

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3608 of 2019

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Fuliya Devi Wife of Late Bhim Hembram Resident of Village- Lagania, Post
Office- Shayampur, Police Station- Haweli Kharagpur, District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Home Department, Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Commandant Bihar Military Police- 2, Dehri, Bihar
4. The Accountant General of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Tewary, Advocate
For the Respondent/s	:	Md. Nadim Seraj (GP-5)
		Mr. Shailesh Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 28-01-2021

Heard learned counsel for the parties.

2. The petitioner has brought this application for issuance of mandamus against the respondent to make payment of gratuity and other retiral benefits in respect of the husband of the petitioner late Bhim Hembram. Late Bhim Hembram was a constable in Bihar Military Police-2 at Dehri. Since late Hembram was found absent from duty for a long period without any information to the authorities concerned, Departmental Proceeding No.87/1984 was initiated against him and finally punishment of dismissal from service was awarded on 12.01.1985 by the Commandant of BMP-2. The husband of the



petitioner preferred an appeal against the order of dismissal which was heard and dismissed by the competent authorities.

3. Annexure-6 to the writ application is order dated 20.03.2010 which would reveal that the amount deducted in the General Provident Fund account of Mr. Bhim Hembram was already paid likewise the amount of Group Insurance was also paid to him and it is specifically mention that no other deduction was made.

4. The respondents in their counter affidavit contended that the effect of dismissal from service was forfeiture of all retiral benefits. Hence, the husband of the petitioner was neither entitled to pension nor gratuity.

5. Learned counsel for the petitioner has relied on the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, for his submission that case of Mr. Hembram is not covered by any of the requirement for forfeiture of gratuity. Hence, Mr. Hembram was entitled for gratuity amount also and after his death, his wife is entitled for the same.

6. Sub-Section (3) of Section 1 of Payment of Gratuity Act clearly depicts that the said Act is not applicable in the matter of State Government employees including the department under which Mr. Hembram was working. The entire



provisions of Section 1 are reproduced below:

“1. Short title, extend, application and commencement.- (1) This Act may be called the Payment of Gratuity Act, 1972.

(2) It extends to the whole of India:

Provided that insofar as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to-

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification,



specify in this behalf.

[(3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.]

(4) It shall come into force on such date as the Central Government may, by notification, appoint.”*

In the matter of Mr. Hembram Bihar Pension Rules are applicable. Rule 27 defines pension which includes gratuity.

7. Since the effect of punishment of dismissal is forfeiture of entire retiral benefits the petitioner is not entitled for gratuity.

8. Hence, this application is dismissed as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	29.01.2021
Transmission Date	

