IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11857 of 2017

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Durga Pathak Wife of Late Vijay Kant Pathak, Resident of 20/162, New Patliputra Colony, P.S.-Patliputra, District-Patna.

... ... Petitioner/s

Versus

1. The State Bank of India through its Managing Director.
2. The Chief General Manager, State Bank of India, West Gandhi Maidan Patna.
3. The Deputy General Manager, State Bank of India, Bhagalpur.
4. The Branch Manager, Haati Branch, State Bank of India, Bhagalpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Adv.
		Mr.Manoj Kumar, Adv.
For the Respondent(SBI):		Mr. S.D. Sanjay, Sr. Adv.
		Mr.Anjani Kumar Mishra, Adv.
		Mr. Ambarish Bhardwaj, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 17-03-2021

The present petition has been filed for directing the respondent Bank and its authorities to make payment of the entire death-cum- retiral benefits of the deceased husband of the petitioner namely late Vijay Kumar Pathak who died in harness on 22.01.1996, while working as Branch Manager at Haati Branch of the State Bank of India, Bhagalpur.

2. The learned Senior counsel appearing for the petitioner Shri J.S. Arora has submitted that the deceased husband of the petitioner had joined the service of the Bank in the month of April 1967 and he died in harness, being inflicted

with cancer, on 22.01.1996, whereafter certain allegations of defalcation were levelled against the deceased husband of the petitioner and a money suit bearing Money Suit No. 113 of 1996 was filed by the respondent Bank before the learned court of Sub-Ordinate Judge, Patna, inter-alia seeking relief therein to the extent that it be declared that the deceased husband of the petitioner had caused loss to the respondent Bank to the tune of Rs.24, 32, 118/-, hence upon adjudication, a decree for recovery of the aforesaid sum be passed in favour of the plaintiff i.e. the respondent Bank. The learned senior counsel for the petitioner has submitted that the aforesaid money suit has since stood dismissed by a judgment dated 22.10.2016 passed by the learned Sub-Ordinate Judge-II, Patna in Money Suit No. 113 of 1996 and the learned court below has held that the plaintiff i.e. the respondents herein have not been able to prove that the claimed amount of loss was caused to the Bank by the fraudulent act of the deceased husband of the petitioner, hence, the learned court below held that the respondent Bank is not entitled to any relief in the said suit.

3. The learned Senior counsel for the petitioner has thus submitted that the petitioner is not only liable to be paid death-cum- retiral dues of her deceased husband but is also

entitled for release of all the certificates, bonds, gold, silver articles lying in the locker of the deceased husband of the petitioner or with the respondent Bank, belonging to the petitioner/ her deceased husband. It is also submitted that as far as death-cum- retiral dues of the deceased husband of the petitioner are concerned, the only remaining outstanding amount to be paid is that part of the provident fund amount which pertains to the period April 1967 to August 1997 inasmuch as the calculation chart furnished by the respondent Bank, which can be found at running page No.- 88 of the brief of the present case, shows calculation w.e.f. September 1977, however, the husband of the petitioner had joined the services of the respondent Bank in the month of April 1967. It is further submitted, by referring to last page of the said chart, which can be found at running page No. 92 of the brief, that the calculation is only upto the month of March, 1996, but the payment has been made only in the year, 2018, hence interest is required to be calculated up to the year 2018.

4. Per contra, the learned Senior counsel for the respondent Bank Shri S.D. Sanjay, has submitted that running page No.-88 of the brief would show that the balance amount in the provident fund account of the petitioner, upto the month of

September 1977 has been shown to be a sum of Rs. 2440.98 (Bank's contribution) as also a sum of Rs. 2440.98 (members contribution) and since the deductions at that point of time were meager, the cumulative amount upto the month of September, 1977 is also meager and moreover it is the case of the respondent Bank that interest has been paid on the total amount of provident fund, upto the date of payment.

5. The learned Senior counsel for the respondent Bank has also submitted that as far as dismissal of the aforesaid money suit is concerned, the respondent Bank has preferred a first appeal bearing F.A. No. 11 of 2017, which is pending adjudication before this Court. Lastly, it is submitted that as far as the prayer of the petitioner for release of the certificates, bonds, gold, silver, articles etc. are concerned, the said prayer of the petitioner is not a part of the main writ petition, hence, the consideration of the same would be amounting to enlarging the scope of the present writ petition.

6. I have heard the learned Senior counsels for the parties and perused the materials on record. As far as the death-cum- retiral dues required to be paid to the petitioner are concerned, the learned Senior counsel for the petitioner has only raised the issue of non- payment of the full amount of provident

fund, as aforesaid. In this regard, this Court would deem it fit and proper to direct the respondent Bank to supply a calculation chart to the petitioner within a period of four weeks from today, regarding the computation of provident fund amount, right from the inception i.e. from the date of joining of the deceased husband of the petitioner in the services of the respondent Bank in the month of April 1967 till the date of actual payment of the provident fund amount i.e. 14.08.2018. It is further directed that in case of any discrepancy being pointed out by the petitioner, the respondent Bank shall consider the same and pass appropriate orders, in accordance with law.

7. It is a trite law that no order of punishment can be passed against a dead person and, in fact, no recovery can be made from the death-cum- retiral benefits of the petitioner on the allegation of the deceased husband of the petitioner having defalcated the Bank's money, without his guilt having been established by taking recourse to the due process of law, hence, this Court finds that the respondent Bank has rightly made payment of all the death-cum-retiral dues liable to be paid to the deceased husband of the petitioner/ the petitioner, which is apparent from paragraph no.3 of the counter-affidavit filed by the respondent Bank in the present case, a bare perusal thereof

would show that the following payments have been made to the petitioner by the Bank:-

(i) Leave Encashment	Rs. 1,01,816.00
(ii) Gratuity	Rs. 1,98,240.00
(iii) Arrear of family pension	Rs. 14,93,607.00 (Till August' 2018).
(iv) Provident fund	Rs. 3,15,562.00

8. This Court further finds that since the money suit filed by the respondent Bank against the petitioner and other legal heirs of the deceased husband of the petitioner for recovery of the defalcated amount, has already stood dismissed, as aforesaid, and there is no interim order in favour of the respondent Bank in the pending appeal i.e. F.A. No. 11 of 2017, the respondent Bank is interdicted from arrogating the properties/ valuables of the deceased husband of the petitioner.

9. The writ petition stands disposed of on the aforesaid terms.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
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