

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4103 of 2017

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Sheela Devi @ Shila Devi Wife of Late Sidhnath Prasad resident of Village +
P.O. - Gopalpur, P.S. - Belchhi, District-Patna, presently residing at Village -
Sisauna, P.O. + P.S.-Jokihar, District - Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary of Public Health Engineering Department, Bihar, Patna.
2. The Principal Secretary of Public Health Engineering Department, Bihar, Patna.
3. The Engineer-in-Chief-cum Special Secretary, Public Health Engineering Department, Bihar, Patna.
4. The Chief Engineer (Mechanical) of Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer Public Health Engineering Department, Purnea Circle, Purnea.
6. The Executive Engineer, Public Health Division, Araria, District - Araria.
7. The Divisional Account Officer, Public Health Division, Araria.
8. The Treasury Officer, Araria, District - Araria.
9. The Accountant General (A & E), Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siyaram Pandey
For the State	:	G.P. 4
For the AG	:	Mr. Kumar Priya Ranjan, SC Mr. Niraj Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-05-2018

The petitioner by way of the present writ petition has
prayed for payment of arrears as per Memo No. 712 (Finance)
dated 25.01.2008, letter contained in Memo dated 12.05.2016



and as per letter dated 23.09.2016 of the Finance Department after revising the pay-scale as well as after revising the pension, gratuity, leave encashment etc. It has further been prayed to pay a compensation of Rs. 7,00,000/- and interest at the rate of 12.5 % per annum for the delayed payment.

2. The brief facts of the case are that the husband of the petitioner died in harness on 20.01.2009. It has been stated that the husband of the petitioner was absorbed under the work charge establishment on 25.01.1988 on the post of Khalasi, however, the services of the husband of the petitioner was finally regularized in the year 2006 on the newly sanctioned post of Keyman-cum-Chaukidar. After the death of the husband of the petitioner in the year 2009, the petitioner had approached the Department for grant of pension and other death-cum-retiral dues, however, nothing was paid to the petitioner and ultimately, she was constrained to approach this Court by filing a writ petition bearing C.W.J.C. No. 2246 of 2012 and this Hon'ble Court by an order dated 04.09.2012 had allowed the writ petition with a direction to the Respondents to ensure payment of family pension and other death-cum-retiral dues including gratuity, leave encashment, group insurance and GPF to the petitioner herein / competent heir of the deceased within a



period of three months. The Respondents had filed an appeal against the aforesaid order dated 04.09.2012, however, the same was dismissed with a finding that the duration of service rendered by the husband of the petitioner in the work charge establishment before induction in regular establishment has to be added to the total duration of his service, thus, making it pensionable and further entitling the petitioner herein to family pension and other post retiral dues of the deceased. The Respondents had then filed a Special Leave Petition before the Hon'ble Supreme Court, but the same was also dismissed. Subsequently, the Respondents had filed a Review Petition bearing Civil Review No. 210 of 2014 whereas the petitioner had filed a contempt petition bearing M.J.C. No. 852 of 2013 and the same were heard together by this Court and the learned Division Bench by an order dated 21.09.2015 while dismissing the review application had directed for listing the contempt application before the appropriate Single Judge for further orders. During the course of the pendency of the contempt petition, the entire death-cum-retiral dues was paid to the petitioner herein, hence, while disposing of the said contempt petition, this Court by an order dated 10.08.2016 granted liberty to the petitioner to file another writ petition for getting arrears of



revised pay-scale. In such view of the matter, the petitioner has filed the present writ petition claiming arrears of revised pay-scale and her claim has been summarized in paragraph No. 13 of the present writ petition.

3. Per contra, the learned counsel for the respondent, referring to the counter affidavit filed on behalf of the Respondent No. 9, has submitted that upon receipt of the revised sanction order and service book from the Executive Engineer, Public Health Division, Araria vide letter No. 1054 dated 15.12.2015, the amount of family pension and death gratuity in the scale of PB-1 + 2000 G.P. has been authorized vide authority letter dated 14.01.2016 and has been sent to the Treasury Officer, Araria for payment. It has further been stated that the Executive Engineer, Public Health Division, Araria has been requested vide letter dated 30.03.2017 to examine the case of the petitioner and in case, decision has been taken by the department to revise the retiral benefit then the sanction order along with the service book of the husband of the petitioner should be sent for further action. The letter No. 1054 dated 15.12.2015, annexed to the counter affidavit, filed by the Respondent No. 9 clearly shows that the pay-scale of the husband of the petitioner has been revised to Rs. 2610- 3540/-



whereafter, the husband of the petitioner has been granted the Central 6th Revised Pay-Scale and the husband of the petitioner has been granted the pay-scale of 5200-20200/-, grade pay 1900 and on account of completion of 20 years of service, he has further been granted the benefit of second A.C.P and consequently, he has also been granted the benefits of grade pay of Rs. 2000/- thereafter, necessary steps have been taken for revision of the pension, gratuity and family pension. In fact, the revised P.P.O order dated 14.01.2016, enhancing the family pension has also been annexed with the said counter affidavit filed by the Respondent No. 9 along with the revised DCR Gratuity payment order dated 14.01.2016.

4. The Respondent Nos. 1 to 7 have also filed a counter affidavit and it has been submitted that for the same and similar relief, the petitioner had also filed a writ petition bearing C.W.J.C. No. 7318 of 2014 before this Court for the following reliefs:-

“(i) to take the service of the husband of the petitioner into work charge establishment just after completion of 240 days working period into daily wages/muster roll as was done in case of the other similarly situated persons.

(ii) to grant promotion to the husband of the petitioner from the post of Nalkoop Khalasi to the post of Work Sarkar/work inspector as has been done in the case of similarly



situated persons or juniors to him.

(iii) To regularise the service of the husband of the petitioner on 02.01.1991 just after completion of 10 years service of the husband of the petitioner in the work charge establishment i.e. 01.01.1981 as has been done in case of other similarly situated persons.

(iv) To grant the First and Second A.C.P. to the husband of the petitioner.

(v) To grant the payment of the amount of honorarium and amount of ex-gratia to the tune of Rs. 10 Lacs for which the petitioner is legally entitled for as her deceased husband (employee) during the relevant period of his death was deputed on duty for flood relief works at flood, relief camp by respondent authorities knowingly and intentionally since he was handicapped and was deputed at flood relief camps which caused and lead to his death for which special honorarium and ex-gratia amount are payable to the employees or their heirs.

(vi) to revise the payment of all retiral-cum-death benefits including Family Pension, gratuity, Leave Encashment as per the recommendation of sixth pay revision.

(vii) To pay the arrear of salary from 01.01.1981 to 20.01.2009 to the petitioner after the death of her husband who died in harness on 20.01.2009 as has been done in the case of similarly situated persons of the Public Health and Engineering Department.”

5. It is further submitted that in the present proceedings, the petitioner has not only suppressed the factum of filing of the said writ petition, but has filed the present writ petition with oblique motives with a view to snatch an order from this Court. It has further been submitted that the pay-scale of the husband



of the petitioner has been revised, as aforesaid, and in fact, the benefits of M.A.C.P. has also been granted to the husband of the petitioner herein. It is further submitted that the husband of the petitioner was granted the benefit of 1st A.C.P. with effect from 23.01.2000 and the benefit of 2nd A.C.P. with effect from 26.01.2008 in light of the letter No. 3972 dated 12.05.2016. It has also been stated that the arrears for the period 01.04.1997 to 31.03.2007 has also been paid to the petitioner. The learned counsel for the Respondents has also submitted that there is no delay in payment of the dues of the husband of the petitioner since he was initially engaged without any advertisement on daily wages in the year 1981 and subsequently, he was taken into the work charge establishment in the year 1988, which was not on any sanctioned or vacant post. It has further been submitted that the services of such work charge establishment employees were terminated in the year 2002, however, subsequently, they were absorbed in the permanent establishment on the newly sanctioned post in the year 2006 and the said absorption was to be treated as fresh appointment and not as continuation of the service, but nevertheless, on account of various judicial pronouncements, the Respondents had to give the benefit of the service rendered by the petitioner



in the work charge establishment for the purposes of computation of various benefits / death-cum-retiral dues / benefits of A.C.P. etc.

6. The petitioner has filed a reply to the counter affidavit, however, the aforesaid averments made in the counter affidavit have not been disputed by the petitioner. It has also not been disputed that the petitioner has suppressed the factum of filing of another writ petition bearing C.W.J.C. No. 7318 of 2014 for almost same and similar reliefs which has also been dismissed by an order passed by this Court dated 31.10.2017.

7. Having regard to the facts and circumstances of the case and having heard the learned counsel for the parties as also having perused the materials on record, I am of the opinion that the present writ petition is clearly barred by the principles of res judicata and moreover even on merits, the petitioner does not have any case inasmuch as the averments made in the counter affidavit filed by the Respondents as also the annexures annexed thereto clearly show that all the grievances of the petitioner stands redressed.

8. I am of the opinion that the petitioner has apparently tried all the tricks to somehow obtain extra pound of flesh from the respondents resulting in filing of successive writ petitions,



the previous one being C.W.J.C. No. 7318 of 2014 which has been dismissed by this Court and it has been specifically held that the petitioner is not entitled to get ex gratia payment of Rs. 10,000,00/-. Hence, this Court finds that the present case is an abuse of the process of the Court, thus, the writ petition is dismissed.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.05.2019
Transmission Date	NA

