a) punishable under Section 5(2) of the Prevention of Corruption Act and was convicted and sentenced to undergo RI for one year.

3. It is submitted by the learned counsel for the petitioner that the decision taken by the respondents to stop the family pension of the petitioner is arbitrary as no opportunity of show cause was ever given to the petitioner. He contended that though the conviction in the criminal case was recorded by the trial court on 27th August, 2010, the pension of the petitioner was not stopped during his lifetime and even the petitioner was allowed to withdraw family pension till July, 2014.

4. It is also contended by the learned counsel for the petitioner that the husband of the petitioner preferred an appeal against his conviction, vide Cr. Appeal No. 938 of 2010 (SJ), which was admitted by this Court and is still pending for adjudication. The petitioner would certainly pursue the appeal and there is all likelihood that the judgment of the trial court would be set aside by this Court.

5. In view of the aforesaid submissions, learned counsel for the petitioner submits that for the present there was no occasion for the respondents to stop or forfeit the family pension of



the petitioner.

6. *Per contra*, learned counsel for the State would submit that the decision to stop the family pension of the petitioner has been taken by the Director General of Police in view of the conviction of Shaligram Sharma in a criminal case relating to corruption. He would submit that the fact that the husband of the petitioner had been convicted was not brought to the notice of the respondents earlier and, as such, the pension of the petitioner was not stopped during his lifetime and his wife was also granted family pension. He would submit that in view of the provisions prescribed under Rule 43 (a) and (b) of the Bihar Pension Rules, 1950 (for short 'pension rules'), the State Government was competent to withhold or withdraw family pension of the petitioner.

7. I have heard learned counsel for the parties and perused the materials available on record.

8. Rule 43(a) and (b) of the pension rules disentitles an employee from getting pension if he is convicted of a serious charge in a judicial proceeding.

9. Rule 43(a) and (b) of the pension rules read as under:-

“43. (a) Future good conduct is an implied condition of every grant of pension. The Provincial Government reserve to themselves the



right of withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or be guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing the whole or any part of a pension under this rule, shall be final and conclusive.

(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceeding, if not instituted while the Government servant was on duty either before retirement or during re-employment;

(i) shall not be instituted save with the sanction of the State Government;

(ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and

(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;

(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

(c) the Bihar Public Service Commission, shall be consulted before final orders are passed.”

10. The aforesaid rules separately enable the State to withhold entire pension or any part of it if the pensioner is convicted of serious crime or held guilty of grave misconduct. Rule 43(b), however, prescribes conditions in which such proceedings, departmental or judicial, can be instituted if not instituted while the Government servant was in service.

11. In the present case, it is an admitted position that a criminal case was instituted against the petitioner's husband while he was in service. Therefore, the case of the petitioner would be governed by Rule 43(a) of the pension rules.

12. It is not in dispute that the husband of the petitioner has been held guilty by the trial court in a case of corruption. Under such circumstance, no fault can be found in the



action of the State if it has decided to withhold the family pension of the petitioner as the taking of family pension would be dependent on the right of the husband of the petitioner to receive pension.

13. In **Shangrila Food Products Ltd. vs. Life Insurance Corporation of India and another [1996 (5) SCC 54]**, it has been observed that in exercise of jurisdiction under Article 226 of the Constitution, the High Court can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give parties complete and substantial justice. It has also observed that the writ jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of equity is to promote honesty and fair play.

14. It would be evident from aforesaid enunciation of law that this Court is not a Court of law, but also a court of equity and good conscience. Keeping these principles in mind, I find no illegality in the action of the State in withholding the family pension of the petitioner.

15. In case the appeal preferred by the husband of the petitioner is pursued by the petitioner and her husband is acquitted by the appellate court, the petitioner may represent before the authorities for reconsideration of her claim of family pension. In



such an eventuality, the authorities would be obliged to examine the matter and pass necessary orders in accordance with law without any delay.

16. With the aforesaid observations and direction, the writ application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.01.2017
Transmission Date	NA

