

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.789 of 2019

In

Civil Writ Jurisdiction Case No.4103 of 2017

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Sheela Devi @ Shila Devi Wife of Late Sidhnath Prasad, resident of Village and P.O. - Gopalpur, P.S. - Belchhi, District - Patna, presently residing at Village - Sisauna, P.O. and P.S. Jokihar, District - Araria.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary of Public Health Engineering Department, Bihar, Patna.
2. The Principal Secretary of Public Health Engineering Department, Bihar, Patna.
3. The Engineer-in-Chief-cum Special Secretary Public Health Engineering Department, Bihar, Patna.
4. The Chief Engineer (Mechanical) of Public Health Engineering Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department, Purnea Circle, Purnea.
6. The Executive Engineer, Public Health Division, Araria, District, Araria.
7. The Divisional Account Officer, Public Health, Division, Araria.
8. The Treasury Officer, Araria, District- Araria.
9. The Accountant General (A and E) Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Siyaram Pandey, Advocate
For the Respondent/s : Mr. S.Raza Ahmad, AAG-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2023

The appellant, a widow, by the above writ petition seeks for demand of arrears as per Memo No. 712 (Finance) dated 25.10.2008, after revising the pay-scale as well as the pension, gratuity and leave encashment of the



husband of the appellant, who is no more. The appellant further claims a compensation by way of damages of Rs. 7, 00,000/- and interest at the rate of 12.5% per annum for the delayed payment.

2. The appellant's husband was absorbed into the work charge establishment on 25.01.1988, in the post of Khalasi and his services were regularized in the year 2006 in the newly sanctioned post of Keyman-cum-Chaukidar. He died on 20.01.2009, after which the appellant approached the Department for grant of pension and other dues entitled to the family of the deceased employee. The appellant filed C.W.J.C. No. 2246 of 2012, on being unsuccessful in getting the pension and other retiral benefits of her husband. The writ petition was allowed with a direction to the respondents to pay the family pension and other retiral benefits due to the deceased employee. An appeal filed was also dismissed. The Appellate Court, while dismissing the appeal, found that the duration of service rendered by the husband of the appellant, in the work charge establishment, should also be counted to determine the total duration of service; thus making the service in work charge establishment also pensionable. A Special Leave Petition filed by the State



was rejected.

3. The respondents still refused to pay the amounts due and contempt petition being M.J.C. No. 852 of 2013 was filed. The contempt petition was heard along with the review filed, by the Division Bench. By order dated 21.09.2015, the review application was rejected and the contempt case was directed to be listed before the appropriate Bench, having roster. Eventually, when the contempt of Court case was pending, the entire death-cum-retiral dues were paid to the appellant. It is stated that while disposing of the contempt petition by an order dated 10.08.2016, the appellant was granted liberty to approach this court with a further writ petition for getting arrears of revised pay-scale; if she so desires. The present writ petition is said to be filed for the revised pay scale, based on the liberty reserved in the Contempt Case.

4. The respondents in their counter affidavit stated that upon receipt of the revised sanction order and service book from the Executive Engineer, Public Health Division, Araria, the amount of family pension and gratuity in the scale of PB-1 + 2000 G.P. was authorized vide letter dated 14.01.2016 and sent to the Treasury Officer, Araria for



payment. The pay scale of the husband of the appellant was then revised to Rs. 2610-3540/- after which the deceased employee was also granted the Central 6th Revised Pay-Scale of 5200-20200/- with Grade Pay of 1900 on completion of 20 years of service.

5. The deceased employee was also granted the benefit of second A.C.P. and consequently, the benefits of grade pay of Rs. 2000/-. The pension, gratuity and family pension were accordingly revised as per the revised P.P. order dated 14.01.2016.

6. It was also stated by the respondent nos. 1 to 7 that earlier, for a similar prayer, the appellant had filed C.W.J.C. No. 7318 of 2014, which stood rejected. This fact was suppressed in the present writ petition, allegedly filed with oblique motives. The entire benefits due to the appellant by virtue of the revision of pay of the appellant's husband has been quantified and the same paid to the appellant, on the death of the husband. It was submitted that the initial engagement of the deceased employee was in the year 1981, without any advertisement, on daily wages and he was taken into the work charge establishment only in the year 1988; again not in a sanctioned or vacant post. The services of work



charge establishment employees were terminated in the year 2002, but they were subsequently absorbed in the permanent establishment in the newly sanctioned posts in the year 2006. This was, in fact, a new appointment and not a continuation of the earlier appointment. Nevertheless, on the basis of the judicial pronouncements, the entire service of the husband of the appellant in the work charge establishment was counted for pension.

7. The learned Single Judge found on an examination of the materials on record that the writ petition was clearly barred by the principles of *res judicata* and even on merits the appellant does not have any case insofar the entire retiral dues of the deceased husband of the appellant having been given to her after revision of pay, retrospectively with benefits also of A.C.P. and M.A.C.P. conferred on the employee.

8. We have also gone through the materials on record. Admittedly, the earlier writ petition C.W.J.C. No. 2246 of 2012 was allowed on 04.09.2012, wherein the appellant was directed to be paid the post retiral benefits of her deceased husband and also the family pension due to her. The said judgment was challenged by the State but they failed, up



to the Hon'ble Supreme Court. It is also seen from the records that the said judgment in the writ petition and judgment in appeal are produced as Annexure-1.

9. The dismissal of the S.L.P. is also evidenced by the order produced along with Annexure-1. The review petition was dismissed by another Division Bench by order dated 21.09.2015 and the contempt initiated against the respondent is evident from the order dated 16.03.2016, produced along with Annexure-2 series. The second document produced as Annexure-2 series is the order disposing of the Contempt of Court case, order dated 10.08.2016, in which liberty was reserved to the appellant to take up the issue of getting arrears of revised pay scale, since the learned Single Judge was rightly of the view that the same cannot be adjudicated in the contempt case.

10. In this context we have to notice that when M.J.C. No. 852 of 2013, the contempt of case was disposed of on 10.08.2016, there was already a writ petition pending, filed as C.W.J.C. No. 7318 of 2014, for the prayers as extracted in the impugned judgment in the present appeal. The reliefs sought for were to take up the services of the husband of the appellant to the work charge establishment after completion



of 240 days, to grant promotion to the husband of the appellant and to regularize his services from 02.01.1991, on completion of 10 years service. Reliefs were also prayed for granting the 1st and 2nd A.C.P. and an amount of honorarium and *ex-gratia* to the tune of Rs. 10,00,000/-, for having deputed her handicapped husband for flood relief; which led to his death. Reliefs also included revision of payment of retiral-cum-death benefits including family pension, gratuity, leave encashment and the arrears of salary from 01.01.1981 to 20.01.2009. The said writ petition was dismissed on 21.07.2019, especially finding that the entire claims relating to the service period of the employee were not raised when he was alive and in service, especially when his death occurred in 2009, long after the period for which the benefits are claimed in the writ petition. The appellant's claim for *ex-gratia* was also rejected. The present writ petition was filed on 18.03.2017, while an earlier writ petition being C.W.J.C. No. 7318 of 2014 was pending. Neither was the pending writ petition revealed in the memorandum of writ petition nor was the disposal of the said writ petition brought to the notice of Court before the hearing, by way of an appropriate amendment.



11. We find it a clear abuse of process of Court and restrain ourselves from imposing cost on the appellant only in the circumstances of she being a widow.

12. Being faced with the above circumstances, the learned counsel sought for withdrawal of the appeal but having considered the matter *in toto*, we are of the opinion that there is no reason to permit such withdrawal and the Letters Patent Appeal would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	NAFR
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