

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4244 of 2021

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Bhikhari Thakur, S/o Late Ram Balam Thakur, Husband of Late Lilawati Kumari @ Leelawati Devi, R/o Village and P.O. Kurur, P.S. Karakat (Gorari) District-Rohtas at Sasaram. Presently residing at Village and P.O.-Dhangai, P.S.-Bikramganj, District-Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Health, Govt. of Bihar, Patna.
3. The Director-in-Chief, Health Service, Govt. of Bihar, Patna.
4. The District Magistrate, Rohtas at Sasaram
5. The Civil Surgeon-cum-the Chief Medical Officer, Rohtas at Sasaram.
6. The Incharge Medical Officer, Bikramganj, Rohtas at Sasaram.
7. The Accountant General, Govt. of Bihar, Patna.
8. The Treasury Officer, Rohtas at Sasaram,

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sujit Kumar Gupta, Advocate Mr. Ram Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sudhir Kumar Singh, AC to SC-23
For the Accountant General:	:	Mr. Dr. Anand Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-11-2022

Heard Mr. Sujit Kumar Gupta, learned counsel for the petitioner, Mr. Sudhir Kumar Singh, learned AC to SC-23 and Mr. Dr. Anand Kuamr, learned counsel for the Accountant General.

2. The present application has been filed seeking quashing of the order as contained in Memo No. 84, dated 15.05.2019, issued under the signature of Respondent No.6 whereby and whereunder the family pension of the petitioner has



been stopped in pursuance to the letter as contained in Memo No. 1299, dated 03.05.2019, issued by the respondent no.5.

3. Shorn of unnecessary details, it is submitted that the wife of the petitioner, namely, Lilawati Kumari, initially joined as Auxiliary Nurse Midwifery (hereinafter referred to as 'the A.N.M.')

in the year 1985. Thereafter her services was regularized by the competent authority after proper verification of the certificates. It is further contended that the wife of the petitioner worked as A.N.M. in different hospitals in the district of Rohtas and lastly in the year 2012 she was posted at Primary Health Centre, Bikramganj, Rohtas where she died in harness on 21.01.2012. It is next contended that the petitioner being the husband and dependent of late Lilawati Kumari, her death-cum-retrial benefit has been issued in favour of the petitioner, apart from the family pension. He next contended that all of a sudden, after seven years of the death of his wife, the impugned order has been passed withholding the family pension of the petitioner. He further contended that during the service period of his wife, namely, Lilawati Kumari, there had never been any departmental proceeding initiated nor any show-cause has been issued with regard to the educational certificates being forged and fabricated, however, after seven years of the death of the wife of the petitioner



that too on a complaint filed by one stranger, namely, Dinesh Kumar Singh before the learned Lokayukta, Bihar, Patna and pursuant to the direction of learned Lokayukta, Bihar, Patna, an enquiry was conducted and the Matriculation certificate of the wife of the petitioner was found forged.

4. He next submits that the very action of the respondent authorities are not sustainable in the eyes of law for the simple reason that the wife of the petitioner is not alive to defend her case and in her absence her certificate cannot be questioned by any authority that too after seven years of her death. In support of his submission, reliance has been made on a judgment rendered by the Hon'ble Supreme Court in the case of **Basudeo Tiwary Vs. Sido Kanhu University and Others**, since reported in (1998) 8 SCC 194 and **Ashok Kuamr Singh Vs. Bihar Industrial and Technical Consultancy Organisation Limited & Ors.**, reported in 2000 (4) PLJR 471.

5. While concluding his submission, learned counsel for the petitioner also relied upon the judgment rendered by the Division Bench of this Court dated 29.06.2015 passed in C.W.J.C. No. 17517 of 2010 (Union of India & Ors. Vs. Shri Gupteshwar Mishra) by which the Division Bench of this Court has been



pleased to hold that no enquiry can be made against an employee, who died in harness.

6. On the other hand, learned counsel for the State vehemently opposed the contentions/submissions made on behalf of the learned counsel for the petitioner and submits that the entire exercise has been done pursuant to the order of the learned Lokayukta, Bihar, Patna and during the course of enquiry the academic certificate of the wife of the petitioner has been found forged, on the basis of which she was appointed. He further submits that the very initial appointment of the wife of the petitioner is based on forged certificate, therefore, no benefit could be granted to her. However, learned counsel for the State shown his inability to confront the ratio laid down by the Hon'ble Supreme Court as well as Division Bench of this Court wherein it was held that where the death of the delinquent is occurred in the midst of disciplinary proceeding, either before or after the superannuation, the proceeding would abate and it would be deemed that the employee died in harness and after his/her death, no fresh enquiry can be held and the order can be passed.

7. In view of the aforesaid settled legal proposition, this Court find substance in the submissions made on behalf of the learned counsel for the petitioner, as the impugned order has been



passed behind the back of the employee without any show-cause notice or opportunity of hearing, as also in view of the aforesaid settled legal position, as discussed above, the impugned order dated 15.05.2019, passed by respondent no.6, is hereby set aside and the respondent no.5 is directed to pass order for release of the family pension of the petitioner with effect from the date, the same was stopped. The entire exercise must be completed within a period of four weeks from the date of receipt/production of a copy of this order.

8. With the aforesaid observations, the writ application is, accordingly, disposed of.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.11.2022
Transmission Date	NA

