IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5507 of 2017

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Jiramani Devi, Wife of late Shyamdeo Mochi, Resident of Sachchidanand Singh Colony, P.O. Kurthaul,P.S. Parsa Bazar, District- Patna.

... ... Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
3. The Director, Department of Panchayati Raj, Govt. of Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Panchayati Raj Officer, Patna.
6. The Treasury Officer, Patna Collectorate, Patna.
7. The Block Development Officer, Maner Block, District - Patna.
8. The Accountant General, Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Mishra
	:	Mr.Vijay Kumar Mukul
	:	Mr.Ranjay Kumar Singh
For the Respondent/s	:	Mr.Pushkar Narain Shahi (AAG 6) with
	:	Mr.Patanjali Rishi
For the Accountant General:		Mr.Arun Kumar Arun

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 13-07-2021

This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. The writ application was filed by Late Shyamdeo Mochi, seeking direction to the respondents to pay him his post retiral dues in terms of pension and other benefits arising out of grant of Modified Assured Career Progression (M.A.C.P.). As he

died during the pendency of the application, he has been substituted by the present petitioner, who is his widow. The petitioner's husband retired while working as Panchayat Secretary, Block Office, Maner in the district of Patna w.e.f. 31.01.2015. Pension payment order was issued on 08.04.2015 itself by the office of the Accountant General vide P.P.O. No. 201511161544, addressed to the Treasury Officer, Patna Collectorate, Patna. Since despite repeated representations, the petitioner's deceased husband was unable to receive his entitlements against pension and arrears arising out of grant of MACP, he filed the present writ application under Article 226 of the Constitution of India, seeking direction to the respondents, as noted above.

3. A counter affidavit has been filed on behalf of the respondents-State of Bihar stating that the deceased pensioner had received certain amount in respect of Social Security Pension Scheme amounting to Rs.25,87,400/- which could not be adjusted because the petitioner had not submitted any voucher in this regard despite several reminders, one being through letter dated 09.05.2017 and, therefore, the Department refused to grant 'No Objection Certificate' consequent upon which the Treasury officer declined to credit the amount of pensionary benefits authorized by the office of the Accountant General, in the pension account of the

deceased employee. It is also stated in the application that the deceased employee had not handed over the charge after he retired on attaining the age of superannuation. On these facts, the respondents are opposing the petitioner's claim for payment of post retiral benefits.

4. The counter affidavit is completely silent on the point, as to whether, for non-adjustment of the amount, which the deceased employee had allegedly received as advance, any enquiry was initiated or any departmental action was taken against him. There is absolutely no averment in the counter affidavit to the effect that even after the retirement of the deceased employee; any proceeding was initiated under the provisions of the Bihar Pension Rules for withholding of the pension. This is thus an admitted fact that the petitioner's husband did not have any occasion to rebut the allegation of non-adjustment of the said amount received by him, in any enquiry or proceeding.

5. In the rejoinder affidavit filed on behalf of the petitioner to the counter affidavit filed on behalf of the State of Bihar, a letter written by the deceased employee addressed to the Block Development Officer has been brought on record wherein the deceased employee had mentioned that he had handed over the vouchers to *Najir* of the Block Najarat of Maner Block. In his

representation dated 29.04.2017, he is said to have narrated the harassment meted out to him and the manner in which he was made to run from pillar to post for obtaining No Dues Certificate and for payment of his pensionary benefits.

6. A supplementary counter affidavit filed on behalf of the State of Bihar from wherein it has been stated that the deceased employee had not submitted vouchers against outstanding advance to the tune of Rs.25,87,400/- which he had received till date. However, the amount equivalent to 90% of gratuity to the tune of Rs.6,08,331/-, the amount of Earned Leave to the tune of Rs.4,09,650/-, the amount of Group Insurance to the tune of Rs.1,087,249/- and the amount of General Provident Fund to the tune of Rs.4,87,502/- have been paid and further no dues certificate has been forwarded to the Treasury Office, Patna for payment of pension. It has been stated, however, in paragraph 13 and 14 as under:-

13. That it is relevant to submit here that the deductions/adjustments have been made by the Treasury Officer to the tune of Rs.15,90,528/- against the outstanding due amount to the tune of Rs.25,87,400/-.

14. That it is respectfully submitted that no due is outstanding against the petitioner towards the post retiral benefits payable to *her husband and the writ petition is now fit to be disposed of.*

7. As has been noted above, there was no proceeding initiated for withholding of pension. No enquiry was held regarding non-submission of the vouchers till the petitioner's husband was alive. In such situation, unilateral decision of the respondents to adjust the amount to the tune of Rs.15,90,528/- is *per se* illegal, arbitrary and in gross violation of principles of natural justice, which cannot be permitted. The respondents do not have any authority to withhold the amount of pension or gratuity without following due procedure prescribed under the Bihar Pension Rules.

8. This writ application is accordingly allowed with a direction to the respondents to ensure that the petitioner is paid all post retiral dues in terms of pension/family pension/gratuity and other arrears within a period of two months from the date of receipt/production of a copy of this order. It is specifically directed that the respondents shall not deduct any amount from such pensionary benefits on the ground, as taken in the counter affidavit, of non-adjustment of any advance which the petitioner's husband had allegedly obtained.

9. It will, however, be open for the respondents to cause an enquiry and find out, as to whether, the amount so

obtained by the petitioner’s husband was in fact utilized or not and in case the respondents reach a conclusion that the same was not done, they shall be at liberty to proceed to recover the said amount in accordance with law after following due procedure.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	13.07.2021
Transmission Date	N/A