

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Civil Writ Jurisdiction Case No.16415 of 2008**

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Lakshmi Devi, wife of Late Yogendra Prasad, resident of village-Tilkahni Via  
Amodai, P.S.- Ramgarhwa, District- East Champaran.

.... .... Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Water Resources Bihar, Patna.
2. The Deputy Secretary, Department of Water Resources, Bihar, Patna.
3. The Under Secretary, Department of Water Resources, Bihar, Patna.
4. The Chief Engineer, Department of Water Resources, Balmiki Nagar, West Champaran, Camp Motihari
5. The Superintending Engineer, Trihut Canal Circle, Raxaul, East Champaran.
6. The Executive Engineer, Tribeni Canal Division, Raxaul, East Champaran.
7. The Accountant General, Bihar, Patna.

.... .... Respondents

**Appearance:**

For the Petitioner/s : Mr. Dr.Arjun Prasad Keshri, Adv.

For the Respondent/s : Mr. Ashok Kumar Dubey, A.C. to A.A.G.-11

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

ORAL JUDGMENT

**Date: 13-11-2017**

1. This case was taken upon on 10.11.2017. On that day, learned counsel for the petitioner was absent, learned counsel for the State was present. This Court while adjourning the case made it clear that if the petitioner will remain absent on the next date, the Court will pass order in accordance with law. Even today, learned counsel for the petitioner is absent, but learned counsel for the State is present. So, this Court has no other option but to pass final order



on merit.

2. The petitioner is claiming family pension on account of death of her husband on 21.08.1988 and other post retrial dues including the full salary and allowances for the period of suspension and setting aside the order of termination.

3. The husband of the petitioner, namely Late Yogendra Prasad, was Junior Accounts Clerk on and after 11.07.1961 in the Office of Tribeni Canal Division, Raxual, Motihari. The husband of the petitioner had gone for casual leave for one day and thereafter he fallen ill, made request from time to time for extension of leave. On 30.06.1968 leave was not sanctioned thereafter he was put under suspension, departmental inquiry was conducted and ultimately he was terminated from service vide memo no.636 dated 24.11.1969 with effect from 07.09.1968. It is well settled law that termination cannot be given retrospectively. So, it will be treated that the petitioner was terminated from service with effect from 24.11.1969 i.e. from the date the order of termination was passed.

4. It appears that late Yogendra Prasad never challenged his termination order though she has taken plea that he had filed an appeal, but without any detail and ultimately he died. Under wrong



impression the wife of Yogendra Prasad, present petitioner was paid the provisional family pension. Later on, it was found that it was a wrong decision as she could not have been granted the family pension on two grounds; first the husband of the petitioner was terminated from service and in terms of Rule-101 of Bihar Pension Rules, on resignation/dismissal or removal from service on the charge of misconduct will forfeit the past services inasmuch the husband of the petitioner has only performed seven years service, the person who completes 10 years of service will only be entitled to the pension. When the husband of the petitioner was not entitled to the pension, the question of giving family pension to the wife does not arise in view of the fact that the husband of the petitioner was terminated from service for overstaying in the leave.

5. It also appears from the record that for certain period the present petitioner was paid the family pension and when the issue came for realization of the excess amount, the Government vide letter dated 30.07.2008 (Annexure-16) has taken decision not to recover the excess amount from the petitioner as the petitioner is a widow of Yogendra Prasad. This consideration has been given in view of direction given in C.W.J.C. No.12536 of 2007.



6. In such view of the matter, this Court does not find any merit in this writ application. Accordingly, this writ application is dismissed.

(Shivaji Pandey, J)

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| AFR/NAFR          | N.A.F.R.   |
| CAV DATE          | N/A.       |
| Uploading Date    | 17.11.2017 |
| Transmission Date | N/A.       |

