

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5667 of 2023**

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Asha Devi Wife of Late Ashanand Pandey Resident of Village Morwan, PO-Chainpur, PS-Siswan, District-Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary, Home Department, Govt. of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police (Headquarter), Bihar, Patna.
5. The Deputy Inspector General of Police, Begusarai Range, Begusarai
6. The Superintendent of Police, Begusarai
7. The Accountant General Bihar Patna, Beer Chand Patel Path R-Block-Patna.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-----------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. D. K. Sinha, Sr Advocate with<br>Mr. Bajarangi Lal,<br>Ms. Akanksha Malviya and<br>Mr. Alexandar Ashok, Advocates |
| For the State        | : | Mr. Sanjay Kumar Ghosarvey, AC to AAG 3                                                                               |
| For the A.G.         | : | Mr. Chaitanya Swaroop, Adv.                                                                                           |

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL JUDGMENT**

**Date : 29-01-2024**

Heard Mr. D. K. Sinha, learned senior counsel along with Mr. Bajarangi Lal, learned counsel appearing on behalf of the petitioner and Mr. Sanjay Kumar Ghosarvey, learned counsel for the State.

2. The petitioner claiming herself to be widow of Ashanand Pandey, who died on 28.09.2018, has filed the present writ petition seeking quashing of the order as contained in Memo No. 1046 dated 02.05.2020 issued by the Superintendent



of Police, Begusarai whereby the family pension of the petitioner has been fixed on the basic pay of Rs. 1090/- as on January, 1992 of her late husband, which in the submission of the petitioner is not tenable in view of the judgment passed in CWJC No. 7899 of 2006 preferred by her husband.

3. It is submitted on behalf of the petitioner that the husband of the petitioner while posted in the district of Begusarai proceeded on leave for seven days on 08.11.1993 after submitting an application for leave but he failed to return on duty on 16.11.1993 due to serious illness and he overstayed after giving information in this regard to the competent authority appending his medical certificate and lastly he joined duty on 27.12.1994. Again due to compelling reason and illness of the husband of the petitioner, he sought further leave on 10.01.1995 and was accorded the same for 20 days. However, on account of overstay without any order of the superior, the authority treated it to be misconduct and he was put to departmental proceeding which culminated into punishment of dismissal vide Memo No. 1987 dated 25.03.1997.

4. Aggrieved, the husband of the petitioner preferred an appeal which also came to be dismissed by the Appellate Authority as contained in Memo No. 2490 dated 03.11.1998



issued by the Deputy Inspector General of Police. He, whereafter, assailed both the orders by filing CWJC No. 11685 of 1998 before this Court which was finally disposed of vide order dated 16.01.2006 with a request to the Director General of Police to decide the memorial. However, in the meantime, the Director General of Police rejected the memorial vide Memo No. 6689 dated 13.10.2000 which was communicated to the late husband of the petitioner vide Memo No. 558 dated 03.03.2006. Aggrieved by the order of punishment of dismissal and its affirmation by the Appellate Authority as well as in the memorial, the husband of the petitioner filed CWJC No. 7899 of 2006.

5. It is to be noted that during the pendency of the writ petition, the husband of the petitioner died on 28.09.2018 and the petitioner being the wife, substituted in his place and pursued the writ petition. The learned Court considering the fact that the order of the disciplinary authority dated 25.03.1997 awarding the punishment of dismissal was without serving copy of the enquiry report and thus, held the second show cause to be unsustainable. In view of the prejudice caused to the erstwhile employee due to non-service of the enquiry report and the second show cause, the order of the disciplinary authority dated



25.03.1997, as well as the subsequent order passed by the Appellate Authority dated 02.11.1998 and the order dated 13.10.2000 passed by the Deputy Inspector General of Police and Director General of Police, Bihar, Patna were quashed. While allowing the writ petition, the learned Court has categorically observed as follows:

*“On account of such lapse under normal circumstance, this court would remand the matter for proceeding from stage of second show cause. Petitioner however, has passed away during instant proceedings and this case is being pursued by wife of the petitioner upon substitution under earlier order of this court dated 22.02.2019. In the circumstance, there is no scope for remanding the matter for reconsideration.*

*This court would thus consider it appropriate that the petitioner be treated to have retired in service. Entitlement on account of family pension of the substituted petitioner be determined by the authorities and payment should be expedited without any undue delay. Final decision and payment of family pension to the substituted petitioner should be completed within eight weeks from the date of receipt/production of a copy of this order.*

*Writ petition stands allowed.”*

6. Referring to the aforesaid order/judgment, the learned senior counsel appearing on behalf of the petitioner submits that from the reading of the aforesaid order there is no scope for the respondent authority to treat the erstwhile



employee as absconder and fix the pension of the petitioner in the basic pay of Rs. 1090/- treating the husband of the petitioner in service only till January, 1992.

7. At this stage, learned counsel for the State while refuting the contention of the petitioner has submitted that the husband of the petitioner remained absconder since 1992 and thereafter he was put to departmental proceeding which culminated into dismissal of his service. Since the husband of the petitioner never submitted his joining and as such there was no reason or occasion to allow the family pension to the petitioner by treating him in service till the date he died. He further submits that pursuant to the order dated 29.09.2019 passed by the Hon'ble Court the salary of the husband of the petitioner was calculated on the basis of resolution No. 3590/Finance dated 24.05.2017 of the Finance Department which comes to Rs.22,400/- as contained in Begusarai District Order No. 1216/2020 dated 05.09.2020 and thereafter family pension of the petitioner was fixed @ Rs.11,200/- and she is getting the same.

8. This Court has heard the learned counsel for the respective parties. Having anxiously gone through the order passed by this Court dated 20.09.2019 in CWJC No. 7899 of



2006, it is manifest that all the punishment order, appellate order as well as the order passed in the memorial have been set aside. The moment the impugned orders of punishment and its affirmance come to an end, the erstwhile employee shall be treated in service. The learned Court, taking note of the fact that during the pendency of the writ petition the husband of the petitioner died on 28.09.2018, pleased to hold that the husband of the petitioner be treated to have retired in service. Thus, in view of the order passed by the learned Court, there is no hesitation to hold and declare that the family pension of the petitioner should have been fixed on the basis of the salary which was found admissible to the erstwhile employee on the date when he died, i.e., 28.09.2018 by treating him to have died in harness.

9. In view thereof, the impugned order to the extent whereby the family pension of the petitioner has been fixed in the basic pay of Rs. 1090/- on January, 1992 is hereby set aside. The matter is relegated to the Superintendent of Police, Begusarai to take a fresh decision in the matter of fixation of family pension of the petitioner by treating the husband of the petitioner to have died in harness on 28.09.2018 and further to ensure all the consequential financial benefits, in accordance



with law.

10. Needless to observe that the impugned order of dismissal and its affirmance were set aside on account of procedural lapses and the erstwhile employee has never discharged any service during the interregnum period, any claim for salary and other benefits would not arise.

11. The aforesaid exercise must be completed preferably within a period of 12 weeks from the date of receipt/production of a copy of this order.

12. Accordingly, the present writ petition stands allowed, to the extent indicated hereinabove.

**(Harish Kumar, J)**

Anjani/-

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