IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1254 of 2017

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Hari Shanker Pathak, S/o Late Ramswaroop Pathak, R/o Vill- Jagir Mohalla, P.S.- Begusarai Town, Dist- Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna.
3. The Accountant General, Bihar, Patna.
4. The District Magistrate, Begusarai.
5. The District Provident Fund Officer, Begusarai.
6. The Circle Officer, Begusarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Bhushan, Advocate.
For the State	:	Mr. Deepak Sahay Jamwar, AC to AAG-4
For the A.G.	:	Mrs. Nivedita Nirvikar, Sr. Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT
Date : 16-03-2023

Re.: Interlocutory Application No. 01 of 2023

Interlocutory Application No. 01 of 2023 has been filed for substitution of of the following legal heirs of the writ petitioner who has died on 22.07.2022:

1. Anju Pathak, wife, Aged about 57 years
2. Manish Pathak, Son, aged about 39 years
3. Abhitesh Kumar, Son, aged about 28 years
4. Isha Bhardwaj, Daughter, aged about 35 years

2. For the reasons stated in the interlocutory application, in the interest of justice, I.A. No. 01 of 2023 is

allowed and legal heirs of the original writ petitioner (deceased) are directed to be substituted in place of the original petitioner who has died on 22.07.2022.

Re.: C.W.J.C. No. 1254 of 2017

3. The original petitioner had filed the present writ application for the following reliefs:

> *(a) For issuance of appropriate writ commanding and directing the respondents authorities to make the payment of retrial dues under following heads-*
> *A. For payment of gratuity.*
> *B. For sanction of dues earns leave of 59 days out of 300 days.*
> *C. For payment of salary dues as well as for the payment of the difference amount, after fixing he Pension, as the provisional pension is being paid to the petitioner.*

4. Learned counsel appearing on behalf of the petitioner at the outset submitted that some payments have been made, however, amount of gratuity, earned leave, payment of difference amount of salary have not been paid and the family pension has not been fixed till date. The original petitioner was posted as Nazir in Teghra Block and was promoted to the post of Upper Divisional Clerk. He had handed over the charge to the incumbent Nazir, but with some delay, for which he was issued with a show cause and a departmental proceeding was initiated against him. The departmental proceeding could not be completed during his life time. Learned counsel further submitted that after the death of the petitioner, the legal heirs of

the original petitioner are entitled for family pension and the proceeding which was initiated during the life time of the original petitioner will automatically cease on account of the fact that the departmental proceeding could not be concluded before his death. Learned counsel appearing on behalf of the petitioner further submitted that family members of the petitioner were not able to provide good treatment to the petitioner in absence of adequate money and further submitted that for the treatment of the petitioner (deceased), huge amount of money was also incurred by the family. Now, the family is on the verge of starvation. The petitioner in support of his claim has relied upon the paragraph No.8 of the judgment of the Hon'ble Supreme Court rendered in the case of ***Dev Prakash Tewari v. U.P. Coop. Institutional Service Board reported in (2014) 7 SCC 260*** which is reproduced hereunder:

> ***"8. Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."***

5. Per contra, learned counsel appearing on behalf of the State submitted that the petitioner was found guilty for

causing delay in handing over the charge which was found proved. Such misconduct comes under Major punishment. Second show cause notice was required to be issued on the basis of special audit conducted during the period of his posting for the financial years 2010-11 to 2012-13 of Teghra Block during which period petitioner was the In-charge Nazir of the Block. He has not denied the fact that after the retirement of the petitioner, no proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 was initiated against the petitioner. He further submitted that the petitioner is not entitled for payment of gratuity and full family pension for having misappropriated the government fund.

6. Heard the parties.

7. During the pendency of the writ petition, the record reveals that the respondents have made payment of G.P.F., Group Insurance and Earned Leave, however amount of gratuity and pension have not been paid to the petitioner on the ground that allegedly a departmental proceeding had been initiated against the petitioner in which the inquiring officer also submitted the inquiry report. After proper inquiry, the petitioner was found guilty for causing delay in handing over the charge to the incumbent. The record also reveals that the departmental

proceeding so initiated against the original writ petitioner had not completed during his life time. It is admitted that after retirement of the petitioner, no proceeding under Rule 43(b) of the Bihar Pension Rules, 1950 was initiated against him. The petitioner retired from service on 31.07.2013 while he was posted as Upper Division Clerk in Teghra Block and thereafter during the pendency of the present writ petition he died on 22.07.2022. Today all his legal representatives have been substituted who now plead that huge amount of money was spent in treatment of the petitioner and now the family is on the verge of starvation.

8. It is now well settled that pension is not bounty rather the same is a right. In the case of **Dr. Pratima Modi Vs. The State of Bihar & Others, 2020 (1) PLJR 451,** this Court deprecated the practice of belatedly initiating proceedings under Rule 43(b) of the Bihar Pension Rules much after retirement of an employee. The case of the petitioner stands on a better footing inasmuch as in the present case a proceeding under Rule 43(b) was never initiated and now the original petitioner has died.

9. In the facts of the present case, I am of the opinion that the concerned respondents by not making payment

of gratuity and fixing the family pension have deprived the petitioner to tide over his financial crisis and now his legal representatives are deprived of their legal right. In such circumstances, the action of the concerned respondent to withhold payment of gratuity, pension and family pension after the death of the original petitioner is illegal. In this regard, it would be relevant to reproduce paragraph No. 31 of ***D.S. Nakara and Ors. Vs. Union of India reported in (1983) 1 SCC 305*** which is as under:

> ***31. From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. It must also be noticed that the quantum of pension is a certain percentage correlated to the average emoluments drawn during last three years of service reduced to 10 months under liberalised pension scheme. Its payment is dependent upon an additional condition of impeccable behaviour even subsequent to retirement, that is, since the cessation of the contract of service and that it can be reduced or withdrawn as a disciplinary measure.***

The above judgment has recently been followed in

Assistant General Manager and Ors. v. Radhey Shyam Pandey reported in (2020) 6 SCC 438.

10. The respondents are under obligation to make payment of the entire amount of retiral dues which has not been paid to the petitioner till date and fix the family pension of the petitioner forthwith.

11. Petitioner is directed to file a detailed representation before the District Magistrate cum Collector, Begusarai – respondent no.4. The respondent no.4 is directed to release the entire amount of retrial dues as claimed by the petitioner which he has not received and forthwith fix the family pension of the petitioner within a period of six weeks from the date of representation.

12. The writ petition is accordingly allowed.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	29.03.2023
Transmission Date	N.A.