IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17015 of 2019

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Bindu Thakur W/o Late Tripurari Thakur R/o House No. 46, Sitaram Path, Patel Nagar, St. Gandhi Residency School, L.B.S. Nagar, Patna, Bihar-800023, at present residing at - Flat No. 105, Zest Residency, Gandhi Murti, Patel Nagar, Patna-800023

... ... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
2. Engineer in Chief Road Construction Department, Govt. of Bihar, Patna
3. Under Secretary (Head Office)-cun-Drawing and Disbursing Officer Road Construction Department, Bihar, Patna
4. Accountant General Bihar, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Jyoti Ranjan Jha, Adv.
For the State : Mr. Rakesh Ranjan, AC to G.P.-22
For Accountant General : Mr. Ram Kinker Choubey, SC & ACAD

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

11 22-06-2023 Heard Mr. Jyoti Ranjan Jha, learned counsel appearing on behalf of the petitioner, Mr. Rakesh Ranjan, learned counsel appearing on behalf of the State and Mr. Ram Kinker Choubey, learned counsel appearing on behalf of the respondents.

2. The husband of the petitioner retired on 31.03.2018 while he was working on the post of Assistant in the Road Construction Department, Government of Bihar, Patna. The deceased employee during his life time submitted his pension paper before his Controlling Officer on 05.04.2018. On

16.05.2018, the petitioner requested to file rectified pension paper, so that further steps be taken with regard to calculation of pension. The husband of the petitioner died on 14.05.2018 and till then the authorities have not taken any steps to make payment of retiral dues to the petitioner including family pension.

3. Learned counsel appearing on behalf of the petitioner submitted that the respondents are required to act in accordance with the Government Circular and provision of Bihar Pension Rules in making payment of pensionary benefit to the petitioner, who is the legally wedded wife of the deceased employee. During the pendency of the present writ petition, the petitioner has filed an Interlocutory Application bearing I.A. No. 1 of 2020 (for amendment of prayer) and has prayed for in addition to the relief sought for in the main writ petition at paragraph-2 of the Interlocutory Application No. 01 of 2020 inter alia as follows:-

> *"2) That following ground may kindly be added in para-2 after sub para-iv as follows:*
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> *v) Because, the clause in question is arbitrary, unfair and unreasonable.*
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> *vi) Because, the husband of the petitioner applied for grant of commutation of pension and the same was not communicated to the finance department by the head of the Road*

Construction Department. The same is not under the control of the petitioner's husband.

vii) Because, the second part of the clause 3 under challenge in question is beyond the control of a retired employee or his family members.

viii) Because, the said clause is arbitrary and as such violative of Article- 14 of the Constitution of India.

ix) Because, the apex court has been pleased to laid down a law that as and when the application for commutation was made the same become absolute (AIR 2019 S.C., Page-1547, para- 27 & 28).

x) Because, the said part of the Govt. decision is otherwise bad in law and fit to be read down."

4. Learned counsel has submitted that the petitioner is liable for grant of commutation of pension, but till date his Controlling Officer has not send the records relating to the petitioner to the Finance Department. Learned counsel submitted that the case of the petitioner is covered by the law laid down by the Apex Court reported in ***A.I.R. 2019 Sc 1547 (Chief General Manager Gujarat Telecom Circle, Bharat Sanchar Nigam Limited & Ors. Vrs. Manilal Ambalal Patel & Ors.)***. He further submits that once application for commutation of pension has been made, the same is required to be paid to the petitioner, which was payable to the husband of the petitioner, in

light of the Judgment of the Apex Court.

5. The petitioner has further relied upon several resolution and circular of the State Government in support of his claim for payment of Commuted amount of pension payable to the deceased employee.

6. Per contra, learned counsel appearing on behalf of the State has referred to the counter affidavit, supplementary counter affidavit and third supplementary counter affidavit. He has submitted that the petitioner has been granted all retiral dues and the petitioner has admitted to that extent.

7. So far as commuted amount of pension is concerned, neither the husband of the petitioner nor the petitioner has taken any steps to rectify the pension paper till date. However, specific denial has been made in third supplementary counter affidavit that in absence of any application or rectified pension papers filed on behalf of the petitioner, no action could be taken and the heirs of the retired employee cannot be granted relief as has been claimed in the Interlocutory Application.

8. Heard the parties.

9. Considering the records as well as the affidavit filed on behalf of the petitioner and the State, the petitioner as

on date is only aggrieved for inaction of the authorities in not calculating the commutation of pension in accordance with Rules 236 to 259 of the Bihar Pension Rules.

10. From third supplementary counter affidavit filed on behalf of the respondents, it appears that in spite of letter dated 16.05.2018, issued by the Controlling Officer of the deceased employee, no further steps was taken and before the submission of the amended pension paper, the husband of the petitioner died. This Court finds that there is a clear averment made in paragraph-7 of the third supplementary counter affidavit to that extent.

11. This Court in such circumstances, directs the Controlling Officer of the deceased employee to verify from the records as well as the original pension paper filled up by the deceased employee and find out as to what action was taken as per letter dated 16.05.2018. The said letter has not been brought on record by which the deceased employee was directed to file amended rectified pension paper. In case, there is any evidence that the duly filled pension paper by the deceased employee also contends claim of commutation of pension and he had shown his willingness for commutation of pension certainly the right of the petitioner cannot denied on account of any technicalities

found for which amended/ rectified pension paper were required to be produced by the deceased employee.

12. The Controlling Officer, Engineer in Chief, Road Construction Department, Government of Bihar, respondent no. 2 is directed to examine the records relating to Late Tripurari Thakur, husband of the petitioner and pass a necessary order examining the record and Government circular in accordance with law with regard to the entitlement of the petitioner for commuted pension and the dues entitlement.

13. In case, the petitioner is entitled for the relief as prayed for the commuted amount of pension must be paid to the petitioner within a period of three weeks. In case the respondent no. 2 finds that petitioner is not entitled, then in that case, considering the fact that the petitioner is a poor lady and is not very literate, she may be given a prior notice, so that she may defend her case. The notice must be served to the petitioner by any mode and if respondent no. 2 finds that for merely technical reason and not filing rectified pension papers, the relief has been denied. In that case respondent no. 2 must ensure that he will extend all help to the petitioner in filling up the form or other required papers faithfully within a further period of three weeks. In case he finds that no case is made out for payment of

commutation amount payable to the petitioner, in that case also he must pass a reasoned order within the aforesaid period.

14. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

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