

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18851 of 2014**

Mostt. Kalawati Devi Widow of Late Yogendra Tiwari, resident of Village-  
Chuwar, P.S. Koran Sarai, District- Buxar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary, Deptt. of Irrigation, Govt. of Bihar, Sichai Bhawan, Patna
3. The Engineer-in-Chief Irrigation Deptt., Govt. of Bihar, Sichai Bhawan, Patna
4. The Chief Engineer, Advanced Planning Irrigation, Govt. of Bihar, Patna
5. The Superintending Engineer, Advanced Planning, Irrigation Deptt., Patna
6. The Executive Engineer, Advanced Planning Research Division Bhabhua at Patna
7. The Executive Engineer, Advanced Planning and Research Division, Buxar

... .. Respondents

**Appearance :**

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| For the Petitioner/s | : | Mr. Alok Kumar<br>Mr. Anirudh Mishra |
| For the Respondent/s | : | Mr. Mritunjay Kumar, AC to GP 3      |

**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL ORDER**

3      03-09-2019                      Writ petition has been filed seeking quashing of the order dated 30.4.2014, whereby Chief Engineer – II Rural Works Department, Patna has terminated services of petitioner's husband in purported exercise of power under Rule 76 of the Bihar Service Code after he has passed away on 1.11.2011. The order of termination has been issued more than two years after death of petitioner's husband.

Rule 76 of the Bihar Service Code upon which reliance is placed by the authorities does not contemplate such



termination of service and in this connection it would be useful to reproduce Rule 76 of the Bihar Service Code which reads as follows:-

"Unless the State Government, in view of the special circumstances of the case, shall otherwise determine a Government servant, after five years' continuous absence from duty, elsewhere than a foreign service in India, whether with or without leave ceases to be in Government employ."

(a) No Government servant shall be granted leave of any kind for a continuous period exceeding five years.

(b) Where a Government servant does not resume duty after remaining on leave for a continuous period of 5 years, or where a Government servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which together with the period of the leave granted to him, exceeds a continuous period of 5 years, he shall unless the State Government otherwise determine be removed from service after following the procedure laid down in the Civil Services (Classification, Control & Appeal) Rules and the Bihar & Orissa Subordinate Services (Discipline & Appeal) Rule 1935."

The same contemplates that in case of absence of an employee for a period of five years or more the authorities are obliged to conduct a proceeding. The same does not contemplate automatic termination or cessation of service on



account of unauthorised leave or continuance of leave for a period of five years or more.

At best the authorities could have conducted a proceeding against the husband of petitioner for his alleged long unauthorised absence.

When husband of the petitioner had made an effort to submit his joining after being away for 15 years the same was not accepted by the authorities. He approached this Court by filing a writ petition. This Court on his earlier writ proceeding arising out of CWJC No. 10282 of 2005 was not inclined to issue any direction to the authorities for accepting his joining. In fact, in those proceedings this court had given liberty to the respondents to issue a show cause and if the petitioner's reply for unauthorized absence was not satisfactory, to proceed departmentally against him.

Liberty was granted on 29.9.2010 in CWJC No. 10282 of 2005. The petitioner has died more than a year later on 01.11.2011. The respondents however took no action in the matter. Respondents have failed to take appropriate action while petitioner's husband was alive in spite of specific liberty granted to them in the earlier proceedings. The law does not permit passing an order of termination of petitioner's husband services after his death as is sought to be done by the impugned order dated 30.4.2014. In this connection this Court would refer to decision of the apex court in the case of Basudeo Tiwary vs. Sido Kanhu University, reported in (1998) SCC 194. After holding that departmental action taken against the petitioner therein, leading to his termination to be bad in law, the apex court did not allow any liberty to the authorities to proceed



against the petitioner as the same, after his death was not possible. The apex court in the circumstances treated the petitioner to have died in harness.

The order is clearly without jurisdiction inasmuch as the rule does not contemplate exercise of power for such termination of service without any proceeding. The authorities had no power to pass such an order. The order is also bad on account of the fact that in view of death of husband of the petitioner no proceeding could have been conducted against him as he was not available to face the charges on account of his unfortunate demise.

Counsel for the state submits that he has been terminated since there was a long absence of about 21 years and therefore resort to power under Rule 76 was the only option left with the authorities.

This Court would observe that said option no longer existed after 1.11.2011 as beyond the said date neither a proceeding could be conducted as per Rule 76, nor the order of termination dated 30.04.2014 could be issued without conducting any proceeding.

The order dated 30.4.2014 is legally unsustainable and is quashed. It would be open to the petitioner to take steps for availing the consequential benefits on account of quashing of the termination order in respect of her husband's service, by treating him to have died in harness, in accordance with law.

The writ petition is allowed.

SNkumar/-

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**(Madhuresh Prasad, J)**

