IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13413 of 2011

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Smt. Sushila Devi, Wife of Late Rameshwar Prasad, Resident of Village-Suitha, P.O. Suitha, P.S. Suitha, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Accountant General, Bihar, Patna.
3. The Secretary, Food & Consumer Protection, Bihar, Patna.
4. The President-cum-Chairman, District Consumer Forum, Motihari, East Champaran.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 15-03-2018

Heard learned counsel for the petitioner and the State.

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

> *" That this is an application for issuance of writ in the nature of certiorari, order or orders, direction or direction, for quashing the order passed by respondent no. 4 vide memo No. 271 dated 18.04.2011 whereby and whereunder directed to the Petitioner to deposit excess paid amount in treasury which was paid in Gratuity, Earn Leave and of other heads as the period of service spent in corporation have been discarded out of the period of service spent in Government service."*

3. The petitioner is aggrieved by the fact that his husband after having worked under the State died in harness on 25.03.2003. Thereafter, death-cum-retiral benefit was paid to the petitioner, being

a widow. However, by the impugned order dated 18.04.2011, she has been directed to deposit unspecified amount on the ground that excess payment was made under Gratuity and Earned Leave by counting the period spent under the Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation'), which was not to be counted, along with period spent under the State Government.

4. Learned counsel for the petitioner submitted that she is the widow and soon after the death of her husband in the year 2003, all the benefits were paid to her and now after eight years, there being an order directing her to deposit the excess amount is arbitrary, unreasonable and inequitable. He submitted that the law has been settled by the Courts holding that the recovery after death is impermissible for amount which may have been drawn by the employee during his service period and, thus, by the same analogy, the benefit derived by the widow of death-cum-retiral benefits after eight years, that too, in connection with a widow of a IIIrd grade employee, cannot be justified. For such proposition, he relied upon the decision of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafiq Masih** reported in **(2015)4 SCC 334**.

5. Learned counsel for the State admitted that soon after the death of the employee in harness on 25.03.2003, all benefits have

been given and the direction to deposit excess amount has been issued on 18.04.2011. However, he submitted that the payment was made taking into consideration the period spent under the Corporation prior to him being absorbed in State Government service.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned cannot be sustained.

7. Besides various decisions of the Courts holding such action to be impermissible and even in some cases, the issue as to whether time spent under the Corporation would be counted for the purposes of pensionary benefits, may be pending before a larger Bench of the Court, the same would not have much bearing on the present case for the reason that after the death in harness of the late husband of the petitioner on 25.03.2003 and payments made to her soon thereafter, no recovery or direction to deposit any perceived excess amount is clearly iniquitous, moreso, as she is advanced in age being the widow of a Class-III employee and it can be reasonably and safely presumed that whatever amount she may have received in the year 2003, must have been spent within a few years thereafter and now calling upon her to deposit or refund or return the amount would not be just and proper.

8. In view thereof, the writ petition stands allowed. The impugned order contained in Memo No. 271 dated 18.04.2011 issued under the signature of the respondent no. 4 stands quashed.

9. It is held that there shall not be any recovery of whatever amount which has already been paid to the petitioner under death-cum-retiral benefits relating to her husband having died in harness on 25.03.2003. If the same has been done, the amount be refunded forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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