

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.725 of 2015

In

Civil Writ Jurisdiction Case No.6596 of 2007

Most. Geeta Devi wife of late Shailendra Singh, resident of village : Gangoi,
P S : Ishuapur, District - Chapra (Saran)

... .. Appellant/s

Versus

1. The State of Bihar through the D.G.P. Bihar, Patna.
2. The I.G of Police, Muzaffarpur Range, Muzaffarpur.
3. The D.I.G. of Police, Muzaffarpur Range, Muzaffarpur
4. The D.I.G. of Police (Human Rights), Bihar, Patna
5. The Superintendent of Police, Muzaffarpur, Patna
6. The Reserved Officer, B.M.P. - 5, Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Suresh Pd. Singh No.1
For the Respondent/s	:	Mr. Birju Prasad, G.P. 13
		Mr. Ajit Anaqnd, A.C. to G.P. 13
		Ms. Shweta Anand, A.C. to G.P. 13

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 02-01-2019

Heard learned counsel for the parties.

This appeal arises from a judgment and order dated 05.12.2013 passed by a learned Single Judge in C.W.J.C. No. 6596 of 2007, whereby the writ petition was dismissed with liberty to the petitioner to question the order of termination in appropriate proceedings because this was the plea taken by the respondents to deny her post retiral benefits as admissible to her on the death of her husband in



harness and so long the order of termination remained, the reliefs prayed were inadmissible.

Discussing briefly the facts leading to the writ petition in question, it is noticed that the husband of the petitioner was appointed as a Constable following a selection process conducted by the respondents pursuant to Advertisement No. 01 of 1998. The husband of the petitioner joined the post on 10.06.2000 and earned service benefits. It is on record that the husband of the petitioner went on sanctioned leave on 27.06.2005, as manifest from Annexure-2 to the writ petition, which was valid up till 29.06.2005 but unfortunately, in between this period he died of cardiac arrest on 28.06.2005 as confirmed from the Death Certificate at Annexure-3 to the writ petition. The writ petitioner, as it was the case of death in harness, after representing the authorities, approached this Court for payment of post retiral benefits, as is found admissible to the dependent of a Government employee dying in harness. This writ petition was filed in the year 2007 and while it remained pending, a peculiar order of termination was issued under the signature of the Senior Superintendent of Police, Muzaffarpur, whereby it is upon finding infirmity with the appointment of



the deceased employee Shailendra Kumar Singh, the deceased husband of the petitioner, that his services was terminated posthumously on 19.01.2011, with effect from the date he went on leave i.e. 27.06.2005. The order is preposterous for neither a termination can take place retrospectively nor any such order can be passed after the death of the government employee. The writ petition, however, came up for consideration on 05.12.2013 and the learned Single Judge while taking note of the order of termination passed by the Senior Superintendent of Police, Muzaffarpur dated 19.01.2011, enclosed as Annexure-B/1 to the reply to rejoinder filed by the State-respondents, did not grant indulgence to the relief prayed by the writ petitioner because until the order of termination was quashed and set aside, the petitioner could not have been granted the relief of payment of post retiral benefits. The learned Single Judge while disposing the writ petition has given liberty to the petitioner to assail the order of termination on its own merits but despite such liberty, being given, the writ petitioner, as appellant, is before this Court.

We have heard learned counsels for the parties and have perused the records and we find no infirmity in the



opinion expressed by the learned Single Judge because until such time that the order of termination is put to question on its own merits/demerits and is quashed by a competent Court, certainly the writ petitioner can not be allowed/granted the post retiral benefits as found admissible to her husband who had died in harness and/or his dependents.

Concluding thus, we do not find any infirmity in the opinion of the learned Single Judge, which also grants liberty to the writ petitioner to question the order of termination as enclosed at Annexure-B/1 to the reply to the rejoinder filed by the respondents in an appropriate proceeding. Since the liberty is already present in the order of the learned Single Judge, the writ petitioner instead of filing the present appeal, would have been well advised to take advantage of the liberty so granted by the learned Single Judge.

Learned counsel Mr Suresh Prasad Singh, attempted to question the order of termination on its validity but having noted the nature of relief that was prayed by the writ petitioner before the writ Court, we are not persuaded to enlarge the scope of the writ petition more particularly



where the liberty has already been granted by the learned Single Judge to the writ petitioner to assail the order of termination in an appropriate proceeding.

With the observation, as above, we dispose of the Letters Patent Appeal.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	A.F.R.
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