IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4925 of 2013

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Most. Tetari Devi @ Tetari Kumari Wife of Late Radhey Shyam Chaudhary Resident of Village- Chatty, P.O.- Bishunpur, P.S.- Deo, District- Aurangabad

.... Petitioner

Versus

1. State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat, Patna
3. Director of Education, Primary Education, Government of Bihar, New Secretariat, Patna
4. The Deputy Secretary, Primary Education, Government of Bihar, New Secretariat, Patna
5. District Education Superintendent, Aurangabad
6. Block Education Officer, Primary Education, Gogo, Navinagar, Aurangabad
7. Principal, Gogo Primary School, Gogo, Navinagar, Aurangabad
8. Accountant General, Accountant General Office, R-Block, Patna
9. Director, Provident Fund, Pant Bhawan, Patna
10. District Provident Fund Officer, Aurangabad

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Ratnesh Kumar Singh, Advocate
For the Respondent-State: Mr. Chandra Shekhar Singh, AC to GA-10
For the Respondent No.8: Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 19-01-2017

Though, initially, the instant writ petition was filed by the petitioner for payment of group insurance, earned leave, arrear of salary, GPF amount and family pension with dearness allowance, it is admitted by the learned counsel for the petitioner that during pendency of the application, the petitioner has been paid amount under the heads, namely, provident fund, leave encashment, group insurance, earned leave and gratuity. Now, the dispute remains only in respect of payment of family pension with dearness allowance

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and revision of pension with effect from the date of death of the husband of the petitioner.

2. It would be pertinent to note here that the petitioner filed Interlocutory Application No.9282 of 2014 in the present writ application, wherein a prayer has been made for addition of relief in respect of correction in the revised pay scale. The amendment petition has already been allowed by this Court vide order dated 22.12.2014.

3. The husband of the petitioner was appointed as Assistant Teacher in Primary School, Gogo, Navinagar, Aurangabad on 02.09.1994. Subsequently, his service was confirmed on 29.04.2006. While he was working as Principal in Primary School, Gogo, Navinagar, Aurangabad, he died leaving behind the petitioner and two minor sons.

4. It is submitted by the learned counsel for the petitioner that the petitioner was granted family pension, but dearness allowance on the family pension is not being paid to her on the ground that the petitioner is in government employment. He submitted that there is no valid reason for denial of dearness allowance on family pension and, in this regard, the decision of the respondents is wholly illegal and arbitrary. In support of his submission, learned counsel for the petitioner placed reliance on the

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decision of the Supreme Court in **H.S.E.B. and others** v. **Azad Kaur [(2000) 2 SCC 227]** and a Division Bench judgment of this Court in **Smt. Shardha Devi** v. **The State of Bihar & Ors. [(2002) 3 PLJR 527]**.

5. Learned counsel for the petitioner also submitted that since the husband of the petitioner died on 29.04.2006, pension of the petitioner ought to have been fixed in the revised scale of pay in view of the pay revision which came into force with effect from 01.01.2006, but the respondents have illegally fixed the family pension of the petitioner in the old scale.

6. In reply, it is submitted on behalf of the State that the dearness allowance has been denied to the petitioner on the ground that the petitioner is already in government service and, hence, it is not admissible to her. He submitted that in this regard the Accountant General, Bihar also made objection while authorizing the family pension of the petitioner. He further contended that in view of circular of Finance Department dated 09.05.1991, if a person getting family pension was already employed independently at the time of death of her husband, in that eventuality, the dearness allowance is not payable on family pension. He submitted that in respect of revision of family pension, the petitioner may represent before the Director, Primary Education,

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Bihar, Patna.

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

8. So far as the claim for payment of dearness allowance on the family pension is concerned, I find substance in the argument of learned counsel for the petitioner. In **H.S.E.B. and others** v. **Azad Kaur** (supra), the husband of the respondent died in harness while he was working as an Upper Division Clerk in Haryana State Electricity Board. The respondent was working as a teacher from before the death of her husband. After her husband's death, she claimed family pension. The respondent was granted family pension but was not given dearness allowance on the ground that the respondent was working as a teacher. The denial of dearness relief was challenged by the respondent in a writ petition filed before the High Court. The High Court granted her dearness allowance relief on family pension whereafter the appellant Haryana State Electricity Board filed appeal before the Supreme Court. The appellant placed reliance in that case on a decision of the Supreme Court in ***Union of India v. G. Vasudevan Pillay [AIR 1994 SC 688]***. The decision in that case dealt with ex-servicemen who were re-employed. The Supreme Court said that pensioners who have got "re-employment" can be treated differently from

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other pensioners and in the case of “re-employed” pensioners, it would be permissible in law to deny dearness relief on pension inasmuch as to the salary paid to them on “re-employment” takes care of erosion in the value of money because of a rise in prices. The Court also observed that the denial of dearness relief on family pension on a fresh employment being granted to the dependant/widow of an ex-serviceman will also be sustained.

9. However, the Supreme Court distinguished the case of respondent by saying that it is not the case of the appellant that the respondent secured employment on compassionate ground as a teacher after the death of her husband. The Court said the word “employed” used in that context can only refers to the kind of “employment” which is secured by a widow or a family member on account of, or in the context of death of the employee to whom family pension is being paid. It said that it can have no reference to any independent employment or any other independent source of livelihood which the family members may possess. The Court held that mere fact that the widow is independently employed as a teacher elsewhere even prior to the death of her husband, cannot be deprived the family of the benefit of the *ad hoc* relief on family pension.

10. The Circular of the Finance Department dated

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09.05.1991 was also the subject matter of consideration before this Court in case of **Smt. Shardha Devi** (supra) and a Division Bench of this Court on interpretation of the circular dated 09.05.1991 placing reliance on the decision of the Supreme Court in case of **H.S.E.B. and others** v. **Azad Kaur** (supra) that in case a person getting family pension was already "employed" independently at the time of death of her husband, in that eventuality, dearness allowance/relief is payable on family pension. The Bench further interpreted that the State Government's Circular dated 09.05.1991 refers to an "employment" and "re-employment", occasioned due to death of an employee but does not cover a case where a person was independently "employed".

11. The ratio laid down by the Supreme Court in **H.S.E.B. and others** v. **Azad Kaur** (supra) and of this Court in **Smt. Shardha Devi** (supra) squarely covers the case of the petitioner.

12. In case at hand, the employment of the petitioner in government service is independent one and not an appointment by the Government on compassionate ground. It is not a case of "re-employment" of the petitioner in the event of death of her husband and the Circular of the State Government would not apply in the facts and circumstances of the case.

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13. In that view of the matter, the prayer of the petitioner in respect of payment of dearness allowance/relief over the family pension is allowed. The respondents are directed to make payment of dearness allowance/relief on the amount of family pension payable to the petitioner. The admissible amount must be paid to the petitioner within a period of four months from the date of receipt/production of a copy of the order.

14. So far as the claim of the petitioner in respect of revision of pension is concerned, since the said prayer has been made by addition of relief, the petitioner would be at liberty to make a representation before the Director, Primary Education, Bihar, in this regard. In case such a representation is filed, the Director, Primary Education, Bihar shall be required to dispose of the same by a speaking order within a period of three months from the date of its filing.

15. With the aforesaid observation and direction, the writ application is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.01.2017
Transmission Date	NA

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