

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10715 of 2023

Geeta Srivastava W/o Late Jai Prakash Narayan @ Jai Prakash Srivastava @
Late Jai Prakash Narayan Srivastava Resident of village B2, Satyam Enclave,
Judges Colony, East Saguna Khagual, Patna, Bihar- 801503.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Planning and Development, Govt. of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
2. The Additional Chief Secretary, Department Finance, Govt. of Bihar, Old Secretariat, P.O. Sachivalay, Patna.
3. The Director, Directorate of Economics and Statistics, Planning and Development Department, Old Secretariat, Patna, Bihar.
4. The Joint Director(Administration), Directorate of Economics and Statistics, Planning and Development Department, Old Secretariat, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.
For the Respondent/s : Mr. Vinay Kirti Singh (Ga 2)

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 04-03-2025

This petition has been preferred by the petitioner being aggrieved with the order dated 17.02.2012 i.e. Annexure – P/7 issued under the signature of respondent no. 04 whereby and whereunder, the unavailable amount of Rs. 3,01,463.63 in cash chest is directed to be adjusted from the post service entitlement of the deceased husband of the petitioner.

2. The brief facts of the case is that the husband of the petitioner was suffering from cancer and have to undergo operations due to that he could not attend office. He expired during his services on 19.09.2003, before his death on 04.09.2003, the first inventory of cash chest and entries in cash



book was prepared. At that time, the husband of the petitioner was not present nor any family member of the deceased employee was present there, after the death of husband of the petitioner the chest box was inquired and it was found that in chest Rs. 3,01,463.63 was unavailable. The departmental proceeding was initiated on 18.01.2008 against Omkareshwar Prasad, the then Director, Vidyakant Jha, the then Additional Director cum DDO and one Vishnu Dayal Pandit, the then Assistant Director, the enquiry was not found proved against Vishnu Dayal Pandit and the enquiry was found proved against Vidyakant Jha and he was given punishment of censure and against Omkareshwar Prasad charges were found to be partly true. Meanwhile, a three-member committee was constituted for clearance of the post retiral dues of the deceased employee i.e. husband of the petitioner. The committee found that the deceased employee i.e. husband of the petitioner was not alone responsible for the missing amount from the chest in spite of that vide order dated 17.02.2012 i.e. Annexure – P/7 direction was given for adjustment of Rs. 3,01,463.63/- from the post retiral dues of the deceased employee. Hence, this writ petition has been filed by the petitioner i.e. wife of the deceased employee.



3. Learned counsel for the petitioner submit that the first inventory was prepared on 04.09.2003 in absence of the deceased employee at that time, no notice was also given to the family members of the deceased employee and inventory was prepared. Since, the departmental enquiry was initiated against three persons and it was found that charges against two of them was found proved, the three-member committee also arrived on the conclusion that the deceased employee i.e. husband of the petitioner was not only responsible for the missing amount from the chest, in spite of that the missing amount was directed to be adjusted from the gratuity and leave encashment of the retiral dues of the petitioner. Since, amount of gratuity and amount of leave encashment also includes in pension therefore, it cannot be adjusted, reliance has been placed by the counsel in the judgment passed by the Co-ordinate Bench of this Court in ***Kaushlya Devi vs. The State of Bihar through Principal Secretary, Department of Home & Ors.*** passed in ***CWJC No. 9735 of 2021*** and also reliance has been placed by the counsel in the judgment passed by the another Co-ordinate Bench of this Court in the case of ***Mostt. Punita Karn Vs. The State of Bihar through the Principal Secretary, Food and Consumer Protection Department & Ors.*** in ***CWJC No. 270 of 2020.***



4. Learned counsel for the respondent – State opposes the argument raised by the counsel for the petitioner and submit that the impugned order has been passed on 17.02.2012 which has been challenged by the petitioner herein in the year of 2023 i.e. after more than nine years of the passing of the said order therefore, on the ground of delay and laches this petition preferred by the petitioner is liable to be set aside.

5. I heard learned counsel appearing for both the parties, perused the documents annexed with the petition as well as the counter affidavit submitted by the respondents.

6. Undisputedly, the impugned order has been passed on 17.02.2012 and the petitioner who is the widow of the deceased employee filed this petition after nine years thereof in the year 2023. Dealing with the issue in case of ***Kaushlya Devi (supra)*** the Co-ordinate Bench of this Court observed that no law of limitation applies to the given pension which is not a bounty to receive post retiral benefit is a right of services which comes inherent with the service it was further observed that to receive post retirement benefit is a continuing right and it cannot be curtailed on account of delay and laches. The respondent-State being a model employer is duty bound to ensure the payment of post-retirement benefits/ family pension to the employee which



he/she earned on account of his/her sincere service rendered to the State. In the light of the above observation made by the Coordinate Bench of this Court, I do not find any substance in the argument raised by the counsel for the respondent-State that on the ground of delay and laches, the petition is liable to be set aside.

7. With regard to the merit of the case is concerned there is also no dispute on the point that on 04.09.2003 when the first inventory was prepared the husband of the petitioner was not present and due to his illness he was at his home. There is also no dispute on the point that at the time of preparing the said inventory none of the family members of the petitioner were called or noticed. The documents annexed with the petition also shows that when it was found that from the chest amount of Rs. 3,01,463.63/- was missing then the departmental enquiry was initiated against three persons namely Omkareshwar Prasad, Vidyakant Jha and Vishnu Dayal Pandit. In the departmental enquiry one Vidyakant Jha was given the punishment of censure and against one namely Omkareshwar Prasad charges were found to be partly true, from the report of the three-member committee i.e. Annexure - P/6 it also transpires that the committee categorically has given its opinion that three persons



were responsible for the said missing amount from the chest and it was also pointed out that the deceased employee was not alone responsible for that. In spite of that the impugned order has been passed. In the counter affidavit submitted by the State there is nothing to indicate that before passing of impugned order dated 17.02.2012 any show-cause notice was issued to the petitioner or any member of the deceased employee, there is also no material available on record which shows that the petitioner or his family members were heard before passing of the impugned order dated 17.02.2012.

8. Vide impugned order, it has been directed that the missing amount to be adjusted from the post retiral entitlements of the deceased employee i.e. husband of the petitioner. The post service entitlement of the deceased employee has been calculated under the heading of gratuity as Rs. 2,77,704/- and under the heading of leave encashment as Rs. 60,648/-. Therefore, the total post retirement benefit which has to be given to the petitioner is Rs. 3,38,352/- and as contained in the direction made in Annexure - P/7 dated 17.02.2012 the missing amount of Rs. 3,01,463.63/- has to be deducted from the amount of Rs. 3,38,352/-.

9. In ***Kaushlya Devi (supra)*** the Co-ordinate Bench of



this Court held that:

“ It is settled proposition of law that judicial enquiry or departmental proceeding against a delinquent totally abates on death of an employee for the simple reason that in order to punish an employer (sic-employee?), there must be subsistence of employer and employee relationship. Once an employee died that said relationship ceases. The defence, if any, is a personal defence available to the employee and no person can be substituted in place of dead employee and defend the conduct of a dead employee and, as such, no order could have been passed withholding the retirement or any outstanding dues.”

10. In the case of **Mostt. Punita Karn (supra)** the Co-ordinate Bench of this Court observed and held that:

“ Coming to the facts of the present case, it is not contended by the respondent-Corporation that prior to the death of the husband of the petitioner, any departmental proceeding and/or any recovery proceeding was initiated by the Corporation for recovery of the alleged defalcated amount from the late husband of the petitioner. The petitioner is the widow of the deceased employee who died in harness. This Court is of the opinion, based upon the facts of the



case, that the effect of recovery from the death-cum-retiral benefits payable to the widow would be unfair, wrongful, improper and unwarranted as the equity lies in favour of the petitioner and the respondent-BSFC cannot fasten direct liability upon the petitioner, who is a widow, in absence of any rule and/or any legal provision for recovery of the amount from the death-cum-retiral benefits payable to the widow. The petitioner cannot be held responsible for defalcation, if any, done by her late husband during his service period.”

11. In another case i.e. ***CWJC No. 4760 of 2020 Pradip Kumar Srivastava Vs. The State of Bihar & Ors.*** another Coordinate Bench of this Court observed and held that:

“Admittedly, in the present case, neither any departmental proceeding has ever been held nor any steps were taken by the Respondents-State to recover the aforesaid amount from the petitioner during his service tenure nor the guilt of the petitioner has been proved. It must be remembered that the Leave Encashment is paid on account of unutilized leave and therefore, it partakes the character of salary. Pension is no longer considered as a bounty. The salary is a property given to the hands of the State which cannot



be withheld except under the powers derived by a statute or law as contemplated under Article 300A of the Constitution of India as laid down by the Hon'ble Supreme Court of India in a catena of decisions.

It is equally a well settled Law, as is evident from the decisions referred to herein above in the preceding paragraphs, rendered both by the Hon'ble Apex Court as also by this Court, that the pensionary dues payable to the employees including gratuity, which is also pension within the meaning of the Bihar Pension Rules, cannot be withheld till such time an order is passed under Rule 43(b) of the Bihar Pension Rules. Similarly, the leave encashment dues also cannot be withheld since the same is paid in lieu of un-utilised leave and, therefore, partakes the character of salary. Consequently, this Court finds that the recovery of a sum of Rs. 3,99,900/-, sought to be made from the leave encashment amount payable to the petitioner, is illegal and perverse, especially in view of the law laid by this Court in a catena of decisions, as referred to hereinabove, hence, the order dated 25.11.2019 passed by the Resporident No. 3 is quashed and the respondents are directed to refund the aforesaid sum of



Rs. 3,99,900/- to the petitioner within a period of four weeks from today. ”

12. From the observations made by the Co-ordinate Bench of this Court as referred hereinabove, it is quite clear that the missing amount of Rs. 3,01,463.63/- can't be adjusted from the pensionary dues payable to the petitioner. Therefore, in the light of the above and as discussed hereinabove impugned order dated 17.02.2012 is liable to be set aside.

13. Accordingly, the order dated 17.02.2012 i.e. Annexure – P/7 is hereby set aside, the respondents are directed to clear the entire pensionary dues/amount mentioned in Annexure – P/7 i.e. amount of gratuity as well as amount of leave encashment along with the applicable interest forthwith. It will be done within two weeks from the receipt of the order of this Court.

14. The writ petition stands allowed.

(Arvind Singh Chandel , J)

Siddharth Soni/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2025
Transmission Date	NA

