

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6349 of 2016

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Soniya Devi, Wife of Late Yugal Mahto, Resident of Village- Rampur Parari East,
P.O.- Banchauri, P.S.+District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health Engineering Department, Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Bihar, Patna.
3. The Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Bihar, Patna.
4. The Chief Engineer, Department of Public Engineering (Mechanical), Bihar, Patna.
5. The Superintendent Engineers, Public Health Engineering Circle, Muzaffarpur.
6. The Executive Engineer, Public Health Division, Sitamarhi.
7. The Sub-Divisional Officer-cum-Assistant Engineer, Public Health Engineering, Sub-Division-Sitamarhi.
8. The Sub-Divisional Officer-cum-Assistant Engineer, Public Health Engineering, Sub-Division-Sheohar.
9. The District Magistrate, Sitamarhi.
10. The Accountant General (A&E) Bihar, Patna.
11. The District Accounts Officer, Sitamarhi.
12. The Treasury Officer, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siyaram Pandey and
Mr. Bishnu Kant Dubey, Advocates

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 24-11-2017

Heard learned counsel for the petitioner and the State.

2. The petitioner has moved the Court for the following

reliefs:

*“ That this is an Application for
issuance of a writ in the nature of mandamus or
an appropriate writ, order or direction
commanding the respondents to pay all the
retiral dues/benefits including:-*

- (i) Family Pension with revised scale.*
- (ii) Full amount of Gratuity.*
- (iii) Full amount of leave encashment.*



- (iv) *Amount of Provident Fund.*
- (v) *Arrear of Family Pension.*
- (vi) *Amount of Arrear of reverted period.*

With statutory as well as penal interest as per memo No. 1344 dated 04.02.1949 and letter No. 17779 dated 12.08.1969 of Finance Department, Govt. of Bihar, Patna as well as section 59 of Bihar Pension Rule, 1950, for which the petitioner is legally entitled for after the death of her husband and be pleased to pass such other order or orders which may be deemed fit and proper in the facts and circumstances of the case”.

3. The husband of the petitioner was engaged as a daily wage employee in the Public Health Division, Sitamarhi on 29.03.1982. He was brought under the work charge establishment on 23.06.1988 and on 18.02.2000, his pay scale was revised. The petitioner along with others was show caused as to why he should not be reverted to daily wages, against which he moved in C.W.J.C. No. 6623 of 2002 and by order dated 24.05.2002, there was an interim stay in his favour. However, he was reverted from work charge to daily wages by order dated 30.08.2002 and finally died in harness on 15.09.2005. Thereafter, the writ petition filed by the petitioner together with analogous cases was disposed off by order dated 13.07.2006, by which a direction was given to the State authorities to consider the case of all the petitioners for the purpose of regularization of their services. However, due to the fact that the



husband of the petitioner was already dead, the Three Men Committee did not consider his case for regularization. In the meanwhile, similarly situated persons under the same Department moved the Hon'ble Supreme Court, which, by order dated 11.08.2006 held the reversion to be bad. Thus, the service of the persons, who were alive at that time, were regularized.

4. On a direct query of the Court to learned counsel for the State as to whether the fact that the husband of the petitioner was not alive on the day the Three Men Committee considered regularization of the services of persons similarly situated, was the only ground or there was any other infirmity in favourable consideration of his case, learned counsel has drawn the attention of the Court to statement made in paragraph no. 16 of the counter affidavit filed on behalf of the respondent no. 6, which states as under:

“16. That the Three Men Committee constituted considered the cases of the persons eligible under the policy decision. However, the case of the husband of the petitioner could not be considered due to his death in 2005 itself.”

5. In the aforesaid background and having considered the matter, the Court finds that the petitioner is entitled to the relief claimed by her. It is not in dispute that the case of the petitioner's husband was also required to be considered, as a direction was



passed in his case also for such consideration, may be notionally. The most important factor in the present case is that had the husband of the petitioner been alive, obviously his case would have been considered and when the State has not taken any objection on merits, it is also obvious that his case would also have been allowed and regularization made. Just because of an unfortunate situation, when the husband of the petitioner passed away in harness, his cause, which is genuine, cannot be defeated. Similar view has been taken by Division Benches of this Court in judgments dated 21.04.2015 in C.W.J.C. No. 21724 of 2012 in the case of **Saraswati Devi vs. The State of Bihar and others**, in C.W.J.C. No. 83 of 2015 in the case of **Nagina Khatoon vs. The State of Bihar** and others as well as in C.W.J.C. No. 1880 of 2007 dated 05.05.2010 in the case of **Most. Maroon Khatoon vs. The State of Bihar and Others**.

6. Accordingly, the writ petition stands allowed. The service of the husband of the petitioner is held to be pensionable and the petitioner, as a consequence thereof, is held entitled to family pension and gratuity. Consequently, all calculation shall be made with regard to death-cum-retiral benefits taking the service of the husband of the petitioner to be pensionable for the period he was in the work charge establishment. The Court would like to clarify that the view taken is also in the background that the Hon'ble Supreme



Court had found substance in the contention of persons, who had moved the Court on their reversion from the work charge establishment to daily wagers, was incorrect and the petitioner's husband was one such person and would have naturally been a party before the Hon'ble Supreme Court also, but for death intervening while he was still in service, much prior to his date of superannuation. The authorities are directed to ensure that the benefits accruing to the petitioner in terms of the order are paid to her within four months from the date of production of a copy of this order before the respondent no. 6.

(Ahsanuddin Amanullah, J.)

P. Kumar

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