IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19469 of 2016

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Most. Shashi Sinha wife of Late Jaideo Narayan Sinha, resident of Mohalla- Ashok Nagar, (Pokharia), Begusarai, Police Station- Town, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Health, Bihar, Patna.
2. The Director-in-Chief, Department of Health Services and Family Planning, Bihar, Patna.
3. The Deputy Director, Health Services, (Administration), Bihar, Patna.
4. The Regional Additional Director, Health Services, Munger Division, Munger.
5. The District Magistrate, Begusarai.
6. The Civil Surgeon, Begusarai-cum-Chief Medical Officer, Begusarai.
7. The Medical Officer, Referral Hospital Manjhaul at Begusarai.
8. The District Provident Officer, Begusarai, District- Begusarai.
9. The District Treasury Officer, Begusarai. District- Begusarai.
10. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Indu Bhushan, Advocate
For the Accountant General : Mr. L.P.K. Rajgrihar, Advocate
For the State : Mr. Aditya Nath Jha, A.C. to S.C.-18

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 23-03-2017

The petitioner has filed the present writ application for a direction to the respondents to pay death-cum-retiral benefits of her deceased husband, who retired from service on 28.02.2010 from the post of clerk from referral Hospital, Manjhaul, District- Begusarai.

2. It is submitted by the learned counsel for the petitioner that while the petitioner's husband was in service he was made accused in Begusarai P.S. Case No.280 of 1992 which ultimately ended in acquittal on 26.05.2015 by a court of competent jurisdiction. He submitted that no disciplinary proceeding was initiated against him while he was in service. Even after retirement no proceeding was initiated against him under the Bihar Pension Rules, 1950 (for short 'Pension Rules'). The contention is that despite having retired from service in February, 2010 and having submitted application for grant of retiral benefits, the respondents did not sanction his retiral dues. He submitted that the husband of the petitioner regularly made representation to the respondents in this regard, but no heed was paid to his repeated request for grant of pension and other retiral benefits.

3. It is submitted that since the husband of the petitioner was suffering from serious ailments, he died on 20th August, 2016 due to lack of proper treatment for want of money. It is submitted that even after death of her husband, the petitioner has not been paid the death-cum-retiral benefits so far despite representation submitted by her to the Civil Surgeon, Begusarai on 30th October, 2016.

4. A counter affidavit has been filed on behalf of respondent no.6 Civil Surgeon-cum-Chief Medical Officer, Begusarai wherein it is contended that since the husband of the petitioner was facing criminal prosecution in Begusarai P.S. Case No.280 of 1992 instituted under Section 409 of the Indian Penal Code for defalcation of Rs.2,52,646/-, his retiral benefits could not be paid. It is further contended that Public Accounts Committee in its review meeting held on 21.07.2016 found that the petitioner's husband had defalcated an amount of Rs.8,31,805/- and recommendation was made to take action for recovery of the said amount. In compliance of the said direction, an opinion was sought for from the public prosecutor, Begusari by the Civil Surgeon, Begusarai, who vide letter dated 19th July, 2016 gave his opinion for institution of another FIR for defalcation of Rs.5,79,159/- as the earlier FIR was lodged for an amount of Rs.2,52,646/- only and as per the opinion given by the Public Prosecutor, Begusarai P.S. Case No.291 of 2016 was instituted under Section 409 of Indian Penal Code on 22.07.2016 against the petitioner's husband. It is further contended that payment of retiral dues after deducting Rs.5,79,159/- is under process and the same shall be paid as soon as possible and for payment of general provident fund amount a letter has already been sent to the District Provident Officer as well.

5. On query made by the Court, learned counsel for the State fairly conceded that a criminal prosecution can not continue against a dead person. He stated that in such circumstance the criminal case would abate. He also conceded that in no circumstance the provident fund amount of an employee could have been withheld. However, he contended that in view of a criminal case being pending against the petitioner's husband, the respondents were fully justified in withholding the other pensionary benefits of the petitioner's husband during his life time.

6. In reply, learned counsel for the petitioner submitted that action of the respondents in not paying even provisional pension to the deceased employee during his life time and not releasing full family pension and other retiral benefits including arrear of full pension after his death to the petitioner is wholly illegal and arbitrary. He submitted that simply because a criminal case was instituted against the deceased employee, the respondents State could not have withheld his entire pensionary benefits.

7. I have heard learned counsel for the parties and perused the record. I find substance in the arguments of the learned counsel for the petitioner.

8. Before adverting to the submissions made on behalf of the parties, it would be apt to record the statutory provisions of the Pension Rules which have bearing on the merits of the argument. The general provisions regarding grant of pension are incorporated in Chapter III of the Pension Rules. The payment of pension to a Government servant against whom a departmental or judicial proceeding or enquiry have been taken up is dealt with in Rule 43 of the Pension Rules, which reads as under:

> "**Rule 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 proceedings, 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 he 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.

Explanation- For the purposes of the Rule-

(a) departmental proceeding shall be deemed to have been instituted when the charges framed, against the pensioner are issued to him or, if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to have been instituted: -

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to a criminal court; and

(ii) in the case of civil proceedings, on the date on which the Complaint is presented, or as the case may be, an application is made to a civil Court.

(c) - Where the departmental proceeding or judicial proceeding, in which the prosecution has been sanctioned against such servant, initiated during the service period of the government servant, is not concluded till the retirement of the government servant, the amount of provisional pension shall be less than the maximum admissible amount of pension but shall in no case be less than 90 % (ninety percent)."

9. From perusal of the aforesaid Rule 43 of the Pension Rules, it would be evident that **Rule 43(b)** of the Pension Rules empowers the State Government to withhold or withdraw a pension or any part of it, whether permanently or for a specified period, and to recover 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 conduct or negligence, during his service rendered including the service rendered on reemployment after retirement. The proviso to **Rule 43(b)** of the Pension Rules further stipulates that such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during reemployment shall not be instituted save with the permission of the State Government and such sanction shall not be accorded in respect of an event which took place more than four years before institution of such proceeding. It further contemplates that the proceeding shall be conducted in accordance with the procedure applicable to the proceedings on which an order of dismissal from service may be made.

10. Further, Rule **43(c)** of the Pension Rules confers power upon the State Government to pay provisional pension to the Government servant where the departmental or judicial proceeding, in which the prosecution sanctioned and initiated against such servant is not concluded till his retirement. However, in such case also the amount of provisional pension shall in no case be less than ninety per cent.

11. Thus, having noticed the relevant provisions of the Pension Rules, I am of the considered opinion that in absence of pre-requisite for withholding or withdrawing more than ten per cent of the pension of the deceased employee while he was facing criminal prosecution the respondents could not have invoked the jurisdiction to withhold the entire pension and gratuity of the petitioner either under **Rule 43(b) or 43(c)** of the Pension Rules. No other provision has been brought to the notice of the Court by the learned counsel appearing for the State under which the State could have exercised its jurisdiction to withhold the pensionary benefits of the husband of the petitioner.

12. Having noticed the statutory rules governing the case of retired Government servant, when I look to the facts of the present case, it would be evident that no departmental proceeding was initiated against the petitioner while he was in service. Even after retirement in February, 2010 no proceeding was initiated against him under the Pension Rules. He has also not been held guilty of causing any loss to the Government by misconduct or negligence during his service or after retirement.

13. True it is that a criminal case was instituted against the petitioner's husband while he was in service in the year 1992. It is also true that in the said case after submission of charge-sheet the petitioner's husband faced full-fledged trial. However, it is an admitted position that the said criminal case ended into acquittal. From perusal of the counter affidavit filed on behalf of respondent no.6, it would be evident that on the same set of allegation as made in the FIR instituted in the year 1992 against the petitioner earlier, the Public Accounts Committee assessed the loss of Rs.8,31,805 and recommended for taking action against the husband of the petitioner for recovery of the said amount pursuant to which an opinion of the Public Prosecutor was sought and after obtaining his opinion after deducting an amount of defalcation of Rs.2,52,646/- alleged to have been defalcated in the first FIR of 1992 another FIR was instituted against the deceased employee for defalcation of Rs.5,79,159/- on 22.07.2016. It has been pointed out that within one month of the institution of the subsequent FIR, the employee died in absence of proper treatment on 20th August, 2016 for want of money.

14. It is well settled principle of law that benefit of pension is hard earned money of a Government employee and is not a bounty. It is to be paid to an employee immediately after his retirement.

15. In **D.S.Nakara vs. Union of India [(1983) 1 SCC 305],** the Hon'ble Supreme Court observed as under:-

> "**18.** The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why, was it required to be liberalized? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?
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> **19.** What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such

artificial division of retirement pre and post a certain date? We need seek answers to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar, 1971 (Supp) SCR 634 : (AIR 1971 SC 1409) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. lqbal Singh, (1976) 3. SCR 360 : (AIR 1976 SC 667)"

16. The aforesaid observation of the Supreme Court has been repeatedly followed in various subsequent decisions relating to retiral benefits and as a concept the said view still holds the field.

17. In State of **Jharkhand and Ors. vs. Jitendra Kumar Srivastava [(2013) 12 SCC 210],** the Hon'ble Supreme Court observed that gratuity and pension are hard earned benefits of an employee and right to receive pension is in the nature of "property". It held that this right cannot be taken away from a Government employee without due process of law as per the provisions of Article 300-A of the Constitution of India.

18. Thus, I am of the opinion that the action of the respondent authorities in withholding all the retiral benefits of the deceased employee during his life time and denial of family pension, arrear of pension and other retiral benefits to the petitioner after the death of her husband is a glaring example of executive arbitrariness and administrative high handedness.

19. Accordingly, I direct the respondents to pay all the death-cum-retiral benefits of the deceased employee to the petitioner with admissible statutory interest. I also direct the respondents to pay full family pension to the petitioner from the date she became entitled to receive it. The entire payment must be made within a period of three months from the date of receipt/production of a copy of the order.

20. In the facts and circumstances of the case, the action of the respondents reflects the attitude of emotionless employer. The authorities of the State remained totally alien to the situation to which a deceased employee had been driven to. The callous approach of the authorities put the petitioner to the stage of starvation and she lost her husband as he could not be provided with proper treatment for want of money.

21. In totality of the situation, I impose a cost of rupees one lakh upon the respondent State to be paid to the petitioner within the aforementioned period of three months. However, the State would be at liberty to realize the amount of cost from the officer(s) responsible for illegally withholding the retiral benefits of the deceased employee for over six years.

22. With the aforesaid observations and directions, the writ application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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