

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15907 of 2023

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Anjali Prabha wife of Late Pramod Kumar Prasad, Resident of Raza Bazar,
Bhagtini Gali, Rukanpura, P.O.-Bihar Veterinary College, P.S.- Shastri Nagar,
District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Animal and Fisheries Resources Department, Govt of Bihar, Patna.
4. The Joint Director (MU), Animal and Fisheries Resources Department, Vikas Bhawan, New Secretariat, Patna.
5. The Assistant Director (P.V.), Extensive Animal Development Project, Semen Storage Centre, Barahiya, Lakhisarai.
6. The Regional Director, Animal Husbandry, Bhagalpur Region.
7. The Special Deputy Director, Extensive Animal Development Project, Munger.
8. The Treasury Officer, Lakhisarai.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Kumar, Advocate
For the Respondent/s	:	Mr. Sajid Salim Khan, SC- 25
	:	Mr. Arif Daula Siddiqui, AC to SC-25
For the A.G., Bihar	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 10-11-2023

Heard Mr. Ravindra Kumar, learned counsel
appearing on behalf of the petitioner, Mr. Bindhyachal Rai,
learned counsel appearing on behalf of the Accountant General,
Bihar and Mr. Sajid Salim Khan, learned SC- 25 appearing on
behalf of the State.

2. The petitioner, who is the wife of the deceased

employee namely, Late Pramod Kumar Prasad, who had died on 10.11.2021, is aggrieved that her husband was entitled to the benefit of 6th and 7th Pay Revision. She claims the same and has sought quashing of Letter dated 06.05.2023 (Annexure-12) being aggrieved that recovery is illegal and seeks for issuance of 'No Dues Certificate' and continue her pension as was being paid.

3. Learned counsel appearing on behalf of the petitioner submits that the recovery from family pension after the husband of the petitioner was given benefits of financial upgradation allegedly on the ground of non-passing of the computer eligibility examination, is against the law laid down by the Apex Court in case of *Amresh Kumar Singh & Ors. Vs. The State of Bihar & Ors.* reported in (2023) SCC OnLine SC 496, in which the Apex Court has held that financial upgradation on account of stagnation on the post will not amount to promotion and passing of any technical examination will not come in the way in fixation of the pension on the basis of last pay drawn by her husband at the revised rate. He further submits that the husband of the petitioner had appeared in the departmental examination conducted by the department on 04.02.2020 and he was declared fail, thereafter, no departmental

examination was conducted by the Department.

4. Learned counsel further submits that the notification dated 06.03.2018 bearing no. 3127 clearly stipulates in Rule-4 that a person who has completed the age of 50 years and appeared in the departmental examination conducted by the department is eligible for the benefit of exemption from passing the departmental examination. It is relevant to make clear that a Rule has been framed under Article 309 of the Constitution of India for exemption of employee from passing the departmental examination.

5. Petitioner seeks to file a detailed representation before the Director, Animal Husbandry, Bhagalpur, for the relief(s) as prayed for in the present writ petition.

6. The Director, Animal Husbandry, Bhagalpur, who is the sanctioning authority, must ensure to make payment of all the retiral dues, to which the deceased employee was entitled for, within a period of six weeks. The Director, Animal Husbandry, Bhagalpur, must consider that the petitioner is a widow and he must not harass her in any manner and also ensure benefits of 6th and 7th Pay Revision, to which husband of the petitioner was entitled for.

7. The order of recovery of a sum of Rs.9,37,120/-,

being against the law laid down by the Apex Court, is non-sustainable in the eye of law and said order is hereby set-aside and quashed. The Sanctioning Authority is directed not to take any action to recover the said amount from the petitioner. If any amount has already not been recovered from the petitioner from the family pension and other pensionary benefits of the deceased employee, the same is directed to be return back.

8. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2023
Transmission Date	NA