IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7513 of 2021

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Nirmala Mishra, Wife of late Vijay Kumar Mishra, Resident of Village - Pipra, P.S. - Pipra, District- Palamu, Jharkhand.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Director, Secondary Education, Department of Education, Govt. of Bihar, Patna.
3. The Bihar Sanskrit Shiksha Board, through its Secretary, 17 Back, Harding Road, Patna.
4. The Chairman, Bihar Sanskrit Shiksha Board, through its Secretary, 17 Back, Harding Road, Patna.
5. The District Magistrate, Begusarai, Bihar.
6. The District Programme Officer (Establishment), Begusarai.
7. Shri Hariganga Tantralata Sanskrit High School, Simaria, through its Secretary, Simaria, District- Begusarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shashank Chandra, Advocate
For the Respondent/s	:	Mr.Lalit Kishore (AG)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

6 02-12-2024 The petitioner is the widow of one late Vijay Kumar Mishra, who was appointed as a Sanskrit Teacher at Shri Hariganga Tantralata Sanskrit High School, Simaria, District - Begusarai in the year 1980. In the year 2009, he became Headmaster of the said school. While working as Headmaster of the said school, the said late Vijay Kumar Mishra died in harness.

2. As per the prevalent rule, at the relevant point of

time, the family member of a deceased Teacher of Sanskrit School was entitled to arrears salary. For receipt of the salary, the present petitioner moved this Court under writ jurisdiction and on the basis of the order passed in the writ petition, the petitioner was granted arrears salary.

3. Presently, it is the case of the petitioner that by virtue of a Government decision, the deceased husband of the petitioner was entitled to the benefits of 5th and 6th Pay Commission w.e.f. 1st of March, 1989 and 1st of April, 2007 respectively. However, the said amount has not been paid to the petitioner. Moreover, the petitioner was entitled to get arrears dearness allowance and leave encashment for accumulated earned leave. Those amounts were also not paid.

4. It is frankly contended by the learned Advocate for the petitioner that during pendency of the instant writ petition, the respondents paid arrears dearness allowance to the petitioner and it was credited to the petitioner's account. Thus, the petitioner admits the contention of the Respondent No. 6 stated in Paragraph No. 10 of the counter affidavit.

5. It is not in dispute at present that after series of litigation, the Teachers of Sanskrit (Aided) Schools are entitled to the benefit of 5th and 6th Pay Commission.

6. The learned Advocate on behalf of the respondents draws my attention to the averment made in Paragraph No. 15 of the counter affidavit filed by the Respondent No. 6, wherein the Respondent No. 6 candidly admits:-

> *"……………......In the light of aforesaid writ D.E.O., Begusarai, also issued a letter to Special Director, Secondary Education, Bihar, Patna whereby and whereunder demanded him sum of Rs. 15,56,882/- for payment of differential amount of the writ petitioner according to norms and guideline of the Education Department vide Letter No. 4316, dated 5th of October, 2024."*

7. It is submitted by the learned Advocate for the respondents that as soon as the said money would be available to the D.E.O., Begusarai, the same would be paid to the account of the petitioner.

8. Learned Advocate for the petitioner, at this stage, submits that the petitioner has a right to go through the calculation sheet on the basis of which the due amount has been fixed. Therefore, the petitioner may be provided with a copy of the calculation sheet for inspection.

9. The learned Advocate on behalf of the petitioner also refers to an unreported Judgement of this Court in C.W.J.C. No. 11015 of 2016, delivered by the Hon'ble Justice Ashwani Kumar Singh, as his Lordship then was, on 23rd of December,

2016. The said writ petition also relates to entitlement of leave encashment by the teachers of Sanskrit (Aided) Schools. Paragraph Nos. 10 and 11 of the aforesaid judgement is relevant and quoted below:-

> *"10. So far as the objection raised by the State is concerned, this Court would like to record that the law is in respect of payment of dues of encashment of leave is well-settled. It is nothing but payment of salary for leave not availed by an employee and which is to his credit. Leave encashment is earned by an employee by discharge of his duties for each completed calendar month of service period. An employee who retires on attaining the age of superannuation becomes entitled to payment of cash equivalent of leave salary for earned leave, if any, at the credit of the employee on the date of retirement subject to the prescribed upper limits to be fixed by the State Government from time to time. Thus, leave encashment is nothing but salary which an employee earns during service and is paid after his retirement.*
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> *11. In view of the discussions made above, the writ petition is allowed. The respondents are accordingly directed to pay the dues of leave encashment to the petitioner as per his entitlement without any delay preferably within a period of three months from the date of production of a copy of this order failing which the respondents would be liable to pay interest at the rate of eight percent per-annum on such delayed payment from the date the amount became due till the date of its actual payment."*

10. In view of such decision of the Coordinate Bench of this Court and the nature of leave encashment, this Court is of

the view that the petitioner is also entitled to leave encashment in respect of the accumulated earned leave of her husband, since deceased.

11. The respondents are directed to make entire payment at the earliest and if possible within 3 months from the date of this order.

12. The liberty is granted to the petitioner that on perusal of the calculation sheet, if any, discrepancy is found by her, she is entitled to raise the grievance to the concerned authority.

13. The instant writ petition is, accordingly, disposed of, on contest.

14. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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