

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15381 of 2019

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Srimati Sunaina Devi Wife of Jayanand Tripathi Resident of Katira Tilak
Nagar Ward No. 17, Ara, Brahra, Ara, District- Bhojpur

... .. Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar
2. Principal Secretary Department of General Administration, Government of Bihar
3. Principal Secretary Udhyoug Bhimbhag, Patna, Bihar
4. Director Udhyoug Bhimbhag, Patna Secretariat, Patna, Bihar

... .. Respondents

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Appearance :

For the Petitioner/s : Ms.Shama Sinha, Adv.
For the Respondent/s : Mr.Kinkar Kumar SC-9

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 15-06-2020

The matter has been listed today for consideration through Video Conferencing.

Heard learned counsel for the petitioner and learned counsel for the State.

The writ petition has been filed seeking a direction upon the respondents to pay retiral benefits and family pension, arrears and interest. The petitioner claims to be the wife of late Jayanand Tripathi, whom she claims worked in the office of the Director of Industries, Bihar for about 10 years as a Routine Clerk/Typist Clerk. Her husband allegedly died in service on 03.01.1957.

About 62 years after death of her husband, the instant



writ petition has been filed with the aforesaid claims.

The petitioner's counsel submits that the petitioner is an illiterate person. She is very old. Coming from a rural background, so she could not raise her claim in time. The aforesaid facts are to be considered in the background of the fact that the petitioner was given an *ex gratia* benefits for her husband, who died while in office. It is submitted that since *ex gratia* payment has been granted to the petitioner's husband, the Authorities could not have obliterated the petitioner's right to receive pension/ family pension and other benefits also. The Authorities were obliged to process and pay the dues admissible to the petitioner on account of family pension, arrears, and now interest also. Having regard to the nature of right being claimed by the petitioner, who is undergoing penury, this Court should direct the Authorities to discharge their obligation by making payments as prayed for.

The learned State counsel submits that the writ petition apart from suffering from vice of inordinate delay and laches, is also not based on any valid and subsisting right of the petitioner. No document, whatsoever, has been placed on record to even indicate, let alone establish that the petitioner has ever served in the State Government. Other than assertions made in the writ



petition, that also vague and “on the basis of the memory of the petitioner” no foundation has been laid in the pleadings or by way of Annexures to sustain the petitioner’s claim. Even the plea that the petitioner was given *ex gratia* benefits for her husband, on the strength of Annexure-4 to the writ petition, is *ex facie*, unsustainable. The averments in paragraph no. 4.5 of the writ petition is that the petitioner was given *ex gratia* benefits of her husband. Letter No. 6068 dated 17.05.1974 has been annexed in support of such statements as Annexure-4 to the writ petition. However, Annexure-4 is not a document showing that the petitioner’s husband was given *ex gratia* benefits.

On the contrary, the same has been written by the Registrar, Industries Department, Bihar, to the petitioner asking her to submit the Form for *ex gratia* payment in five copies, properly filled up to the Industries Department, Bihar, so that appropriate steps may be taken in this regard.

Letter dated 17.05.1974, is not conclusive of the fact that the petitioner was granted *ex gratia* benefits for her husband. It is a correspondence in the midst of the claims/ process for *ex gratia* payment. Whether the same culminated by grant of *ex gratia* payment to the petitioner, or not? is not evident from Annexure-4. This Court would further observe that having



regard to the advanced age of the petitioner, in the back ground of her rural and illiterate identity, this Court may have overlooked the long and inordinate delay. The same, however, could have been done had there been any semblance of right made out by the petitioner for the claim she has raised. Unfortunately, for the petitioner, there is no such basis, whatsoever, in the writ proceedings. In fact, from paragraph no. 4.2 of the writ petition, it appears that the claim is only based on facts founded on memory of the writ petitioner. Para 4.2 of the writ petition reads as follows:-

“4.2 That it is humbly stated that on the basis of the memory of the petitioner, the husband of the petitioner was in -service for about 10 years as Routine Clerk (Typist Clerk) in the office of Director of Industries, Bihar. The husband of the petitioner died in service on 03.01.1957.”

This Court would consider it appropriate to reiterate the settled law for invoking writ jurisdiction of this Court under Article 226 of the Constitution of India. Existence of a legally enforceable right is a pre requisite to the invocation of jurisdiction under Article 226 of the Constitution of India. It is only if there is such a subsisting right that the writ Court would exercise its jurisdiction to ensure that the corresponding



duties/obligation is discharged by the State or its authorities. Only if a legally enforceable right subsists, an order or direction in the nature of a writ of mandamus is issued under Article 226 of the Constitution of India. From the pleading of the writ petition, it is not possible to arrive at a conclusion regarding existence of any right, whatsoever, for enforcement of which the writ petition has been filed.

In the counter affidavit filed on behalf of the respondent nos. 3 and 4, also the respondents have categorically stated that they made all efforts to search for document relating to the petitioner's husband, and her alleged claim that he was in service in the office of the Director of Industries, Bihar. After such an exercise, no link of the deceased could be established with the Government at all, on the basis of any authentic documents whatsoever.

Neither the petitioner has produced any material to make out a case that her husband ever served the State Government nor the same is available in the records of the State Government, to show that the petitioner's husband ever served the State Government as a routine clerk in the office of the Director of Industries. In absence of any material whatsoever, the petitioner cannot be permitted to raise any claim. Since no right of the



petitioner has been made out, the Authorities have no other alternative then to reject the claim of the petitioner for grant of any retiral benefits.

No enforceable claim of the petitioner is made out in the writ petition.

The same is dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	24.06.2020
Transmission Date	24.06.2020

