

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1079 of 2014
IN
Civil Writ Jurisdiction Case No. 8449 of 2011**

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Sharda Devi wife of Late Prem Chand Upadhaya Resident of village - Dhansoin,
P.S. Dhansoin, District - Buxar.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Government of Bihar, Patna.
2. Director-in-Chief, Health Services, Government of Bihar, Patna.
3. Regional Deputy Director, Health Services, Patna Division, Patna.
4. Chief Surgeon-cum-Chief Medical Officer, Buxar & Ara, District - Buxar.

.... Respondents

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Appearance :

For the Appellant : Mr. Ajoy Kumar Chakraborty, Advocate

For the Respondents : Mr. Ajay Bihari Sinha, GA-8
Mr. Upendra Kumar Singh, AC to GA-8

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 08-04-2017

Heard counsel for the parties.

This appeal has been filed by the present appellant since the learned single Judge refused to pass any order giving the benefit of pension etc. by considering the husband of the petitioner-appellant to be an employee of the State. The learned single Judge, however, did extend the relief for giving a direction for release of such deductions, which were made during the period the husband of the petitioner had worked including Group Insurance and General Provident Fund, if he had subscribed to the same.



The short facts which are required to be noted is that the husband of the appellant was appointed as a Pharmacist by one Dr. K.N.Rai, the then Civil Surgeon-cum-Chief Medical Officer, Bhojpur. It later transpired that these were fake appointments or illegal appointments done by the then Civil Surgeon-cum-Chief Medical Officer and he had indulged in large scale irregularities in such appointments. Hundreds and thousands of cases of such kind, where termination was effected, accumulated before the High Court and by a common order by a Division Bench a direction was issued to scrutinize each and every case and take a decision.

It is also of relevance that because of that illegality, appointment of the husband of the petitioner was terminated vide order dated 20th February, 2004, which is Annexure-6 to the writ application. Before the directive of the Division Bench for examining the cases of such terminated employees could be put in motion, God willed otherwise, the husband of the petitioner died on 17.06.2007. The learned single Judge, therefore, after considering the various facets of submissions and law opined as under:

“On a consideration of rival submissions and after perusal of the pleadings on record, it appears, the husband of the petitioner died before he could be considered by the Committee as per order of this Court in the light of



materials/documents to be placed by him for regularization of his service if the same was found in accord with the observations made by the Hon'ble Apex Court in the case of **Uma Devi (Supra)**. Pension or family pension is payable to an employee who holds a substantive post in the Government. The husband of the writ petitioner was not holding a post under the State on the day he died. He was not considered and found fit for regularization in the service obviously for the reasons that he did not appear before the Committee set up in this regard by the government to substantiate his claim. How can he, therefore, be considered for grant of pension/family pension. There is clear findings recorded in the impugned order that the enquiry committee on perusal of records found his appointment forged/fake and/or illegal. The pension or family pension is payable to an employee who died while in the employment of the State government. Having given my anxious consideration to the submissions of the parties this Court is unable to find any illegality much less patent illegality in the order passed by the respondent Director-in-Chief (Annexure-13) meriting interference by invocation of its extraordinary and discretionary writ jurisdiction.

Before parting with the records, this Court would observe that in the representation



(Annexure-12) the petitioner had also prayed for payment of certain dues to her which was/were deducted from the salary of her husband. The husband of the petitioner while in service was permitted to subscribe to the General Provident Fund. It also appears from the service book that the husband of the petitioner had also subscribed to the Group Insurance Scheme of the Government and certain deductions were made from his salary under this head. These deductions, together with statutory interest, are required to be paid to the petitioner, if not already paid. Let the respondent(s) calculate and pay those dues which were deducted from the salary of the husband of the petitioner under the head(s) Group Insurance and General Provident Fund while he was in the employment within 08 weeks from the date of receipt/production of a copy of this order.”

The facts being what they are, the learned single Judge has extended the benefit which can be extended, but the expectation of the present appellant to declare the husband to be a regular Government servant when no such decision was taken or could be taken since he was already dead and gone, the expectation on her behalf that she could be entitled to pension and other benefits is a totally misplaced expectation to have within the framework of the



fact and law.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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