

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16620 of 2018

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Bimla Devi Alias Bimla Kumari

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent/s : Mr. Ravi Ranjan, AC to Sc22

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL ORDER

2 22-11-2021 Heard learned counsel for the petitioner and

learned counsel for the state.

In the instant petition, the petitioner has prayed

for the following reliefs:

“(i) For issuance of appropriate writ/writs, order/orders in the nature of certiorari for quashing the enquiry report dated 21.07.2015 submitted by respondent no. 7, whereby the enquiry officer has proved all the charges against the petitioner’s husband in a complete illegal, arbitrary and unauthorized manner,
(ii) For quashing the consequential punishment order dated 31.05.2016 and office order contained in memo no. 113 dated 31.05.2016 issued by respondent no. 5, whereby and where under the punishment of removal from service has been awarded to the petitioner’s husband in a departmental proceeding initiated against him, on non-est grounds,
(iii) In consequent thereof, for issuance of writ/writs of mandamus commanding the respondent authorities to grant all consequential benefits admissible to petitioner after death of her husband,
(iv) For further direction to respondent



authorities to make payment of salary from January 2012 onwards for the period petitioner's husband has worked and also subsistence allowance for the period of suspension from 05.09.2013 to 31.05.2016, (v) For any other order/orders which the petitioner may found to be entitled in the facts and circumstances of the case."

Deceased employee late Sri Sanjay Kumar,

while he was in service, was subjected to departmental proceedings and it was concluded in imposition of penalty or dismissal from service on 31.05.2016 and he died on 10.02.2017. While, he was alive he has not filed appeal before the appellate authority. Thus, the petitioner's wife filed this petition. The petitioner has statutory remedy of appeal before the appellate authority. In terms of the Apex Court decision in Jammu and Kashmir para 20 held as under:

"20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus :-

"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*

- (b) the petition reveals all material facts;*
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*

- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;*

- (e) ex facie barred by any laws of limitation;*

- (f) grant of relief is against public policy or barred by*



any valid law; and host of other factors.”

(Emphasis supplied)

One of the principle laid down in the aforesaid decision of the Apex Court is that if a person has a statutory remedy and he has not exhausted such remedy w.r.t. petition under Article 226 of the Constitution is not maintainable. Therefore, the present petition is premature.

Accordingly, the writ petition stands disposed of for reserving in liberty to petitioner to preferred appeal before the appellate authority.

Insofar as delay in presenting appeal is concerned, the appellate authority is hereby directed to take note of Section 14 of limitation act. If such a memorandum of appeal is filed by writ petitioner before the appellate authority the appellate authority is hereby directed to disposed of such appeal within a period of three months from the date of receipt of the petitioner's appeal.

(P. B. Bajanthri, J)

Gaurav Kumar/-

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