

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5797 of 2017

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Sunita Devi W/o Late Kausheendra Prasad Choudhary R/o Village- Rampur
Jalalpur, P.S.- Dalsinghsarai, District- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. Principal Secretary, Primary Education, Department of Education, Government of Bihar, Patna.
3. Director, Primary Education, Department of Education, Government of Bihar, Patna.
4. Deputy Director, Department of Education, Government of Bihar, Patna.
5. Regional Deputy Director, Primary Education, Department of Education, Government of Bihar, Patna.
6. District Education Officer, Samastipur.
7. District Education Program Officer, Samastipur.
8. Head Master, Rajkiya Buniyadi Vidyalaya, Banghara, Samastipur.
9. Accountant General (A & E), Bihar, Patna.
10. District Program Officer (Establishment), Samastipur.
11. Treasury Officer, Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Mr. Ravi Shankar Choudhary and Mr. Anshul Agrawal, Advocates
For the State	:	A.C. to A.A.G. 15
For the Accountant General	:	Mr. Raj Nandan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 21-11-2017

Heard learned counsel for the petitioner; State and
Accountant General.

2. Counter affidavit has been filed on behalf of the
Accountant General. The same is taken on record.

3. The petitioner has moved the Court for the following
reliefs:

“i) For passing a writ in the nature of



Mandamus or any other writ order or direction commanding the respondents to pay with penal interest all death cum retiral benefits of the husband of the petitioner viz., of Late Kaushlendra Prasad Choudhary, who superannuated on 31.01.2014 from the post of Headmaster from Rajikiye Buniyadi Vidyalaya, Bandhara (Samastipur) and thereafter died on 27.10.2016.

ii) Any other writ or order of direction to which the petitioner is found by this Hon'ble Court may kindly be issued."

4. During the pendency of the writ petition, though retiral benefits in favour of the late husband of the petitioner as well as the petitioner have been sanctioned but stipulating recovery of Rs. 1,63,645/-. The said amount has been found recoverable in view of the fact that the late husband of the petitioner after being promoted to the post of Headmaster on 06.01.2010, the promotion was cancelled by order dated 31.01.2011, but because of there being an interim stay in C.W.J.C. No. 3378 of 2011, he continued to get the emoluments for the post of Headmaster till his superannuation on 31.01.2014. However, later on the writ petition stood dismissed by order dated 18.09.2014. The late husband of the petitioner upon his superannuation kept on representing for his pensionary dues but initially provisional pension was started from 01.03.2015 which also, upon death of the husband of the petitioner on 10.11.2016, has been stopped and there has been no payment of the remaining dues.

5. Learned counsel for the State submitted that once the



writ petition filed by the late husband of the petitioner has been dismissed by the Court, the excess amount drawn by him of the post of Headmaster, upon such dismissal and upholding of his reversion to the post of Assistant Teacher, has to be given effect and, thus, whatever the excess amount the late husband of the petitioner has drawn is legally recoverable.

6. Having considered the matter, the Court finds the action of the respondents to be untenable in law. Though they may be correct in taking a stand that the reversion of the late husband of the petitioner from the post of Headmaster to that of Assistant Teacher has been held, he is entitled to the salary of Assistant Teacher, however, in the facts and circumstances of the present case, the petitioner not only got the emoluments of the post of Headmaster, he also discharged the duties of such post. Moreover, the same was not under any misconception but rather pursuant to interim order passed in C.W.J.C. No. 3378 of 2011. Thus, such payment cannot be considered to be illegal to the extent of being recoverable. The Court is fortified in its view in light of the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported as **(2015) 4 SCC 334**.

7. Having reached the conclusion that recovery is impermissible, the Court would clarify the position to the extent that



after the dismissal of the writ petition, the claim of late husband of the petitioner remained only to the post of Assistant Teacher. Thus, it would be deemed that he was an Assistant Teacher till the time he superannuated. Thus, his pensionary benefits, notionally have to be reckoned treating him as an Assistant Teacher. At this stage, on a query of the Court, learned counsel for the petitioner submitted that he has no issues with such proposition.

8. Learned counsel for the State also submitted that the petitioner and her last husband are entitled to post retiral benefits treating the petitioner to have superannuated from the post of Assistant Teacher.

9. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the writ petition stands disposed off holding that there can be no recovery on account of excess payment which may have been drawn by the late husband of the petitioner while working as a Headmaster. However, the post retirement benefits shall be calculated treating the late husband of the petitioner to have notionally retired from the post of Assistant Teacher and accordingly, the benefits would be calculated. The same shall be done and the arrears of pension of the late husband of the petitioner as well as the family pension of the petitioner shall be paid to her along with regular payment of family pension till she is alive,



within two months from the date of production of a copy of this order before the respondents no. 10 and 11. The petitioner shall also be entitled to all the remaining admissible dues of her husband which may have remained unpaid, though reckoning such dues treating the late husband of the petitioner to have superannuated from the post of Assistant Teacher.

10. It goes without saying that if the petitioner feels that her late husband may otherwise also have got benefits under any policy or scheme of the Government, *de hors* the present controversy, of any promotion and revision, she shall be at liberty to move before the competent authority, which shall be considered on its own merits, in accordance with law, expeditiously.

(Ahsanuddin Amanullah, J.)

P. Kumar

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