IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2334 of 2014

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1. The Union Of India , Through The D.G. Cum Secretary Department Of Posts, Dak Bhawan, New Delhi
2. The Chief Post Master General, Bihar Circle, Patna
3. The Director Account (Postal) , GPO Complex, Patna
4. The Post Master General, Northern Region, Muzaffarpur
5. The Director of Post Services, Northern Region, Muzaffarpur
6. The Superintendent of Post Officer, Begusarai Division, Begusarai

.... Petitioners

Versus

Sarita Rani Wife Of Late Shiv Shankar Yadav Resident of Mohalla - Professor Colony, Ram Bagh, Purnea, District – Purnea .... Respondent

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Appearance :
For the Petitioner/s : Mr. Sanjay Kumar, ASG.
For the Respondent/s : M/s. Hemant Kr. Karn, Jayant Kr. Karn, Advocates

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CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
And
HON'BLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT
(Per: HON'BLE MR. JUSTICE HEMANT GUPTA)
Date: 25-02-2016

The Union of India is aggrieved with the decision of Central Administrative Tribunal, Patna Bench Patna (for short "Tribunal") dated 13^{th} of September, 2012 whereby an Original Application filed by the respondent was allowed holding that recovery of Rs. 304898/- cannot be recovered from the death-cum-retirement benefit.

2. It was on 22^{nd} of November, 2007 Superintendent of Posts, Begusarai Division passed an order for recovery of Rs. 3,60,000/- from the pay of the husband of the applicant late Shiv Shankar Yadav to be deducted in 120 installments of Rs. 3,000/- each. Such order was challenged by the petitioner in an Original

Application under Section 19 of the Administrative Tribunal Act, 1985 which has been allowed by the impugned order.

3. The learned Tribunal found that O.A. No. 414 of 2008 filed by the husband of the applicant has abated after his death. Thereafter, the applicant filed the present O.A. No. 255 of 2011 challenging the right of the present petitioner to recover from the death-cum-retirement gratuity payable to a widow on the death of the employee. Learned Tribunal found that the employee was never held guilty of any misconduct warranting issuance of major penalty proceedings or even proceeded against under Rule 9 of the Central Civil Services (Pension) Rules, 1972 (for short the Pension Rules) Consequently, it allowed the Original Application but ordered that no order is required to be passed in the Original Application filed by husband of the applicant.

4. We have heard learned counsel for the parties and find that the Tribunal has misdirected itself in conduct of the proceedings. The order of imposition of recovery of Rs. 3,60,000/- was passed on 02^{nd} of November, 2007. The said order was challenged in O.A. No. 414 of 2008 but the Tribunal held that such proceedings have abated. If the proceedings have abated, the consequence of abatement of proceedings is that order impugned in the original application stands affirmed. Even if it is assumed that applicant has independent right to challenge the recovery vide order

dated 2nd November, 2007 Still, we find that the applicant has no basis to challenge the aforesaid order. Even before this Court, no illegality in the said order could be pointed out. The only argument raised in that amount of loss cannot be recovered from death-cum-retirement Gratuity. It could not be shown that there is any infraction of any Rule while passing such an order on 02nd of November, 2007.

5. Shiv Shankar Yadav died in harness on 25th of February, 2010.

6. Rule 73 (3) of CCS (Pension) Rules permits recovery of the amount from the death-cum-retirement Gratuity. Such Rule has been examined by Division Bench of this Court in CWJC No. 5253 of 2012. It has been held that if an order of recovery was passed when the employee was still in service, than the recovery could be affected from the death-cum-retirement gratuity. The relevant extract from the order reads as under:

> *4. Having considered the matter, in our view, the order of the Tribunal, to the extent under challenge, cannot be sustained. That there was a liability on the part of the respondent to pay the amount to the Government, is not in dispute. The order of penalty dated 27-02-2004 having attained finality, that order was passed while the respondent was still in service. The result would be that upon retirement, that amount becomes an amount due and payable to the Government. No order was required to be passed afresh after his retirement, as he had already suffered the order in a disciplinary proceeding prior to his superannuation. Thus, it being an amount due and payable at the time of his superannuation, in our view, Rule 73(3) of CCS (Pension) Rules would squarely apply, which, after its amendment in 1988, permits adjustment of amount due from retirement gratuity. Rule 73(3) of CCS (Pension) Rules reads as follows:*

> *"(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of retirement gratuity becoming payable to the Government servant on his retirement."*

> *5. In our view, this is sufficient provision and authorization to the government to adjust the amount due from retirement gratuity."*

7. In view of categorical decision of this Court in respect of the identical issue raised, we find that the order of the Tribunal runs counter to the law laid down by this Court and consequently the same is not sustainable.

8. Consequently, the writ petition is allowed. The order passed by the Tribunal is set aside and the writ application filed by the Respondent No.1 herein is dismissed.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

Rajiv/MEH

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