

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5288 of 2016**

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Renu Devi W/o Late Bishundev Kumar, Resident of New Quarter Room No.- 54,  
Block -A, Near I.G.I.C., P.M.C.H., P.O.- Bankipur, P.S.- Pir Bahaur, District- Patna

.... .... Petitioner/s

Versus

1. The State Bank of India through the General Manager (PRS), Zonal Office, J.C. Road, Patna
2. The Deputy General Manager (PRS), State Bank of India, Zonal Office, J.C. Road, Patna
3. The Assistant General Manager, State Bank of India, Zonal Office, J.C. Road, Patna
4. The Branch Manager, State Bank of India, Barauni Refinery Campus, Barauni, Begusarai

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s :

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 14-11-2017**

Heard learned counsel for the petitioner and State Bank of India (hereinafter referred to as the 'Bank').

2. The petitioner has moved the Court for the following reliefs:

*“a. For issuance of an appropriate Writ/Writs, direction/directions in the nature of **Mandamus** or Writs, order or Orders for directing the respondents to ensure payment of regular family pension to the petitioner admissible on account of the death of her husband on 04.11.2011, including the payment of remaining Death-cum-retiral dies*



*along with the interest over the arrears of family pension and the amount due and calculated until the date of final payment.*

*b. For issuance of an appropriate Writ/Writs, direction/directions in the nature of mandamus for directing the respondents to fix the pension after ensuring the due benefits in terms of increment under Bipartite Settlement Scheme as the deceased was not granted the due increment and all its consequential benefits along with the statutory interest over the same apart from issuing appropriate directions by requiring the authorities of the Bank to consider the case of the petitioner for appropriately appointing the family members eligible non compassionate ground or lieu thereof, to grant ex-gratia to the deceased family in terms of the decision taken by the appropriate authority and circular to this effect having been issued for grant of such benefits.*

*c. For further kind indulgence of this Hon'ble court to look into the matter and the concerned respondents may be directed to produce all connected records for perusal and passing an appropriate order.*

*d. For any other relief/relief which the Hon'ble court may grant in general interest checking these kinds of harassment to the dependent of the deceased employee that may be deemed appropriate and necessary in this case."*



3. The moot question in the present case is whether the late husband of the petitioner shall be deemed to be covered by the relevant provisions of the statute/regulations/agreement between the parties/settlements which would entitle him to death-cum-retiral benefits.

4. The husband of the petitioner was initially appointed as temporary Sweeper in the Bank on 31.12.1994 and later on by notification dated 06.01.1995, the Assistant General Manager informed the late husband of the petitioner that he would be treated as subordinate staff of the Bank. Thereafter, by communication of the Assistant General Manager to the Chief Branch Manager concerned dated 02.09.1995, it was mentioned that the service of the late husband of the petitioner was being recommended for being made full time and that police verification with regard to his character be obtained. It was further reiterated in the letter that if the same had not been done, necessary arrangements should be made for the same. The late husband of the petitioner kept on working and also received appreciation letters from the higher authorities. When things did not move, the husband of the petitioner represented to his Union with regard to him being made full time employee. It appears that based on the same, the Chief Manager of the Branch wrote to the Superintendent of Police, Patna under letter dated 13.03.2006 seeking



a verification report. Matter seems to have remained pending and in the meantime, the petitioner died while being in service, at the age of about 38 years on 04.11.2011. The petitioner has averred in the writ petition that she kept approaching the Bank authorities for getting the benefits due, both to her late husband as well as to her, but the same was not done, forcing her to move the Court in the present case.

5. Learned counsel for the petitioner submitted that the petitioner is a young widow and her husband also died at young age and even though, strictly speaking, the formalities of issuing a letter making the service of the late husband of the petitioner full time was not issued by the Bank authorities, it is apparent that for all practical purposes, his service is deemed to have been that of a regular employee. Learned counsel submitted that the appreciation letters issued and also the communication of the Bank authority dated 13.03.2006 clearly reflects that the conduct of the petitioner was satisfactory. It was submitted that the stand taken by the respondents that he was frequently absenting himself cannot be a ground, for the reason, that the first allegation of being absent is of few days and that too in the year 1997 whereas in the year 1995 itself, the decision to make him regular/full time had already been taken and only a formality of police verification was required, for which also the onus was on the Bank authorities in which the late husband of the petitioner



had no role to play. As far as the opening of CPF account is concerned, it was submitted that besides the late husband of the petitioner being ill informed because of his social position, it is the responsibility of the employer to ensure that all formalities, including signing of papers as may be required, is completed. It was, thus, submitted that all these technicalities and formalities cannot defeat the basic cause of the petitioner which entitled her to receive benefits of the service rendered by her late husband.

6. Learned counsel for the Bank submitted that the late husband of the petitioner was never brought into regular establishment and further that he was a habitual absentee and that the legal formalities of opening CPF account and of completing the paper formalities not having been done by the late husband of the petitioner, no fault can be attributed to the Bank. It was further contended that the salary for whatever period the late husband of the petitioner had worked has also been paid to him but only in the daily wages scale due to non-opening of CPF account. It was submitted that it is the liability of the employee himself to submit the relevant papers for opening of CPF account. Learned counsel further submitted that there has been no deduction of any CPF amount from the salary of the late husband of the petitioner.

7. Learned counsel for the petitioner, by way of reply,



submitted that the objection raised by the Bank is not tenable, for the reason, that it has now been settled by various judgments that it is the duty of the employer to ensure that all formalities, including signing of papers have to be ensured by the officers and the liability cannot be fastened on the employee and that, if required, the authorities have to go to door step of the employee to get the formalities completed. For such proposition, he relied upon the decision of a co-ordinate Bench of this Court in C.W.J.C. No. 7839 of 2012 dated 05.10.2012 in the case of **Veena Devi Vs. The General Manager P.F. and Pension Fund Department, PNB Head Office and Ors.** It was submitted that the Court has also held that whatever deficiency exists in legal formalities have to be communicated to the concerned and the communication has to be borne out from the records by taking a receipt.

8. Having considered the matter, though there cannot be any dispute that the service of the late husband of the petitioner was never formally made regular, but from the facts and circumstances of the case and conduct of the authorities, the Court has no hesitation to hold that for all practical purposes, it shall be deemed that the late husband of the petitioner was brought in regular establishment of the Bank. The recommendation for his service to be made full time was way back in September, 1995 and the only requirement was a formal



police verification with regard to his character. Nothing has been brought on record to show that there was any allegation against the late husband of the petitioner with regard to his character and, thus, for a low placed employee, who has no control over the affairs of the Bank, the inaction on the part of the authorities will not dissuade the Court from intervening in his favour, as is required in the present case.

9. Further, even the allegations which have been levelled against the late husband of the petitioner in the counter affidavit of having been absent for various periods, besides the same being without pay, no steps were taken to either terminate his service or even place him under suspension or any proceeding started against him. Moreover, such allegations have been brought before the Court only by way of making a statement in the counter affidavit, without any supporting documents and most surprisingly, though the allegation of being absent for small period starts from 1997, but even in the year 2006, while asking for a police verification from the Senior Superintendent of Police, Patna, a clean chit has been given where it has been stated that his conduct has been satisfactory. Thus, the service of the late husband of the petitioner is held deemed regularized/made full time as Sweeper in the Bank with effect from October, 1995. However, as the formalities which were required to be



done have not been completed, the Court would not put the blame entirely on the Bank authorities as it may not be deliberate and many officers have changed their position, but the same would not absolve the Bank from taking the responsibility, as whatever had to be done, was by the Bank, with regard to getting any police verification and issuing a formal letter with regard to the service of the petitioner being made regular/ full time.

10. The Court is fortified in its views by the consistent pronouncements of the Court, including the Hon'ble Supreme Court, that the conduct of the employer *vis a vis* the employee is also a pointer to the actual status of the employee and in the present case, if the late husband of the petitioner had not died at the age of 38, he would have a valid and sound claim for his service being regular/full time.

11. It is also the admitted position at the Bar that had the services of the late husband of the petitioner been formally brought in the regular scale, he would have been entitled to all death-cum-retiral benefits.

12. Accordingly, taking an overall, compassionate, sympathetic and equitable view in the matter and also being conscious that such view is not illegal or directly in the teeth of any settled law or statutory provision, once having held that the service of the late



husband of the petitioner has to be deemed as regular/full time with effect from October, 1995, all consequential benefits accruable are also held to be payable by the Bank to the petitioner. The same shall be subject to completion of all legal and paper formalities required.

13. The exercise be completed within two months from the date of production of a copy of this order before the respondent no. 4.

14. The writ petition stands allowed in the aforementioned terms.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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