IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13948 of 2017

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Sri Bhagwan Singh Son of Late Surya Nath Singh, H/o Late Prabhawati Kumari, At- Adarsh Nagar Collectreat Road Ward No.11, P.O. and P.S.- Buxar, District- Buxar.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Accountant General AandE, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Magistrate, Buxar.
5. The Deputy Development Commissioner, Buxar.
6. The District Education Officer, Buxar.
7. The District Programme Officer Estb., Buxar, Bihar Education Project Kawaldah Pokhar Station Road,
8. The Treasury Officer, Buxar, District- Buxar.
9. The Block Education Extension Officer, Itarhi, District- Buxar.
10. The Headmaster, Primary School Narayanpur Anchal- Itarhi, District- Buxar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Anirudh Mishra
For the Respondent/s : Mr.S.C. Mishra-Sc16

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 22-05-2020 The petitioner's wife was Incharge Headmaster of Primary School Narayanpur, (Itarhi) in the District of Buxar. She died in harness on 01.09.2016.

2. The petitioner has filed the present writ application seeking direction to the respondents to pay the amount of death-cum-retirement benefits including the family pension and gratuity. It has been stated that despite authority slip already issued by the office of the Accountant General on 06.12.2016,

the petitioner is not being paid the amount of pension and gratuity.

3. A counter affidavit has been filed on behalf of the District Programme Officer (Establishment), Buxar (respondent No.6) in which following the statement has been made in paragraph 7:-

> *"7. That it is stated that the DPO (Estt.), Buxar has sent a letter to Treasury Officer, Buxar regarding "No dues certificate" of the petitioner and stated therein that the adjust the dues amount of Rs. 1,44,000/- from pension/gratuity and rest amount paid to the petitioner vide letter no. 1005 dated 23.12.2017 in the light of letter vide letter no. 1852 dated 14.12.2017."*

4. The said specific averment made in paragraph 7 of the counter affidavit has not been denied by the petitioner.

5. Mr. Anirudh Mishra, learned counsel appearing on behalf of the petitioner has vehemently argued that merely on the basis that certain amount was due to be refunded by the deceased to the Department, the pensionary benefits cannot be withheld without initiating a proceeding in accordance with Rule 43 (b) of the Bihar Pension Rules. He has placed reliance

on a decision of this Court reported in **2017(2) PLJR 815 (Rashda Khatoon vs. State of Bihar and ors**). He has further submitted that the deceased employee had in fact deposited the amount, which was to be refunded by her, during her life time.

6. In my opinion, there is no application of Rule 43(b) of the Bihar Pension Rules in the admitted facts and circumstances of the case. There is specific statement in the counter affidavit filed on behalf of the respondents-State of Bihar that a total sum of Rs. 1,44,000/- was due on the deceased employee against an advance of Rs. 5,20,000/- which she had taken for construction of school building. This is to be noted that the said amount of Rs. 1,44,000/- includes interest which has been calculated on the due amount of Rs. 1,00000/-. It is thus, the case of the State of Bihar that as a matter for fact, a sum of Rs. 1,00000/- was required to be refunded by the petitioner's wife against the advance which she had taken and before she could do that, she died. If certain amount was admittedly due, the said amount will have to be treated as dues on the deceased employee. The petitioner shall be entitled to receive pensionary benefits only after adjustment the said admitted amount of Rs. 1,00000/-.

7. In the facts and circumstances of the case, it is

observed that the State respondents should not claim any interest over the said amount of Rs. 1,00000/-.

8. So far as the claim of the petitioner that the said amount of Rs. 1,00000/- was in fact deposited by the petitioner's wife during her life time, it is observed that the petitioner shall be at liberty to satisfy the respondent No.6 by filing a detailed representation. If the petitioner files a representation in this regard before respondent no.6 within three weeks from today, the same shall be examined and a final decision shall be taken on the question as to whether the said amount of Rs. 1,00000/- was deposited by the petitioner's wife or not and whether any due amount was payable by her, against the advance which she had taken.

9. If the respondent No.6 is satisfied that the said amount was in fact payable, he will have to record his reasons why the petitioner's representation was not fit to be accepted.

10. If the decision of respondent No.6 goes in favour of petitioner, it must be ensured that the pensionary benefits are paid to him. In case the decision of respondent No.6 goes against the petitioner, the petitioner shall be at liberty either to question the said decision before appropriate forum or accept the pensionary benefits after deduction of the said amount of Rs.

1,00000/-.

11. This application stands disposed of, with the aforesaid direction and observation.

(Chakradhari Sharan Singh, J)

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