

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1896 of 2021

In
Miscellaneous Appeal No.772 of 2009

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Kiran Devi, aged about 53 years, Female Wife of Batul Kumar Verma,
Daughter of Late Sachidanand Sinha, at present residing at flat no. 205
Maheshwari Kunz Road no. 6 East Patel Nagar, P.S. Shastri Nagar District-
Patna.

... .. Petitioner/s

Versus

1. Batul Kumar Verma, aged about 53 years, Male Son of Ishchandra Nrayan Verma, Residence of Village-Bhagwanpur, P.S.- Bhagwanpur, P.O. Bhabhua, District- Kaimur, presently working as sorting assistant in R.M.S., C-Division Railway Station Gaya, District- Gaya.
2. Ranjan Kumar Srivastava, aged about years, Male Superintendent, R.M.C., 'C' Division Gaya, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Sinha, Advocate
For the UOI	:	Dr. Krishna Nandan Singh, ASG
		Mr. Raj Kamal, CGC
		Mr. Shivaditya Dhari Sinha, JC to ASG
For Opposite Party No. 1:		Mr. Din Bandhu Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 30-11-2023

On 02.11.2023, the following order was passed.

*“Show cause has been filed on behalf of
the opposite party no.2 while furnishing
Annexures-R-2/1, R/2/2 and R/2/3.*



2. Perusal of R/2/2, certain period has been excluded for the purpose of calculation. The reason being petitioner's husband remained absent. On that score, the respondents cannot deduct or left over the same for the purpose of calculation. It is to be noted that petitioner's husband was a holder of permanent post in the Railways-R.M.S. For the purpose of deduction of single rupee from the salary of the servant of the Government Department for any reason, he is or such servant is required to be subjected to disciplinary proceeding. In the present case, the allegation is that he remained unauthorized absent for various period, therefore, he is not entitled to salary for the concerned period. Consequently, the petitioner, the wife of the servant, is not entitled to have benefit of arrears of salary for such of those period. Remaining unauthorized absent was not taken note of by the concerned authority or Head of the Department so as to place petitioner's husband under suspension and thereafter subjecting him to disciplinary proceeding and in disciplinary proceeding, the competent authority/disciplinary authority was required to determine whether petitioner's husband was entitled to salary or not? or forfeiture of salary or any other penalty can be imposed. Further, how to regulate such of those unauthorized absence period have not been determined by the disciplinary authority. Therefore, apparently the respondents cannot take contention that petitioner's husband remained absent, therefore, for the absented period, petitioner is not entitled to difference of pay. The same is depreciated in the absence of certain disciplinary proceedings under the Discipline Rules called the Railway Servants (Discipline and Appeal) Rules, 1968 R/w The Railway Services (Conduct) Rules, 1966.



3. *The concerned authority is hereby directed to recalculate amount to be given for other unauthorized period for the reasons that there is inaction on the part of the disciplinary authority for not taking action so as to determine the absence period as duty or not and further no entitlement of arrears of salary during the period of absence. Hence, the concerned authority is hereby directed to recalculate Annexures-R/2/1 and R/2/2 and redetermine the arrears and place it on record before the next date of hearing. The amount determined as sum of Rs.1,09,441/- is stated to have been paid in entirety in three installments. For remaining unauthorized absence period whether the respondents have taken any action under Rules, 1968 R/w Rules, 1966 cited supra or relevant Disciplinary Rules insofar as determining the absented period and regulating the same for the purpose of service condition of the petitioner's husband. In that regard, if any materials are available, the same shall be placed on record. If such materials are already on record in that event, the respondents will not determine the difference of calculation for the absented period. If records are not available in that event they are bound to calculate and pay the difference to the petitioner.*

4. *Relist this matter on 23.11.2023.*

2. Today, respondents have filed supplementary show cause on behalf of opposite party no. 2 along with Annexure-R/2/4 to Annexure-R/2/8.

3. Perusal of the documents, it is evident that employee had filed leave application for various period from 10.10.2020 to 12.02.2022. On his leave application, the concerned authority has



proceeded to pass orders permitting the employee to avail various kinds of leave (extraordinary leave), committed leave and Earned leave.

4. In view of these facts and circumstances, the employee is not entitled to 50% salary against those days read with regularisation of those days leave like Extraordinary, Committed and Earned leave. On the other hand, employee is entitled to arrears of 50% of salary only against earned leave. Earned leave has been granted only on 01.01.2022, that may be considered by the concerned respondents.

5. Learned counsel for the petitioner submitted that retired employee has not been paid pension on account of his attaining age of superannuation and retired from service in the month of June, 2023. This issue cannot be adjudicated in contempt of Court petition that apart it is a fresh cause of action to the employee or to the petitioner. Ordinary, the State-Central Government will not stop pension. If it is not paid the concerned authority is hereby directed to examine and redress the same in this regard. The employee is hereby directed to furnish a detailed representation in so far as fixation of retiral benefits and pension if such application or representation is submitted the concerned



authority will examine and pass appropriate order within a reasonable period of time.

6. With the above observation, the present MJC stands dropped. The above grievance is required to be agitated by retired employee only.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	
CAV DATE	
Uploading Date	01.12.2023
Transmission Date	

