IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18972 of 2019

Nirmala Devi, W/o Late Shashikant Chaudhary (Ex-Police Inspector, Sheikhpura), Permanent R/o Village and Post Kurso Nadiyani P.S. manigachhi, District- Darbhanga. Presently R/o Santosh Sharma, Henymen Street, Vachaspati Nagar, Kumahrar, P.S. Agam Kuan, Dist. Patna.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary- Cum- Commissioner, General Administration Department, Government of Bihar, Patna.
2. The Director of General of Police, Munger.
3. The Inspector General of Police, Munger.
4. The Deputy Inspector General of Police, Munger.
5. The Superintendent of Police, Sheikhpura.
6. The Accountant General, Bihar, Virchand Patel Path, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar
For the Respondent/s	:	Mr.Sheo Shankar Prasad (Sc8)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 03-03-2020

This writ application has been filed by the petitioner, who is widow of one Shashikant Choudhary, who was serving as Sub-Inspector of Police. She has filed the present writ application seeking direction to the State respondents to pay to her all retiral benefits, which her husband was entitled to receive and fix the petitioner's family pension accordingly.

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There are certain facts, which are not in dispute. The petitioner's deceased husband was appointed as Sub-Inspector of police in the year 1981. He was made an accused in Boyarijor (Godda) P.S. Case No. 144/92 for the offences punishable under Sections 343/323/302 and 201 of the Indian Penal Code. He was convicted by the Trial Court and sentenced to imprisonment for life by the judgment and order of the Trial Court dated 25.04.2012. He was placed under suspension thereafter on 03.10.2012. During the period of suspension, he died on 03.02.2016.

After the death of her husband, the petitioner approached the respondents for payment of death-cum-retiral dues. As the petitioner could not get any substantial relief, she has filed the present writ application. Admittedly, a departmental proceeding was initiated against the petitioner's husband on 04.03.2013. Before the departmental proceeding could conclude, he died on 03.02.2016 and the Department, having no other option, decided to drop the said departmental proceeding by an order dated 05.07.2018.

A counter affidavit has been filed on behalf of the respondent State of Bihar, wherein it has been stated that no approval of payment of pension was granted by the Administrative Department, because the petitioner's husband was undergoing

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imprisonment. It is the case of the State of Bihar that in terms of Finance Department Memo No. 9505 dated 03.09.1964, benefit of family pension is not admissible to the spouse of such employee. It has been stated that cash equivalent to un-utilized earned leave, which the petitioner's husband was entitled to, has not been paid. An advisory has been issued by the Finance Department, Government of Bihar in this regard.

So far as payment of cash, equivalent to un-utilized earned leave, is concerned, let there be no doubt that an employee earns days of leave on the basis of the days for which he discharges his duties. After having earned the said days of leave, if the leave remains un-utilized, an employee acquires title to receive cash equivalent thereto, subject to maximum limit. There is no provision, statutory or otherwise, which can stop payment of cash equivalent to un-utilized earned leave, which is equivalent to salary, which an employee earns.

It is accordingly directed that let the respondent compute un-utilized earned leave of the deceased employee and corresponding equivalent cash, which was payable to him. It is also directed that if any earned leave is found in the leave account of the deceased employee, the State respondents are obliged to pay

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the equivalent cash to an employee and in the present case to his successor.

So far as payment of pension and gratuity is concerned, Rule 43(a) and Rule 43(b) of the Bihar Pension Rules, 1950, refer to the circumstances, in which pension can be withheld. Rule 43(a) states that the State Government reserve to themselves, the right to withholding or withdrawing a pension or any part of it, if the pensioner is convicted of serious crime or is guilty of grave misconduct. The decision of the Provincial Government on any question of withholding or withdrawing whole or any part of any pension under this Rule, shall be final and conclusive, sub Rule 43 (a) declares.

Rule 43 (b) lays down that the State Government has the right of withholding or withdrawing any pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery of pension of the whole or any part of any pecuniary loss caused to the Government, if the pensioner is found in a 'departmental proceeding' or 'judicial proceeding' to have been guilty of grave misconduct or to have caused pecuniary loss to the government by misconduct or negligence, during his service.

This is not in dispute that the petitioner's husband was held guilty at the trial of offence punishable under Section 302 of

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the Indian Penal Code and was sentenced to life imprisonment. It is also not in dispute that no decision has been shown to have been taken by the State Government exercising powers under Rule 43(b) of the Pension Rules to withhold pension and other post retiral dues of the deceased employee.

Since, till date, no decision has been shown to have been taken, in exercise of power under Rule 43(b) of the Pension Rules, despite conviction of the petitioner's husband at a criminal trial, in my opinion, the State respondents cannot deny the petitioner the benefit under the Pension Rules, 1950.

It is accordingly directed that let the respondents determine the pension, which was payable to the deceased employee, on the date of his death and fix family pension of the petitioner accordingly. The petitioner shall be entitled to receive all arrears of pension, which her deceased husband was entitled to receive, as on the date of his death.

Necessary sanction must be issued by the State of Bihar within two months from today. It is directed that if the Accountant General is required to issue authority slip for payment of pension, the same must be done within one month from the date of receipt of sanction order from the pension sanctioning authority.

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This application is allowed.

(Chakradhari Sharan Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

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