

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22201 of 2018

Farzana Khatoon Wife of Late Md. Sahab Uddin Subhani @ Md. Sahab Uddin Resident of Village-Naya Tola Benigir,P.O. Benigir,Distt.-Munger

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary,Department of Rural Development,Govt.of Bihar,Old Secretariat,Bailey Road,P
3. The Deputy Secretary,Department of Rural Development Govt. of Bihar,Old Secretariat,Bailey Road,Pat
4. The Divisional Commissioner,Khagaria
5. The District Magistrate cum Collector,Khagaria
6. The Deputy Development Commissioner,DRDA,Khagaria
7. The Chairman,The District Rural Development Agency,Khagaria
8. The Accountant General,Bihar,Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abdul Mannan Khan, Advocate Mr. Binay Kumar, Advocate Mr. Allama Abdul Quadir Jamal Jahidi, Advocate
For the State	:	Mr. B.K. Pandey, AC to GA-2
For the AG	:	Mr. Prabhat Ranjan, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-03-2023

Heard Mr. Abdul Mannan Khan, learned counsel appearing on behalf of the petitioner, Mr. B.K. Pandey, learned AC to learned GA-2 for the State and Mr. Prabhat Ranjan, learned counsel for the Accountant General.

Re: I.A. No. 02 of 2022

2. An Interlocutory Application No. 02 of 2022 has been



filed for condonation of delay of one year seven months in filing substitution petition of the original petitioner, who had died on 12.02.2021.

3. For the reasons stated in the application and the affidavit and also considering the period of pandemic, delay of one year and seven months in filing the substitution petition is condoned and I.A. No. 02 of 2022 stands allowed.

Re: I.A. No. 01 of 2022

4. Heard Interlocutory Application No. 01 of 2022 for substitution of sole petitioner Farzana Khatoon, who had died during the pendency of the present writ petition on 12.02.2021.

5. For the reasons stated in the application and the affidavit, the prayer for substitution is allowed.

6. The office is directed to make necessary correction in the cause title of the present writ petition by substituting the following heirs in place of original petitioner. Accordingly, I.A. No. 01 of 2022 is allowed.

Re: CWJC No. 22201 of 2018.

7. Learned counsel appearing on behalf of the substituted petitioner informs this Court that the husband of original petitioner was appointed on the post of Night Guard on 07.03.1986 on the recommendation of the committee duly



headed by the Director, District Rural Development Agency (hereinafter referred to as 'the DRDA'). A decision was taken by the Government of India that all the persons who were the employee of District Rural Development Agency prior to 01.04.1999 should be absorbed in one or the other department of the respective State Government. The State Government took decision that the employees of the District Rural Development Agency would be absorbed permanently in the government service following the roster in various department and then only they would be brought on deputation to DRDA. He further submitted that husband of the original petitioner was posted as Night Guard in DRDA at Khagaria in the year 1986 and thereafter pursuant to the decision of the State Government dated 13.11.2003, the heirs of the deceased employee upon his death in the year 2016 are required to be paid all the benefit on account of the death of the husband of the original petitioner from the date of absorption.

8. *Per contra* learned counsel appearing on behalf of the State submitted that the decision of the State Government was clarified vide Letter No. 93214 dated 27.02.2012 so far as the present writ petitioner is considered and in terms of the Rural Development Department memo no. 176323 dated 05.02.2014



the husband of original petitioner can not be considered a government servant and as such he has been denied the payment of ACP, Gratuity and Pension.

9. The Division Bench of Allahabad High Court relying upon the Supreme Court Judgment in *State of Assam v. Kanak Chandra Dutta* reported in *AIR 1967 SC 884* held that the employees of DRDA do not answer the tests for coming within the purview of a Government or the State Government. It was held that merely because an Association falls under the expression 'instrumentality of State' within the meaning of Article 12 of the Constitution, it would not make its employees come within the definition of government employees. It was held that the employees of DRDA are for all practical purposes employees of the Society who are not holding any civil post in the services of the State and therefore Rule 56 of the Fundamental Rules would be inapplicable in their case.

10. The contention made on behalf of the State appears to be misconceived. The husband of the original petitioner was appointed under a scheme duly headed by the UNICEF and executed by the DRDA. The husband of the original petitioner was initially appointed as Night Guard at Khagaria by the Director, District Rural Development Agency, Khagaria and the



employees of the DRDA pursuant to the decision taken by the Central Government in the year 1999, were absorbed by the State Government in the year 2003-2006. The employees of the DRDA throughout the State of Bihar have been absorbed in the Department of Rural Development of the State Government. Even prior to such absorption, the Department was in existence for a long time with its staff having been employed. Such a long period of not only the organization but its employees as well cannot be said to be temporary in nature, which is a fact recognized by the State Government itself by issuance of the government order dated 13.11.2003. Once the husband of the original petitioner has been absorbed by the State Government, the dues payable to the petitioner on account of the death of the husband of the original petitioner cannot be denied. As such, the said submission on behalf of the State lacks merit.

11. The respondents are directed to consider the claim of the petitioner in light of the decision taken by the State Government. The husband of the original petitioner, who was the employee of the DRDA having once absorbed by the State Government is entitled for retiral dues payable to State Government employees. The petitioner is entitled accordingly for all the retiral benefits on account of the death of the



deceased employee from the date of the absorption in the state service.

12. Accordingly, the present writ petition is allowed.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	05.04.2023
Transmission Date	N/A

