

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9557 of 2010

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- 1.1. Pankaj Kumar Ghosh Son of late Sachinandan Ghosh and late Shakuntala Ghosh R/o 6, Shastri Nagar, Munger, P.S. Kasim Bazar, Munger District- Munger.
 - 1.2. Gita Devi Daughter of late Shakuntala Ghosh and Wife of Niranjana Kumar Dutta R/o Village- Dhanbai, P.S. Hasdiha, District- Dumka, Jharkhand
 - 1.3. Usha Ghosh D/o late Shakuntala Ghosh, W/o late Chandra Shekhar Ghosh R/o Narainpur, P.S. Sajour, District- Bhagalpur.
 - 1.4. Pusha Ghosh D/o late Shakuntala Ghosh and Wife of Awadh Kishore Sinha R/o Bhikhanpur, Bhagalpur, P.S. Kotwali, District- Bhagalpur.
 - 1.5. Rekha Ghosh D/o late Shakuntala Ghosh, W/o Sri Ajit Kumar Sinha, R/o Bilasi Town, Deoghar, P.S. Deoghar, District- Deoghar, Jharkhand.
 - 1.6. Sulekha Ghosh D/o late Shakuntala Ghosh, W/o Sri Niranjana Kumar Ghosh, R/o Shastri Nagar, Munger, P.S. Kasim Bazar, District- Munger.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary-Cum-Commissioner, Deptt. Of Health, Medical Education And Family Welfare, Govt. of Bihar, Patna
3. Director, Health Services, Deptt. Of Health, Govt. Of Bihar, Patna
4. The Accountant General, Bihar, Patna
5. Director Of Provident Fund, Bihar, Patna
6. Commissioner, Munger Division, Munger
7. District Magistrate-Cum-Collector, Jamui Null Null
8. Regional Deputy Director Of Health Services, Munger Division, Munger
9. Civil Surgeon-Cum-Chief Medical Officer, Munger
10. Superintendent Of Sadar Hospital, Munger
11. Civil Surgeon-Cum-Chief Medical Officer, Jamui
12. District Provident Fund Officer, Jamui
13. Medical Officer Incharge, Refral Hospital, Laxmipur, Jamui
14. Medical Officer Incharge, Jamalpur, Munger

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pramod Kumar Sinha, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Chetan Kumar, Advocate
For Respondent No. 4	:	Mr. Arun Kumar Arun, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI



ORAL JUDGMENT

Date : 22-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioners have prayed for following reliefs:-

“(1) That this writ application is being filed for issuance of appropriate writ of writs in the nature of the writ of (i) certiorari quashing part of the order dtd. 28.06.2009 (annexure-17) passed by the principal secretary-cum-commissioner, Deptt. Of Health, Medical Education and Family Welfare, Govt. of Bihar, Patna, respondent no. 2 as communicated to the petitioner under memo no. 912 dtd. 8.07.2009 by Director, Health Services, Bihar, respondent no. 3 whereby and whereunder the respondent no. 2 did not accept the period running from 19.03.1982 to 20.01.1989 (correct date should be 19.01.1989) the period the petitioner remained awaiting for posing and disentitled find the petitioner for salary in utter violation of the order of sanction of the salary contained in Memo No. 275 dtd 8.03.1997 (Annexure-8) which attained finality under the order dtd. 11.03.2002 (annexure-12) of this Hon’ble court passed on C.W.J.C. No. 7160 of 2000 (ii) Mandamus directing and commanding the respondents to pay the arrears of salary to the petitioner for the said period running from 19.03.1982 to 19.01.1989 in the consequential revised scale of pay, and stay the operation of the impugned order as contained in Annexure-17.”

3. Petitioners are legal heirs of the deceased-employee (Smt. Shakuntala Ghosh).



4. Crux of the matter in the present petition is whether the deceased-employee is entitled to salary during the intervening period from 19.03.1982 to 19.01.1989 or not? The alleged allegations levelled against the deceased-employee is that she remained unauthorized absent during the aforesaid period while working as ANM in the office of 9th Respondent. She was transferred and posted to Referral Hospital, Laxmipur, the then Munger district on 08.04.1991. Till passing of the impugned order dated 28.06.2009 there is protracted correspondence among the deceased-employee and the official respondents. Further deceased-employee stated to have approached this Court and this Court has directed the concerned authority to examine the grievance of the petitioner relating to payment of arrears of salary for the aforesaid period. In non-compliance of the order of this Court, the deceased-employee is stated to have filed contempt petition. During pendency of the contempt proceedings, the official respondents have passed order. Thus, the deceased-employee approached this Court. During pendency of the present petition, Smt. Shakuntala Ghosh- petitioner died and legal heirs have been brought on record.

5. Learned counsel for the petitioner submitted



that no doubt remaining unauthorized absent for a particular period amounts to misconduct. At the same time, official respondents have not initiated enquiry proceedings in order to hold whether deceased-employee has remained unauthorized absent or absence beyond her control or not? In other words, there is no determination of unauthorized absence so as to attract alleged misconduct stated to have been committed by the deceased-employee. In the absence of determination of unauthorized absence in a domestic enquiry, respondents cannot deny the salary which is due to the deceased-employee during the intervening period from 19.03.1982 to 19.01.1989.

6. Per contra, learned counsel for the respondents resisted the aforesaid contentions and submitted that a detailed speaking order has been passed that deceased-employee remained unauthorized absent for the aforesaid period and she is not entitled to salary for the aforesaid period. Therefore, there is no infirmity in the speaking order. In the result, petitioner has not made out a case so as to interfere with the impugned order and issuance of direction to the concerned authority.

7. Heard learned counsels for the respective parties.

8. The deceased-employee, Smt. Shakuntala



Ghosh while working as ANM, she was not paid salary during the period from 19.03.1982 to 19.01.1989. It is alleged that she remained unauthorized absent. Admittedly, official respondent/appointing authority has not initiated disciplinary proceedings in so far as remaining unauthorized absent for the aforesaid period and simultaneously salary has not been paid to the deceased-employee. Whenever an employee remained unauthorized absent, it is bounden duty of the appointing authority to place such an employee under suspension and proceed to initiate enquiry or in the alternative to take back such unauthorized employee and proceed to initiate enquiry so as to hold that remaining unauthorized absent amounts to misconduct. The aforesaid procedure has not been adopted by the disciplinary authority in the present case. Even though, the matter is a case of remand, however during pendency of the present petition, the deceased-employee Smt. Shakuntala Ghosh has died and legal heirs has been brought on record. Therefore, question of holding enquiry at this juncture is not warranted.

9. In the light of these facts and circumstances, petitioner has made out a *prima facie* case so as to interfere with the impugned order dated 28.06.2009 (Annexure- 17). Hence, the impugned order is set aside.



10. The disciplinary authority/appointing authority is hereby directed to calculate arrears of salary during the intervening period from 19.03.1982 to 19.01.1989 and disburse the same to the legal heirs of the deceased-employee Smt. Shakuntala Ghosh after due verification of identification of legal heirs on record. Such payment shall be made within a period of three months from the date of receipt of this order.

11. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2022
Transmission Date	

