IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19684 of 2024

==

Malti Devi W/o Late Bhola Ram, Resident of Pahar Ke Pass Katari Hill, P.O.-HPO, P.S.-Chandauti, District-Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through its Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Municipal Commissioner, Gaya Municipal Corporation, Gaya.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Dharmendra Kumar Sinha
For the State	:	Mr.J.K. Roy, SC-13
		Mrs. U.K. Singh, AC to SC-13
For the GMC	:	Mr. Rahul Kumar Singh

==

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

4 07-11-2025 Heard the learned counsel for the petitioner as well as the learned counsel for the Municipal Corporation, Gaya.

2. The present writ application has been filed by the petitioner for following relief:-

> *"For issuance of appropriate writ in the nature of mandamus seeking direction to Respondents to pay family pension to petitioner till her life which has been stopped after making payment of 5 years in view of interpretation of Rule 35 of Patna Municipal Corporation Officers and Servant Pension Rule 1986 but rule 35 has been replaced by Rule 37 and by Memo No. 587 dated 05.03.2016 Municipal Commissioner, Gaya Municipal Corporation had directed to make payment of family pension and its arrear with effect from 01.04.2016 and thus petitioner is*

entitled to receive family pension in the light of said decision.

(ii) For issuance of appropriate writ in the nature of mandamus seeking direction to Respondent to pay family pension to petitioner till her life in view of guideline issued by Rural Development Department, Govt. of Bihar, Patna which has been adopted by Patna Muzafarpur, Darbhanga including Gaya Municipal Corporation from different dates but Gaya Municipal Corporation after making payment to some of the employee is denying for making payment to others which is discrimination and violation of principal of natural justice."

3. The husband of the petitioner was a class IV employee working in Municipal Corporation Gaya. He retired in the year 2007 and he died on 01.08.2018. After his death, the petitioner (his widow) was regularly receiving the family pension, but it was stopped after five years from the date of its commencement.

4. The reason for the stoppage of the family pension was that, according to proviso of Rule 35 of Bihar Municipal Corporation, Officers and Servants Pensions Rule 1987 (hereinafter referred as 'Rules 1987'), in no case the family pension shall be paid after five years from the date on which the

deceased employee retired or he would have retired on or after his death. The relevant portion of the proviso of Rule 35 is being extracted herein below:-

> *"Rule 35. .....Provided that the period of payment of family pension will in no case extend beyond a period of 5 years from the date on which the deceased employee retired or on which he would have retired on a superannuation pension in the normal course accordingly as the death takes place after retirement or while the employee in service."*

5. Learned counsel for the petitioner, by drawing my attention towards annexure-4, which is an order dated 05-03-2016 passed by Municipal Commissioner Gaya, has submitted that the Municipal Commissioner, Gaya has issued an order that if the family pension was stopped after five years in terms of Rule 35, it shall be continued with effect from 01-04-2016 and be paid according to Rule 37 of Rules 1987. Rule 37 is being extracted herein below:-

> *37. Family for purposes of the scheme will include the following relation he employees:-*
>
> *(a) unemployed wife in case of a male*

employee.

(b) unemployed husband in case of female employee.

(c) minor son and unmarried minor daughter.

Note.- Marriage or remarriage after retirement will not be recognised for purpose of this scheme.

The pension will be admissible-

(a) in the case of widow/widower upto the date of death or remarriage whichever is earlier.

(b) in case of minor son until the age of 18 years.

(c) in case of unmarried daughter until she attains the age of 21 years or marriage whichever is earlier.

Note.- *(i) Pension granted under this scheme will not be payable to more than one member of employee's family at the same time.*

(ii) In the event of remarriage or death of widow/widower the pension will be granted to that

minor children through their natural guardian till the youngest child attains the age of majority. In disputed case, however, payment will be made through a legal guardian.

(iii) Any increase, if sanctioned to any alive pensioner will not be admissible on the family pension granted under this scheme."

6. The learned counsel for Municipal Corporation, Gaya has submitted that the Municipal Commissioner, Gaya has sought instruction in this regard from the State Government through Letter No. 1605 dated 18th June 2024 (Annexure D). In reply thereof, the State Government sent a letter dated 17.12.2024 (Annexure-E), in which it has only been mentioned that there is specific provision for grant of family pension in the Rule, 1987.

7. According to Rule 37, the family pension may be granted to the widow/widower of the employee till his/her death or remarriage, whichever is earlier. The Municipal Commissioner, Gaya has already taken a decision to provide family pension according to Rule 37 of the Rules, 1987. There is no cogent reason for stoppage of family pension of the petitioner.

8. The respondents are directed to continue the family pension of the petitioner in accordance with Rule 37 of the Rules, 1987, with effect from the date of its stoppage. The respondents are further directed to pay the arrears to the petitioner within a period of three months.

9. Accordingly, the writ petition stands allowed.

(Nawneet Kumar Pandey, J)

Nirmal/-

U		T	