

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20361 of 2019

=====

Sudha Kumari @ Sudha Devi Wife of Late Deo Narayan Mahto, Resident of
Mohallah- Gulabi Ghat, Mahendru, P.O.- Mahendru, P.S.- Sultanganj,
District- Patna, Pin Code- 800006 (Bihar).

... .. Petitioner/s

Versus

1. The Bihar School Examination Board Sinha Library Road, Patna 800017 (Bihar) through its Secretary.
2. The Chairman, Bihar School Examination Board, Sinha Library Road, Patna 800017 (Bihar).
3. The Finance Officer, Bihar School Examination Board, Sinha Library Road, Patna 800017 (Bihar).

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Dhanendra Chaubey, Advocate
For the Respondent/s	:	Mr.Lalit Kishore, AG
For the BSEB	:	Mr. Manish Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 06-07-2020

Heard learned counsel for the petitioner and learned counsel for Bihar School Examination Board (hereinafter referred to as the 'Board') through video conferencing.

The petitioner has filed the instant application for a direction to the respondents to allow family pension to the petitioner including other retiral benefits due to death of her husband on 2.4.2018 and for other reliefs to which the petitioner is found entitled in the facts and circumstances of the case.

The case of the petitioner in brief is that her husband who was an employee on a Class III post in the Board, retired on 31.5.2002 from the post of Budget In-charge. On his retirement he was getting pension from the respondent Board. It is further stated that after about 10 years, the petitioner's



husband started having extra marital relationship with a lady and also started maintaining her. On objection by the petitioner, it is stated that the petitioner was tortured. It is further stated that the petitioner had one son from her wedlock with her husband while her husband with the other lady had two sons and a daughter. In the year 2006 her husband executed a memorandum of partition separating his property in three units, one being for the son with the petitioner and the other two for the two sons from the other lady. In the year 2012 the petitioner states that she was ousted from the house and thereafter she filed Maintenance Case no. 253 (M) of 2012 before the Principal Judge, Family Court, Patna wherein by judgment dated 15.3.2019 she was allowed maintenance to the tune of Rs. 4,000/ per month from the date of her application. Further case of the petitioner is that the other lady pre-deceased her husband who died on 2.9.2018. As such the petitioner has filed the instant application for a direction to the respondents to allow family pension and consequential benefits due to her on the death of her husband.

Although a counter affidavit of the Board is not on record, however it is submitted by learned counsel for the Board that a counter affidavit (Oath no. 42087 dated 25.6.2020) had been prepared on behalf of the Board but the same could not be filed because of lockdown. It is submitted that the same will be filed soon after normalcy is restored in the Court proceedings. However, a scanned copy of the same has been made available to the Court master through electronic means.

On going through the counter affidavit of respondent



nos. 1, 2 and 3 sworn by Mr. Tanuj Verma, Law Officer of the Board, it transpires that the stand of the Board is that the husband of the petitioner who was working as an Assistant in the Board retired from service on 31.5.2002 and after his retirement all his retiral dues/benefits had already been paid to him in accordance with law. It is further stated that the petitioner vide her letter dated 15.7.2016 had filed a complaint before the Court alleging therein that her husband has been making efforts to replace her name as his wife illegally in the service records of the Board in order to benefit his second wife namely Nirmala Devi. The petitioner had prayed that the pension of her husband should be stopped till the matter got resolved. The Board got the matter enquired into and on finding substance in the allegations as levelled by the petitioner, show cause notice dated 1.3.2017 (Annexure - A) was issued, also intimating to him that in the meantime his pension had been stopped. The husband of the petitioner submitted his reply to the show cause notice and again vide letter dated 5.8.2017 (Annexure - B), the Board asked him to furnish his reply so that his pension can be resumed. It is further stated by the Board that instead of giving a proper reply, the husband of the petitioner filed a complaint before the Human Rights Commission (hereinafter referred to as 'the Commission'). By letter dated 4.7.2017 (Annexure - C), the Commission asked the Board to furnish a report in this regard to which the Board submitted its report vide letter dated 11.8.2017 (Annexure - C). In the meantime, the Board asked the husband of the petitioner to furnish his life certificate so that



his pension could be resumed. As the same was not submitted, a reminder was also sent by the Board on 8.12.2018. It is finally stated by the Board that now the petitioner has filed the present writ petition claiming that her husband has already died and that family pension should be allowed to her.

It is submitted by learned counsel for the petitioner that from perusal of the contents of the letter no. AC-978/2019 dated 16.11.2019 (Annexure E) written by the Board to the petitioner, the Board was unaware about the death of her husband. The petitioner has been asked by the said letter to produce the death certificate, marriage certificate and the prescribed form along with other supporting documents so that payment of family pension to the petitioner can be started. It is submitted by learned counsel for the petitioner that so far as the petitioner is concerned, she has not had much formal education and is not aware of the fact as to whether her marriage with her deceased husband was formally registered or not.

It is submitted that the respondent authorities are acting unreasonably in asking for the marriage certificate after the death of the petitioner's husband when even on earlier occasion, the name of the petitioner figured as wife of the Board's employee Late Deo Narayan Mahto and there is no controversy with respect to the same. It is further submitted that it is on the petitioner's complaint, as would be evident from the contents of the counter affidavit, that the pension of the petitioner's husband had been stopped by the Board. Further even in the maintenance case, the petitioner had been



granted maintenance by the Court to the tune of Rs. 4,000/- per month.

At this stage it is submitted by learned counsel for the Board that the petitioner should approach the respondent Board with the other documents as mentioned in the letter dated 16.11.2019 (Annexure E), leaving aside the marriage certificate for the time being. The authorities of the Board shall look into the other documents produced by the petitioner and shall take a decision with respect to payment of the family pension to the petitioner within a reasonable time.

Having heard learned counsel for the parties and taking into consideration the facts and circumstances of the case, it is directed that the petitioner shall file a representation along with all supportive documents as also a copy of this order before the Secretary, Bihar School Examination Board, through whom the respondent no. 1 is represented. The Secretary of the Board shall get the petitioner to fill up the prescribed form, if so required and on going through her application/representation along with the supporting documents produced by the petitioner as also the records available in the office of the Board, take a decision on the representation of the petitioner within a period of three months from the date of it's filing. It is further directed that the arrears shall be paid as also payment of the current pension shall be started within a period of two months from the date of the order. In case the representation of the petitioner does not find favour with the Secretary, he shall communicate the same in writing to the petitioner along with the reasons thereof



within the aforesaid period.

The writ application stands disposed off with the aforesaid observations and directions.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

