

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20072 of 2019

Most. Ramsigari Devi W/o Late Ram Dev Singh Resident of Village- Chauri,
P.S.- Daudnagar, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. The District Magistrate, District- Aurangabad.
3. The District Officer, District- Aurangabad.
4. The Block Development Officer, Deo Block, District- Aurangabad.
5. The Block Development Officer, Obra Block, District- Aurangabad.
6. The Regional Provident Fund Commissioner, Provident Fund Office, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Adv. Mr. Ravi Kumar, Adv. Mr. Ankit Katriyar, Adv.
For the Opposite Party/s :		Mr. Binod Kumar, AC to GP-10.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 07/07/2020

Heard learned counsel for the petitioner and learned AC
to GP-10 for the respondent State.

The petitioner has filed the instant writ application for
a direction to the respondent authorities to make payment of the
arrears of salary and death-cum-retiral benefits of her deceased-
husband along with interest thereon.

It is the case of the petitioner that her husband namely,
Ramdev Singh was appointed as a Panchayat Sevak on 20.4.2005



and was attached to the Block office in Rafiganj, Aurangabad. He died prematurely in-harness on 15.6.2019. It is submitted that he had not been paid salary for the last forty months in as much as he did not get salary for the last ten months when he was posted at Deo Block. It is further submitted that he also did not get salary from August, 2017 after he was deputed at Obra Block and died while in service.

It is submitted by learned counsel for the petitioner that as would be evident from the counter affidavit filed on behalf of the respondent nos. 2 to 5, the amount due to the petitioner's husband amounting to Rs.3,38,240/- under the head of unutilized earned leave, Rs.36,946/- under the head of Group Insurance and Rs.2,50,667/- under the head of GPF were paid to the petitioner. However, the amount of gratuity to the tune of Rs. 4,72,536/- could not be paid nor could the arrears of salary be paid which were due for the month/period mentioned in paragraph no. 9 of the writ petition. It is submitted that although the amount of gratuity to the tune of Rs.4,72,536/- was calculated by the respondents but the same could not be paid for the reason that it was contended that with the insertion of Rule 43(d) vide notification dated 21.1.2019 in the Bihar Pension Rules, further amount of gratuity may be



withheld till the final conclusion of the departmental or judicial proceeding.

It is further submitted by learned counsel for the petitioner that from perusal of the notification contained in Memo No. F(27) Pen.Cell-47/2018____/F, Patna dated 21.1.2019, wherein clause (d) was introduced in Rule 43 of the Bihar Pension Rules, 1959, the requirements of withholding the amount of gratuity was that departmental or judicial proceeding should be pending against the government servant at the time of retirement. It is submitted that in the instant case although by letter dated 23.5.2018 addressed to the Officer-in-charge of the concerned police station an FIR was registered being Dev P.S. Case No. 55 of 2018, however, so far as the petitioner's husband is concerned, he died while in service itself. Further it has categorically been stated that no departmental proceeding was started against him. Thus submission on behalf of the petitioner is that firstly her husband did not retire from service, instead he died while in service. Further at the time of his death neither any departmental proceeding was pending against him and so far as the criminal case is concerned, the same also came to an end, as a criminal case cannot proceed against a dead person. Thus, it was submitted that the requirements of Rule 43(d) not having



been satisfied, the respondent should be directed to pay the amount due to the petitioner's husband under the head of gratuity together with interest as has already been calculated and they should also pay the arrears of salary for the period mentioned in paragraph no. 9 of the writ petition.

It is submitted by learned counsel for the State that it is true that no departmental proceeding was pending against the petitioner but the FIR being Deo P.S. case no. 55 of 2018 was registered on 23.5.2018 against him under sections 420, 406 and 409 of the Indian Penal Code. It is further submitted that a certificate case being Certificate Case no. 11/2017-18 was initiated against the petitioner's husband and others under section 7 of the Bihar and Orissa (Public Demand Recovery) Act for realization of government money to the tune of Rs. 58.40 lacs. Against the said certificate proceeding, the petitioner's husband had moved the Patna High Court in CWJC No. 3252 of 2018 which was disposed of with a liberty to the petitioner to file representation before the respondent authority.

Having heard learned counsel for the parties, it transpires that a new clause (d) was added in Rule 43 of the Bihar Pension Rules by notification dated 21.1.2019. As per the said Rule 43(d) the requirements for withholding the full amount of gratuity was



pendency of departmental or judicial proceeding against the government servant at the time of his retirement. In the instant case admittedly the husband of the petitioner did not retire from service but died in harness on 15.6.2019. Further at the time of his death admittedly there was no departmental proceeding pending against him. So far as the criminal case pending against him is concerned, the same also abated on his death. Thus, in the opinion of this Court the requirements of Clause (d) of Rule 43 of the Bihar Pension Rules, 1950 is not satisfied in case of the petitioner's husband.

Thus, in view of the facts and circumstances of the case, the respondent authorities are directed to pay to petitioner the total amount due and payable to the petitioner's husband under the head of gratuity together with interest as also the arrears of salary which is found payable by the respondent authorities.

The dues should be paid to the petitioner within a period of three months from the date of receipt of a copy of this order.

The writ petition stands allowed.

(Partha Sarthy, J)

Sushma/-

AFR/NAFR	NAFR
CAV DATE	30.06.2020
Uploading Date	10.7.2020
Transmission Date	

