IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17342 of 2018

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1. Raj Laxmi D/o Late Lalmani,
2. Rahul Kumar, S/o Late Lalmani, Both resident of Mohalla- Chailital, Takiya ke Peche, P.S.- Alamganj, Distt- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Finance, Govt. of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Accountant General, Bihar, Patna.
5. The District Education Officer, Patna.
6. The District Programme Officer Estb., Patna.
7. The District Accounts Officer, Patna.
8. The District Treasury Officer, Patna.
9. The Drawing and Disbursing Officer, Vyapar Mandal Kanya Madhya Vidyalaya, Fatuha, District- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Santosh Kumar Singh, Advocate
For the Respondent/s : Mr.Smt. Shilpa Singh- GA12
For the Accountant General : Mr. Manish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 10-07-2020

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Accountant General, Bihar, Patna.

The instant writ application has been filed by the petitioners praying therein for directing the respondents to grant family pension in favour of the petitioner no. 1 along with the entire consequential benefits and arrears thereof as mother of the petitioners died in harness during service period on

29.5.2015 while working as Assistant Teacher in *Utkramit Madhya Vidalaya*, Jethuli, Patna and also for quashing the communication contained in memo no. 10-12-390 dated 15.6.2018 issued by the Accountant General, Bihar, Patna.

The case of the petitioners in brief is that the mother of the petitioners who was an Assistant Teacher in *Utkramit Madhya Vidyalaya*, Jethuli, Patna died in service on 29.5.2015 leaving behind one daughter and one son who are the petitioner nos. 1 and 2 respectively. The father of the petitioners had predeceased their mother, on 13.12.2007. It is the case of the petitioners that immediately on death of their mother the petitioner no. 2, who happens to be the elder of the two petitioners, informed the authority concerned for family pension and also submitted an application on 27.11.2015 before the District Programme Officer (Establishment), Patna requesting him to grant the death-cum-retirement benefit in favour of his sister, the petitioner no. 1. Although some amounts were transferred in the account of the petitioner no. 1 and some amounts in the account of petitioner no. 2, however, the details of head from which payments were made were not provided. Provisional pension was paid in favour of petitioner no. 1 vide memo no. 781 dated 25.1.2016 but unfortunately the same was stopped by the Drawing and Disbursing Officer from the month of February 2016. In reply to memo no. 1248 dated 5.5.2018, on 15.6.2018 the Accountant General sent a letter to the District Programme Officer (Establishment), Patna to recommend the name of the petitioner no. 2 in place of petitioner no. 1 and remitted the matter back. The petitioner no. 1 filed several representations and not having got relief the petitioners have filed the instant writ application for the relief as stated above.

A counter affidavit has been filed on behalf of the Accountant General, Bihar, Patna and a separate counter affidavit has been filed on behalf of the District Programme Officer (Establishment), Patna.

Without going into the details of the contentions raised by the respective parties, it may be stated here that the prayer of the petitioners in the writ application is that the family pension of the mother of the petitioners who died in harness be granted in favour of petitioner no. 1 along with the consequential benefits and arrears. As per the counter affidavit of the District Programme Officer (Establishment), Patna, the petitioner no. 1 is younger to petitioner no. 2 and as per provision, family pension can be issued in the name of elder child of the deceased. It is further stated that in view of the request made by the petitioners, the family pension was sanctioned in the name of petitioner no. 1 and sent to the office of the Accountant General, Bihar, Patna but the same was returned with a direction to send the sanction in favour of the elder child ie the son of the deceased employee. It is further submitted that in view of the provisions under the Bihar Pension Rules, it is the elder child of the deceased, the petitioner no. 2 in the instant case, who is entitled to get family pension till he attains the age of 25 years and thereafter the second child i.e. petitioner no. 1 who is an unmarried daughter will continue to receive the family pension till she attains the age of 25 years, or her marriage, whichever is earlier. However the relevant provision has not been brought on record. It is also stated in the counter affidavit that the date of birth of the petitioner no. 2 is 18.9.1994.

From the statements made in the counter affidavit filed on behalf of respondent no. 6, the date of birth of the petitioner no. 2 being 18.9.1994, the petitioner no. 2 attained the age of 25 years on 18.9.2019. On this being pointed out, learned counsel appearing for the State submitted that the State has no objection as even on earlier occasion they had sent recommendation for grant of family pension in favour of petitioner no. 1, however, it was the office of the Accountant General, Bihar who had returned the same. On this it was submitted by learned counsel appearing for the Accountant General, Bihar that since the petitioner no. 2 has attained the age of 25 years, the Department may send the sanction of pension in favour of petitioner no. 1 and the Accountant General, Bihar will issue the required authority letter.

Having heard learned counsel for the parties and in view of the facts and circumstances of the case, it is directed that the respondent District Programme Officer (Establishment), Patna (respondent no. 6)/respondent concerned shall sanction the family pension in name of the petitioner no. 1 and send the same to the Accountant General, Bihar within a period of four weeks of receipt of a copy of this order and the Accountant General, Bihar shall issue the necessary authority letter/sanction in favour of the petitioner no. 1 within a period of four weeks of receipt of the communication/sanction from the respondent no. 6. So far as the arrears of family pension, till the date the petitioner no.2 attained the age of 25 years is concerned, the same shall be paid by the respondent authorities to the petitioners in accordance with law. The arrears of family pension from the date that the petitioner no.2 attained the age of 25 years is concerned shall be paid in favour of petitioner no.1. The payment of arrears should be made to the petitioners within a period of four months.

The writ application stands allowed with the above observations and directions.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	