

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6763 of 2023

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Kalktari Devi @ Kalakatari Devi W/o Late Bandelal Ram, R/o Mophalla-
Manik Parasi, P.O.- Goprakha Parasi, P.S.- Karakat (Gorai), District- Rohtas.
... .. Petitioner/s

Versus

1. The State of Bihar.
 2. The Principal Secretary, Panchayat Raj Department, Govt. of Bihar, Patna.
 3. The Accountant General (A and E), Bihar, Patna.
 4. The District Magistrate, Rohtas.
 5. The Panchayat Raj Officer, Rohtas, Sasaram.
 6. The Block Development Officer, Karaghar Block, Karaghar, Rohtas.
 7. The District Provident Fund Officer, Rohtas.
 8. The Panchayat Secretary, Gram Panchayat, Araruwan, Karaghar, Rohtas.
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Tiwary,
For the Respondent/s	:	Mr.Kameshwar Pd. Gupta (GP10)
		Mr. Virendra Kuar, Adv.
For AG, Bihar	:	Mr. Ritika Rani, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

4 08-05-2026 Heard learned counsel for the petitioner and learned
counsel for the Respondent-State.

2. The writ petition has been filed for the following
relief(s):-

*“(I) Memo no-227dated 19.2.21
issued under the signature of the Block
Development Officer Karahgar, Rohtas as
well as the letter no.731 dated
23.05.22issued by the same authority may
kindly be quashed and consequential / follow*



up action over the same may kindly be as declared as non-est in the eyes of law.

(ii) The orders/action of either kind, so issued or proposed to be issued/taken either against the deceased employee or against the present petitioner may kindly be declared as alien to law for all practical purposes.

(iii) Rs 19, 18, 073/- said to be recovered (informed vide memo no 1400 dated 28.09.22) from the Post Retiral/ Death- cum-Terminal dues of the innocent widow, petitioner, may kindly be directed to be refunded in her favour with immediate effect as any kind of order, if passed/ action taken, against a dead person is a nullity.

(iv) The answering respondents also may kindly be directed to furnish the calculation chart with regard to the petitioner's entitlement and may kindly be simultaneously directed to pay the surviving dues including arrears of salary, payable to



the employee for of the period of June 2003 to February 2009, (if not paid earlier) at earliest in the interest of Justice.

(v) Any other relief or reliefs also may kindly be allowed to the present petitioner with the statutory / panel interest on the ground of delayed payment.

3. Learned counsel for the petitioner by referring to the impugned Memo No. 1400 dated 28.09.2022, submits that after death of the petitioner's husband the liability to the tune of Rs. 19,18,073/- has been quantified and the widow petitioner has been subjected to make such payment.

4. It has next been submitted that in earlier round of litigation being CWJC No. 1768/2021, as per the order passed in the said writ petition, the entire amount of death-cum-retiral dues are said to have been paid and the arrears of salary were also deposited in the account of the petitioner but the amount to the tune or Rs. 19,18,073/- which is being shown as arrears upon the petitioner's husband *vide* impugned Memo No. 1400 dated 28.09.2022, was not brought to the notice of the Hon'ble Court for unexplained reasons.

5. It is further submitted that while the said writ



petition was being disposed, the State Counsel had never brought on record the factum of such withholding of amount in the said proceeding, in which, the adjudication of such liability could have been carried out by this petitioner and since this liability so created was communicated after disposal of the said writ petition, therefore, this petitioner has been coerced to file another writ petition challenging the said demand, which is sought to be made by the authorities from the death-cum-retiral benefits of the petitioner, having been sanctioned in pursuance of the order passed by this Court in the aforesaid writ petition.

6. It has next been submitted by the learned counsel for the petitioner that from the order impugned itself, it is quite evident that no proceedings were ever drawn, which is provided under Bihar Pension Rules, 1950, to quantify the liability in accordance with law and since no such proceedings were drawn during the life time of the deceased employee, such liability could not have been fastened against the widow-petitioner in terms of provision of Bihar Pension Rules, much less without any proceeding known to law.

7. At this stage, learned counsel for the State submits that this matter may be adjourned to take appropriate instructions in the matter and file appropriate affidavit. The



prayer made by the learned counsel for the State is being rejected on the ground that the writ petition is of the year 2023 is legally unsustainable and despite there being specific averment made by the writ petitioner that no recovery can be made after the death of the deceased-employee much less from the death-cum-retiral benefits of the widow petitioner and to such statement made in the writ petition, no plausible reasons have been put forth for consideration by the State authority in the counter affidavit filed by the State.

8. Learned counsel for the petitioner further submits that in the matter of recovery after the death of the deceased employee from the family pension, such act of the authority have been deprecated and is impermissible in reference to the provisions of Bihar Pension Rules, 1950, and the adjudication made by this Court on the similar issues may be referred from the judgment rendered by the Hon'ble Division Bench passed in LPA No.270 of 2021, wherein by relying upon the judgment of Hon'ble Apex Court in the case of *State of Punjab & Ors v. Rafiq Masih & Ors* reported in (2015) 4 SCC 475, it has been categorically mentioned that “*excess payment made in favour of the deceased-Rama Nand Prasad cannot be recovered from his wife, respondent-Akhileshwari Devi.*”



9. Considering the fact that the impugned order itself sufficiently indicates that no enquiry was conducted during the life time of the deceased employee as the opening line of the order impugned speaks that quantification was done after the death of the deceased employee, which the authorities were well aware that the demand which was being made from the widow-petitioner was impermissible in law, still on the strength of such orders as contained in Memo No. 1400 dated 28.09.2022, an amount to the tune of Rs. 19,18,073/- has been withheld by them.

10. Since the provisions of Bihar Pension Rules, 1950 have not been resorted during the lifetime of the deceased employee to fasten the liability, which finds place in the impugned Memo No. 1400 dated 28.09.2022, and since, the statutory provision does not permit such recovery to be made from the death-cum-retiral benefits from the widow-petitioner, in such background, this Court has got no option but to set aside the Memo No. 1400 dated 28.09.2022 and accordingly, the amount to the tune of Rs. 19,18,073/- is directed to be refunded in favour of the petitioner with applicable bank interest, within eight weeks from the date of production/receipt of this order.

11. The writ petition stands disposed of.



12. Interlocutory application, if any, shall also be deemed to be disposed of.

(Ajit Kumar, J)

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