

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13830 of 2006

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Most. Sumitra Devi, aged about wife of Late Ganga Prasad Yadav, Resident of
Village- Sahebganj Bind Toli, P.O.- Champa Nagar, P.S. Nath Nagar, District-
Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Higher Education,
Government of Bihar, Patna.
2. The Vice- Chancellor, Tilka Manjhi Bhagalpur University, Bhagalpur.
3. The Registrar, Tilka Manjhi Bhagalpur University, Bhagalpur.
4. The Superintendent, Student Welfare, Tilkamanjhi Bhagalpur University
Hostel, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan Kumar, Advocate
For the University	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Manoj Kumar Sinha, A.C. to G.A. 9

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 22-03-2018

Heard learned counsel for the petitioner; State and T.M.

Bhagalpur University (hereinafter referred to as the 'University').

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

*“(i) A writ in the nature of mandamus or
any other appropriate writ order or direction
commanding the respondents to pay the petitioner
all death cum retiral benefits including family
pension, Gratuity, Provident fund, Group Insurance
Rs. 96,000/-, Leave encashment and others dues of*



the petitioner which is lying with the respondents.

(ii) A writ in the nature of mandamus or any other appropriate writ order or direction commanding the respondents to pay interest on delayed payment of all kinds of pensionary benefits and other dues in the light of Government's order issued under memo no. P.C.-2-1-16/79/3157 dated 07.11.1981 as well as panel interest litigation cost.

(iii) Any other/others relief or reliefs to which the petitioner be deemed entitled."

3. At the very outset, learned counsel for the University raised a preliminary objection and submitted that the petitioner, along with her son, had also filed C.W.J.C. No. 13283 of 2006, which was disposed off by order dated 06.05.2010. It was submitted that though the said writ petition was filed seeking appointment on compassionate ground of the son of the petitioner and the writ petition being disposed off with a direction to the authorities of the University to consider for appointment on compassionate ground within a period of three months from the date of receipt/production of a copy of this order, the Vice Chancellor has passed a detailed order dated 03.08.2011, in which the claim, both for death-cum-retiral benefits as well as for appointment on compassionate ground, has been rejected. It was submitted that the thrust of the order is basically with regard to the status of the service of the late husband of the petitioner and for reasons assigned in the order itself, it has been held that the service of the petitioner was never on a sanctioned



post and, thus, once the same is so held, neither can there be any entitlement to death-cum-retiral benefits nor for appointment on compassionate ground. Learned counsel submitted that the said order was passed pursuant to the case filed by the petitioner and her son and, thus, she shall be presumed to be aware of the order and till date not having challenged the same, the relief claimed in the present writ application cannot be granted to her. In support of the order, learned counsel also drew the attention of the Court to various directions of the Hon'ble Chancellor of the Universities indicating that there had been large scale illegal appointments made by the University authorities and a specific direction was given to take corrective measures and it was further indicated that if any payment is made to such appointees, the officer concerned shall be held liable.

4. Learned counsel for the petitioner submitted that the order was passed in a case which was filed seeking appointment on compassionate ground and not for death-cum-retiral benefits and, thus, the said order would not have any bearing in the present case. He further submitted that the order was passed during the pendency of the present writ application. He submitted that on merits, he has sufficient material to indicate that the discussions made in the order are factually incorrect and the service of the late husband of the petitioner had been absorbed. It was also contended that a similarly



situated person namely, Jwala Prasad Singh, was also granted retiral benefits on the basis of the order passed by the Court. It was further contended that till date, no termination order against the late husband of the petitioner has been served either to him or to the petitioner. It was contended that though the stand of the University is that the late husband of the petitioner was removed from service in the year 1999 but subsequently, even in the year 2002, there is a transfer order which clearly indicates that there was no termination and that he kept working till he died in harness on 04.11.2003. It was submitted that the late husband of the petitioner not having moved the Court against his termination is also not correct for the reason that the service of the late husband of the petitioner was never terminated and, thus, he is not covered in the 43 posts on which subsequent appointments were made of other persons and the petitioner's late husband was not required to move the Court as he was never removed and kept working till his death and there being no grievance against the authorities, there was no occasion for him to approach the Court.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the preliminary objection of learned counsel for the University. Once an order is passed on the claim of the petitioner directly holding her not entitled to death-cum-retiral benefits, the



same, unless set aside, no relief can be granted in the present writ application. It was incumbent upon the petitioner to assail the same *in toto*, for the reason that it was pursuant to an order by the Court in the writ petition filed by her and, thus, any order passed is presumed to be within the knowledge of the petitioner. The order being of the year 2011 and not assailed, without the same being interfered with, the petitioner cannot be held entitled to death-cum-retiral benefits, for the reason that detailed reasons have been given for the University to come to the conclusion that the petitioner's husband was never appointed on a sanctioned post and his service was terminated. Such action of the University has to be specifically assailed so as to give opportunity to the other side to counter the claim of the petitioner with regard to the validity of the service of her late husband.

6. Though learned counsel for the petitioner tried to address the Court on merits relating to the appointment of the late husband of the petitioner, but the Court finds it difficult to go into the same as the order dated 03.08.2011 remains unchallenged.

7. After the arguments were concluded and the Court was to start dictating its order, learned counsel for the petitioner submitted that copy of the supplementary affidavit of the University has been filed after service of copy to him only today. The Court



does not find any reason to take cognizance of the same for the reason that copy of the order has only been brought on record which is presumed and deemed to be in the knowledge of the petitioner as, at the cost of repetition, the same was passed on the claim of the petitioner herself and her son and upon an order to do so by the Court in the writ petition filed by her, where the Court had also fixed a time frame of three months for passing of the order and if at all the order was actually not passed, the petitioner would naturally have moved the Court alleging non compliance of the order. The same not having been done, the Court has no reason to presume that the petitioner was unaware. Further, if at all, any time is to be prayed for adjournment, the same has to be done at the very outset before arguments are advanced and not after the arguments have concluded and the Court is to start dictating the order, for at that stage prayer for adjournment on any ground cannot be sought as a matter of right. Moreover, in the present case, the Court is only upholding the preliminary objection of the University with regard to an order dated 03.08.2011 holding her not entitled to get death-cum-retiral benefits remaining unchallenged/uninterfered with, the relief prayed in the present writ application cannot be granted to her.

8. Accordingly, the writ petition stands disposed off.

9. However, it shall be open to the petitioner to take



appropriate steps, in accordance with law, before the appropriate forum, with regard to the order passed by the Vice Chancellor of the University dated 03.08.2011, copy of which is Annexure-B to the supplementary counter affidavit filed on behalf of the University.

(Ahsanuddin Amanullah, J.)

P. Kumar

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