

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18397 of 2016

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Sandhya Akhauri wife of Dr. Akhauri Radha Krishna Sinha, resident of Akhauri Niwas, Jai Mahaveer Colony , Road NO. 4A, Behind East of Bazar Samiti, P.O.- Mahendru , P.S Bahadurpur, Town and District - Patna. At present residing at C/o Sri Kripa Prasad, 'Sinha Sadan' Veer Kunwar Singh Colony, Janta Road near Naurangi Academy , P.O.- GPO, Police Station- Gardanibagh, Patna- 800001

.... Petitioner/s

Versus

1. The Vice Chancellor, Patna University, Patna.
2. The State of Bihar through the Principal Secretary, Education Department, Higher Education, Government of Bihar, Bikas Bhawan, Secretariat, Patna.
3. The Registrar, Patna University, Patna.
4. The Principal B.N. College, Ashok Rajpath, Patna.
5. The Finance Officer, Patna University, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shiv Kumar, Advocate
For the University	:	Mr. Digvijay Singh, Advocate
	:	Mr. B.J. Jha, Advocate
For the State	:	Ms. Shilpa Singh- G.A.-12
	:	Mr. Ranjan Kumar, A.C. to G.A.-12

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-05-2017

The present writ application has been filed by the petitioner for directing the respondents to pay her the entire death-cum-retiral dues on the basis of length of service of her deceased husband. The petitioner also seeks a direction to be issued upon the respondents to fix and pay her the due family pension in accordance with law.

2. The uncontroverted facts of the case are that the husband of the petitioner late Dr. Akhauri Radha Krishna Sinha was appointed on 02.06.1980 as Laboratory Incharge in the Department of



Geography in B.N.College, Patna and since then he was working against the said post till the date of his death in harness on 08.08.2016. After the death of her husband, the petitioner submitted her application for payment of death-cum-retirement benefits including gratuity, leave encashment, group insurance and general provident fund along with no dues certificate to the Principal of the college, but as the respondents failed to make payment, the petitioner submitted her representation to the respondent Vice Chancellor with a copy of the same to the Registrar, the Principal and the Finance Officer of the University on 17th October, 2015 for issuance of family pension payment order and for payment of retiral dues like gratuity, leave encashment, group insurance and general provident fund amount etc.

3. Learned counsel for the petitioner submitted that the respondents are denying the death-cum-post retiral benefits to the petitioner on the ground that her husband was appointed against an unsanctioned post. He contended, however, the fact is that the ground raised by the respondents for denying the aforesaid payments has already been settled by order dated 25.10.2011 passed in CWJC No.15230 of 2009 and analogous cases by this Court in which it has clearly been held that the petitioners of those cases will be deemed to be working against sanctioned post. He contended that the aforesaid



order dated 25.10.2011 has attained finality, as the same was never challenged by the respondents either before this Court in intra-court appeal or before the Supreme Court. He contended that the appointment of the husband of the petitioner was approved by the Patna University vide letter no.GI-1603 dated 31.01.1981 along with one Ram Kishore Thakur, who was also appointed as Laboratory Incharge in the Department of Psychology, B.N.College, Patna in similar manner as that of husband of the petitioner and after his death his wife Smt. Sushila Devi has not only been paid the entire death-cum-retiral benefits including family pension, but she has also been appointed on compassionate ground in the Magadh Mahila College, Patna pursuant to the order dated 29.03.2011 passed in CWJC No.13710 of 2005. He contended that similarly one Shyamawati Karan was also selected to be appointed as Laboratory Incharge in the Zoology Department of Magadh Mahila College, Patna like the husband of the petitioner and was appointed on 25/26 February, 1981. She worked as Laboratory Incharge in the said college until retirement on 31st December, 2004. However, after her retirement the respondent University denied payment of her retiral benefits on the ground that the post was not sanctioned and being aggrieved by such denial of payment, the said Shyamawati Karan preferred writ application bearing CWJC No.7914 of 2005 wherein after hearing the parties this



Court directed the University to pay all the terminal dues vide order dated 08.09.2006. In compliance of the same, the University has not only paid all her terminal dues but it is also paying her regular pension. He contended that the respondents cannot discriminate the petitioner and deny her payment of death-cum-retiral dues and family pension.

4. *Per contra*, learned counsel appearing on behalf of the University submitted that the posts of Demonstrator in the Universities were abolished by the State Government with effect from 18.09.1975, as a condition for implementing revised UGC pay scale to the teachers on 01.01.1973. He contended that since maintenance of Laboratory equipments as well as conducting practical classes became difficult in post-graduate departments and colleges, the Education Department of the Bihar Government vide its letter dated 17.08.1979 directed all the Universities including Patna University to appoint Laboratory Incharge, as per requirement in anticipation of approval of the State Government and consequent upon such direction, late husband of the petitioner was engaged, as Laboratory Incharge in the Department of Geography, B.N.College, Patna on an unsanctioned non-teaching post with effect from 02.06.1980. He contended that the temporary appointment of the husband of the petitioner was approved by the Patna University on 02.02.1981. However, the State



Government did not approve the sanction of the post and later on the Department of Higher Education, Government of Bihar vide its letter dated 15.10.2004 directed the Universities of Bihar to terminate all those Laboratory Incharge working against unsanctioned post pointing out that responsibility of paying salaries to the said employees will not be undertaken onwards by the State Government. He contended that since the salary, pension etc. is paid to the teaching and non-teaching employees, who have been legally appointed on regular sanctioned post, the payment of death-cum-retiral benefits of the petitioner cannot be made as the petitioner was never appointed against a sanctioned post.

5. On the other hand, learned counsel for the State submitted that the University being custodian of the records of its employees is competent to take a decision in the matter. She contended that the State Government releases deficit consolidated grant-in-aid to the Universities for payment under different heads. Such grant-in-aid are being released to the Universities of the State regularly for making payment of salary as well as retiral benefits who are working in legal and valid manner. She submitted that the Universities are required to disburse these amounts to its employees in accordance with law. She contended that the concerned University is competent to look into the factual claim of the petitioner and make



payment of lawful dues of the petitioner.

6. On query made by the Court regarding the claim of the petitioner, learned counsel for the University fairly conceded that under similar circumstance pursuant to the order passed by this Court Smt. Sushila Devi wife of late Ram Kishore Thakur has been paid her death-cum-retiral benefits including family pension and she has also been appointed on compassionate ground in the Magadh Mahila College, Patna. He conceded that the case of the petitioner is identical to that of wife of late Ram Kishore Thakur. He also conceded that the case of the petitioner is identical to the case of Shyamawati Karn who has been paid all her terminal dues in compliance with the order passed by this Court in CWJC No.7914 of 2005.

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

8. As noted above, there is no dispute to the fact that the husband of the petitioner was appointed, as Laboratory Incharge on 2nd June, 1980 in B.N.College, Patna. He continuously worked against the said post and was paid his regular salary till the date of his death, i.e. on 8th August, 2016. After his death, the respondents are denying death-cum-retiral dues to the petitioner on the sole ground that her husband was appointed against an unsanctioned post. In the opinion of the Court, the issue that the husband of the petitioner was not



appointed against a sanctioned post cannot be agitated or raised by the University, as the said issue is no more *res integra*. This issue was raised by the University while issuing a show cause to the husband of the petitioner on 27.10.2009, as to why his services be not terminated because he had been appointed against an unsanctioned post. The said show cause notice was challenged by the husband of the petitioner by preferring writ application vide CWJC No. 18214 of 2009, which was heard along with some other writ applications and after hearing the parties the court held that neither the University nor the State Government can be allowed to terminate the petitioner on the ground that he continued to work against unsanctioned post. The operative part of the order passed by this Court in the aforesaid CWJC No.15230 of 2009 reads as under:

“The Government, right from the date of petitioners’ appointment, released fund for making payment to such appointees. After so may years, neither the University nor the State Government can be allowed to revert back and terminate these petitioners on the ground that they continued to work against unsanctioned posts. The respondent-State as well as the University, are under obligation to give approval to the post of Lab In-charge/Lab Assistants against which petitioners’ are working and for which recommendation had been made by 8 Men Committee constituted by the



Vice Chancellor of the University, long time back in its meeting dated 22.11.1999 and communicated to the State Government vide letter no.2617 dated 31.1.2000. Petitioners will be deemed to be working against sanctioned posts; as such they are also entitled to be re-designated as Demonstrators as well as for promotion to the post of Lecturer, if qualified for being promoted to such posts with all consequential benefits. The impugned show cause notices contained in memo nos.1530, 1531, 1532, 1533, 1535, 1538, 1540, 1542 and 1543 dated 27.10.2009, issued to the petitioners under the signature of the Registrar of the Patna University are quashed.

All three writ applications are allowed.”
(emphasis mine)

9. Since the aforesaid order dated 25.10.2011 has never ever been challenged either by the University or by the State it has attained finality. Thus, now it is not open either for the respondent-University or the respondent-State to take a plea that the petitioner is not entitled for payment of death-cum-retiral benefits as the post was not sanctioned.

10. Furthermore, since it is conceded by the learned counsel for the University that under similar circumstance wife of another Laboratory Incharge late Ram Kishore Thakur, namely, Sushila Devi has not only been paid entire death-cum-retiral benefits including



family pension but has also been appointed on compassionate ground in Magadh Mahila College, Patna pursuant to the order dated 29.03.2011 passed in CWJC No.13710 of 2005, there is no reason as to why the petitioner should also not be paid death-cum-retiral benefits and family pension.

11. Similarly, on the same ground when the death-cum-retiral dues and family pension was denied to one Shyamawati Karn, she approached this Court by filing CWJC No. 7914 of 2005. As seen above, the case of Shyamawati Karn is also identical to the case of the petitioner. The only difference between the two cases is that the petitioner is claiming for family pension whereas Shyamawati Karn being a Laboratory Incharge herself had approached this Court for her right to pension. In her case also the University had pleaded that since she was working against an unsanctioned post in the Magadh Mahila College, Patna, she was not entitled to retiral benefits and family pension. However, this Court vide its order dated 08.09.2006 allowed the writ petition of Shyamawati Karn on the following terms:

“If the post had not been sanctioned how a public notice could be issued inviting applications for filling of the said post has also not been explained. Furthermore, if the post was not sanctioned how the then Vice Chancellor could accord sanction to the appointment of the petitioner to the post in question has not been explained. Then again if the



post was not sanctioned how for more than twenty five years the petitioner could get salaries from the exchequer has not been explained. The manner in which the affidavits have been filed demonstrates that for no just reason the respondents are seeking to deprive the petitioner of her lawful dues. It is surprising that a person who worked until 31st December, 2004 will not be entitled to the revised pay with effect from 1st April, 1997 and settlement of pension and other terminal dues on the basis of which revised pay scale.

The plea that the post was not sanctioned is an untrue plea and the same is rejected. The decision not to give the benefit of the revision of the pay scale, being without reason, is rejected.

The writ petition, accordingly, stands allowed. It is declared that the petitioner was duly appointed as Laboratory Incharge, Zoology, of the college in question in a sanctioned post and retired from the said post while working as such on 31st December, 2004 and, accordingly, became entitled to whatever remuneration was payable to a Laboratory Incharge, Zoology, during her service tenure and thereupon terminal/pensionary dues on the basis thereof. It is also declared that the petitioner is entitled to revised pay scale as applicable to Laboratory Incharge, Zoology, with effect from 1st April, 1997 until her retirement and is also entitled to have her pensionary/terminal



dues settled on the basis of her such pay, as entitled to, as last drawn. Let the arrears of salary, by reason of such revision, and pensionary/terminal dues on the basis of the aforementioned declarations, less whatever already has been paid to the petitioner, be released and paid to the petitioner as quickly as possible but not later than three months from today. In the event payment, as directed above, does not reach the petitioner within the period, as mentioned above, the same shall carry interest at the rate of 10% per annum on and from expiry of three months from today until payment.

This disposes of the writ petition.”

12. As noted above, it is conceded by the learned counsel for the State that pursuant to the aforesaid order dated 08.09.2006 passed by this Court, Shyamawati Karn has been paid all her retiral benefits by the University, I fail to comprehend as to why and how when similarly situated persons, who were appointed like the husband of the petitioner, are getting benefits of pension/family pension and other retiral benefits, the petitioner is being discriminated by the University. The impugned action of the University clearly smacks colourable exercise of power and is a glaring example of arbitrariness and high handedness.

13. In that view of the matter, while allowing this writ



application, I direct the respondents to pay the petitioner entire death-cum-retiral benefits on the basis of length of service of her deceased husband. The respondents are further directed to pay arrears of family pension as well as current family pension to the petitioner as early as possible, but not later than three months from the date of receipt/production of a copy of this order before the Registrar of the Patna University, Patna. In case the aforesaid payments are not made to the petitioner within the period stipulated hereinabove, the same shall carry interest at the rate of eight per cent per annum on and from expiry of three months from today until payment.

14. The parties shall bear their own costs.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.05.2017
Transmission Date	

