

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 12657 of 2016**

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Gagni Kunwar @ Gagni Kuar Wife of Late Ram Bilas Ram, resident of Village-  
Pokhrai, P.O.- Gidha, P.S.- Saraiya, District- Muzaffarpur.

.... .... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner-cum-Secretary, Department of Human Resources, Government of Bihar, Patna.
2. The District Superintendent of Education, Muzaffarpur.
3. The Treasury Officer, Muzaffarpur.
4. The Area Education Officer, Kanti, District- Muzaffarpur.
5. The Accountant General, Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

|                                          |   |                                                    |
|------------------------------------------|---|----------------------------------------------------|
| For the Petitioner/s                     | : | Mr. Sandeep Kumar and<br>Mr. Anuj Kumar, Advocates |
| For the State<br>(Respondent No. 1 to 4) | : | Mr. Bishwa Bibhuti Kumar Singh, A.C. to<br>A.G.    |
| For the Accountant General               | : | Mr. L. P. K. Rajgrihar, S.C.                       |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date: 19-08-2017**

Heard learned counsel for the petitioner and the  
  
State.

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

*“(A) For issuance of writ in the nature  
of Certiorari for:-*

*(i) For quashing the order dated  
4.11.2009, issued vide memo no. 5333, passed by  
District Superintendent of Education,  
Muzaffarpur (Annexure-4), whereby the authority  
concerned refused to pay any amount to the  
petitioner except the Provident fund stating that  
the petitioner is not eligible to pay any amount as  
per the provision of Rule 76 of the Bihar Service  
code.*

*(B) For issuance of writ in the nature of*



*mandamus for:-*

*(i) For direction to the authorities concerned for fixation of Family pension as well as payment of the same since the death of her deceased husband with interest.*

*(ii) For direction to the authorities concern for payment of other death cum retiral benefits with statutory as well as penal interest.*

*(iii) For direction to the respondent authority for payment of due salary and other amount of the deceased husband of the petitioner.*

*(C) For any other relief/reliefs to which the petitioner is found entitled to.”*

3. The brief facts of the case are that the husband of the petitioner is said to have stopped attending his duties in the year 1980 and thereafter he died in the year 2012. The petitioner moved the authorities for payment of salary and retiral benefits, which has been denied.

4. Learned counsel for the petitioner submitted that the stand of the authorities that the service of the petitioner's husband stood terminated due to long absence cannot be sustained for the reason that for such charge, neither any departmental proceeding was ever initiated, much less he was dismissed. Learned counsel submitted that because of his extreme illness, due to which he was bedridden and ultimately passed away, he could not join duty and the petitioner, being a widow, is only praying for family pension to sustain her life. Learned counsel for the petitioner in support of his case has relied upon a decision of a Division Bench of this Court in



the case of **Md. Saleem vs. The State of Bihar and Ors.** reported as **1991 (1) PLJR 229.**

5. Learned counsel for the State submitted that in the present case, though the plea has been taken of deemed termination, but he is not pressing the same. However, he submitted that for 22 years, when the petitioner remained alive from 1980 to 2012, him not joining, is clearly a case of willful abandonment and thus, no benefit for such act can be claimed. Learned counsel submitted that the decision relied upon by learned counsel for the petitioner in the case of **Md. Saleem** (supra) is easily distinguishable for the reason that the mother of the said writ petitioner, though had been absent from 21.08.1982 to 02.01.1987, but thereafter had joined on 02.01.1987 and only subsequently, having fallen seriously ill on 01.01.1988, she ultimately died in that month itself. It was submitted that the petitioner and her husband having survived since 1980, the plea of survival cannot be accepted today.

6. Having considered the rival contentions, this Court is unable to interfere in the matter on the ground of willful laches on the part of the husband of the petitioner as well as the petitioner herself. The petitioner, even if he had good reason to absent himself from duty in the year 1980, was at least required to take leave, or in the alternative to at least join duty after a reasonable



period, but 22 long years cannot be said to be a reasonable period and moreover, as has been rightly submitted by learned counsel for the State, it would clearly be a case of willful abandonment. Moreover, the payment sought being from public exchequer, there has to be some legal right shown for any person, including the petitioner, to claim such benefit. In the present case, when the Court finds that there have been deliberate laches and further, delay of four years after the husband of the petitioner having passed away and she approaching the Court, this Court is not persuaded to exercise its extraordinary, prerogative and discretionary writ jurisdiction in the matter.

7. For the reasons aforesaid, the writ petition stands dismissed.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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