

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.452 of 2017
IN
Civil Writ Jurisdiction Case No. 11879 of 2015**

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Mostt. Nagjadi Devi, W/o Late Shaligram Sharma, R/o Village- Chatar, P.O.- Hati,
P.S.- Kako, District- Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Inspector General of Police, Govt. of Bihar, Patna Region, Patna.
4. The Senior Superintendent of Police, Darbhanga.
5. The Inspector General of Police, Darbhanga Region, Darbhanga.
6. The Superintendent of Police, Saharsa.
7. Accountant General, Govt. of Bihar, Patna.
8. Treasury Officer, Jahanabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dinesh Jha, Advocate
For the State : Mr. P.K. Verma, AAG-3
Mr. S.K. Sharma, AC to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-02-2018

Petitioner widow has filed this appeal under Clause-X
of the Letters Patent seeking exception to an order dated 13.1.2017,
passed by the learned Writ Court in C.W.J.C. No.11879 of 2015
whereby the writ petition, claiming family pension and challenge to
the order of stopping the family pension has been rejected.

Having heard learned counsel for the parties, we find
that the petitioner's husband, who was working as a Sub Inspector of
Police in Darbhanga, was convicted for an offence under Sections
5(1)(a) and 5(2) of the Prevention of Corruption Act and this



conviction being a bar for grant of pension under Rule 43(a)(b) of the Bihar Pension Rules, the pension inadvertently and incorrectly granted to the petitioner's husband and thereafter family pension to the petitioner has been stopped and the learned Writ Court, after examining the provisions of Rules 43 (a)(b) of the Rules, has held that conviction of the petitioner's husband is a bar for grant of pensionary benefit and has refused to interfere into the matter.

During the course of hearing, learned counsel for the appellant pointed out that the conviction of her husband is challenged by the appellant and is pending consideration in Cr. Appeal No.938 of 2010 before a learned Single Bench of this Court and as such the pension should be continued.

However, Sri P.K. Verma, learned Senior Counsel representing the State, points out that in the Cr. Appeal No.938 of 2010, which was filed by the petitioner's husband, there is no stay of the conviction. There is only an interim order granting bail to him and as the effect of the conviction is still in subsistence, he relies upon the law laid down by the Hon'ble Supreme Court in the case of Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera reported in (1995) 3 SCC 377 and the subsequent judgment of the Supreme Court in the case of Government of Andhra Pradesh vs. B. Jagjeevan Rao reported in (2014) 13 SCC 239 to contend that so long as the conviction is not



stayed, the disqualification attached to the conviction subsists and at this stage when the conviction is in force, the pensionary benefit cannot be granted in view of the bar created by Rule 43 (a) and (b) of the Bihar Pension Rules.

We are of the considered view that the submissions made by Sri Verma are correct. Under Rule 43 (a) and (b), conviction of a person is a bar for claiming pension and so long as the conviction of the employee subsists, no indulgence or pensionary benefits can be conferred and in rejecting the writ petition on such consideration the learned Writ Court has not committed any error warranting reconsideration. However, in case in Cr. Appeal No.938 of 2010 the conviction is set aside, right would accrue to the appellant to seek pension afresh in accordance with law.

With the aforesaid liberty granted to the appellant, in case the Cr. Appeal is decided in her favour, we dispose of the matter.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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