IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8204 of 2014

==

Mostt. Sultana Begum widow of Late Md. Yamin, resident of Mohalla- Sadikpur Adhsar Market, P.S.- Alamganj, District- Patna

.... Petitioner/s

Versus

1. The Bihar Legislative Council through its Secretary, Bihar, Patna
2. The Incharge Secretary, Bihar Legislative Council, Bihar, Patna
3. The Under Secretary, Bihar Legislative Council, Bihar, Patna
4. The State of Bihar through Commissioner, Finance Department, Government of Bihar, Patna
5. The Accountant General, Bihar, Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. Santosh Kumar Sinha -2, Advocate
: Mr. Vijay Kumar Verma, Advocate
For the Accountant General : Mr. Uday Kumar, Advocate
For the Vishan Parishad : Mr. Kaushal Kumar Jha, Advocate
For the State : Mr. Brajesh Kumar, A.C. to A.A.G.-IV

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 20-03-2017

In the present writ application, the prayer of the petitioner is to direct the respondents to allow and pay her full pension of her deceased husband and accordingly calculate and pay her the family pension.

2. The husband of the petitioner Md. Yamin joined the service under the respondent of the Bihar Legislative Council (for short 'the Council') as a clerk and in due course of time he was promoted as Deputy Secretary. By order dated 14.05.2008, while being posted as Deputy Secretary in the Council, he was compulsory retired by way of punishment.

3. It would be evident from the record that the husband of the petitioner was put under suspension on 13.09.2006 on the ground that a file was found missing from the office. Later on, the missing file was received in the office by post. A proceeding against him was initiated for the aforementioned misconduct and finding the alleged act of misconduct on the part of the husband of the petitioner to be proved, the said proceeding culminated into an order dated 14.05.2008 of punishment of compulsory retirement from service as a penalty.

4. It is submitted by the learned counsel for the petitioner that the petitioner's husband filed an appeal before the Secretary of the Council for setting aside the order of compulsory retirement and allowing him full pension on 1st September, 2008. Unfortunately, during pendency of the appeal, he died on 10th November, 2009. He submitted that subsequent to the death of her husband, the petitioner applied for grant of family pension and is getting family pension on reduced rate. The grievance of the petitioner is that no order has been passed on the appeal preferred by the husband of the petitioner before the Secretary of the Council.

5. A counter affidavit has been filed on behalf of the Council wherein it is stated that, as a matter of fact, a representation was filed by the deceased husband of the petitioner before the Secretary of the Council and the said representation has already been disposed of by the respondent no.2, the Incharge Secretary of the Council on 14th January, 2009.

6. Learned counsel appearing for the Council submitted that the husband of the petitioner was compulsory retired from service as a penalty and, therefore, as per Rule 46A of the Bihar Pension Rules, he was entitled to receive two third of the pension, which was being paid to him during his life time and after his death, the admissible family pension is being paid to the petitioner accordingly.

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

8. In case of employees of the Council, conditions under which pension is earned are enumerated in the Bihar Pension Rules, 1950.

9. Rule 46A inserted by Memo No. CDR - Pen - 1034/64/9092F dated 11.09.1965 effective from 27.10.1957 deals with entitlement of an employee to receive pension in case of compulsory retirement from service as a penalty. It reads as under:

> "46*A. A Government servant compulsorily retired from service as a penalty may be granted by the authority, competent to impose such penalty pension at rate not less than two-thirds and not more than full invalid pension and special additional pension, if any, admissible to him on the date of compulsory retirement;*

Provided that in the case of a Government servant mentioned in rule, who has completed, before such compulsory retirement, 25 years of qualifying service or more the pension shall be not less than two thirds of the invalid pension and not more than the full retiring pension and special additional pension, if any, to which he would have been entitled, if he retired on that date.

Note 1.- This rule applies also to those Government servants who are governed by the New Pension Rules, issued with the Finance Department Resolution No.PF -PAR- 12/50-12548F;, dated the 23rd August, 1950, as amended from time to time.

Note 2.- When a Government servant is compulsorily retired, but not as a measure of penalty, his case will be governed by rule 134(b) of the Bihar Pension Rules read with rule 74 of the Bihar Service Code."

10. Relying on the aforesaid Rule 46A, the pensionary benefits to the husband of the petitioner were granted at the rate of two third of the pension admissible to him on the date of compulsory retirement.

11. In the opinion of the Court, in view of the fact that the husband of the petitioner was proceeded against departmentally and was found guilty for the alleged misconduct for which he was compulsorily retired from service as a penalty, no fault can be found with the order by which he was denied full pension. Admittedly, during his life time he was getting two third pension and after his death the petitioner's pension has also been calculated on the same basis.

12. In that view of the matter, I find no merit in the present writ application.

13. It is dismissed accordingly.

14. However, the order by which the representation of the petitioner's husband was rejected by the respondent no.2, if not communicated earlier, be communicated to the petitioner within a period of four weeks from today.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.03.2017
Transmission Date	