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SC-12
14.11.14

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C.No. of 2014

Anant KumarPetitioner

Versus

The State of Bihar & othersRespondnts

Sub- Retiral beneefit,
Education Dept, No-Gazzated

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IN THE HIGH COURT OF JUDICATURE AT PATNA
(Civil Writ Jurisdiction)

C.W.J.C.No. of 2014

Anant Kumar

Versus

.....Petitioner

The State of Bihar & others

Synopsis

.....Respondents

Prayer-

For direction to respondents grant arrear of pension to the petitioner in pursuance of the order dt. 16.10.2012 passed in CWJC No. 5273/2012 by which directed to the respondent to ensure the family pension to the deceased employee including son of the petitioner within period of four months, but respondent authorities have been granted Family pension to the petitioner w.e.f. 05.08.2008, in the minimum scale of pay, nor even arrear of pension has been grant to petitioner, since death of his father on 12.07.2004 and further direction to respondent pay the arrear of pension from 12.07.2004 to 04.08.2008 as well as arrear of pension from 05.08.08 to till today, on the ground petitioner has been granted minimum scale of pension and further issued direction to the respondent grant the family pension since date of death of his father, no family pension either given to the Smt. Dorakhi Devi as first wife till alive nor Smt. Fulo Devi, as 2nd wife in this circumstances respondents should be given arrear of pension to the petitioner and further give other legal consequential benefit.

11.07.004

Father of the petitioner died on 11.07.004 but no any family pension given either Dorakhi Devi 1st wife of his father nor mother of the petitioner (2nd wife), meaning thereby the arrear of the family pension is still pending before the respondent for payment

16.10.2012

Mother of the petitioner namely Fula Devi @ Smt. Fulo Devi filed CWJC No. 5273/2012 before this Hon'ble Court for payment of family pension, afore said writ application was heard on 16.10.2012, Hon'ble Court has been pleased to disposed of the matter with direction to the respondent to grant family pension to the petitioner.

27.12.2012

In pursuance of the direction of this Hon'ble Court, respondent authority has been granted family pension to the petitioner w.e.f. 05.08.08, whenever he is entitled since 2004

29.02.2013

Respondent authority has been granted family pension to the petitioner worth of Rs. 1750/- as fix family pension Rs. 3500.

21.05.14

Mother of petitioner filed application on 21.05.14 before respondent for grant family pension in the light order of this Hon'ble court, minimum worth of Rs. 3500/ since death of her husband, who died on 11.07.04, but same has not consider till today, which is pending for due consideration.

Hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Civil Writ Jurisdiction)

C.W.J.C. .No. of 2014

In the application under Article 226 from the

Constitution of India

A N D

In the matter of

Anant Kumar Son of Late Kapileshwar Arya, residing at Guljarbagh, ward no. 20, Madhepura,
P.S+District Madhepura.Petitioner

Vrs.

1. The State of Bihar through Director, Primary Education, Governemnt of Bihar, Patna..
2. The Director, Primary Education, Governemnt of Bihar, Patna.
3. The District Education Officer, Madhepura, District - Madhepura
4. The District Programme Officer (Establishment), Madhepura, District - Madhepura.
5. The Accountant General, Governemnt of Bihar, Patna.Respondents

To

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice of the High Court of
Judicature at Patna and her companion Justices of the said Hon'ble Court.

The humble application on behalf of
petitioner above named.

Most Respectfully Sheweth:-

1. That this writ application is being filed issuance of writ nature of mandamus for direction to respondents grant arrear of pension to the petitioner in pursuance of the order dt. 16.10.2012 passed in CWJC No. 5273 /2012 by which directed to the respondent to ensure family pension to the deceased employee including son of the petitioner within period of 3 months, but respondent authorities have been granted Family pension to the petitioner w.e.f. 05.08.2008, in the minimum scale of pay, nor even arrear of pension has been grant to petitioner, since death of his father on 12.07.2004 and further direction to respondent pay the arrear of pension from 12.07.2004 to 04.08.2008 as well as arrear of pension from 05.08.08 to till today, on the ground petitioner has been granted minimum scale of pension and further issued direction to the respondent grant the family pension since date of death of his father, no family pension either given to the Smt. Dorakhi Devi as first wife till alive nor Smt. Fulo Devi, as 2nd wife in this circumstances respondents should be given arrear of pension to the petitioner and further give other legal consequential benefit.

2. That main points involved in this application are as follows

- i.) Whether in pursuance of the order dt. 16.10.12 passed in CWJC No. 5273/2012, petitioner is entitled for pension w.e.f. 11.07.04 or not?
- ii) Whether father of the petitioner died on 11.07.2004, thereafter respondent authority are duties bound to pay family pension to the petitioner or not?
- iii) Whether in pursuance of the order of this Hon'ble Court dt. 16.10.2012 respondents have to consider the case of the pension w.e.f.12.07.2004 but respondent authorities have been granted pension from 05.08.2008 or not?
- iv) Whether petitioner is entitled for arrear of pension from 12.07.2004 to 04.08.2008 as well as enhanced scale of the pension including D.A., have to pay to the petitioner by respondents but did not grant rather paying worth of Rs. 1750/- after fixing family

pension worth of Rs. 3500/-, without giving any D.A. as well as revised scale of the pension thus, petitioner is entitled for the arrear of pension or not ?

v) Whether action of the respondents illegal, malafide and miscarriage of justice or not?

3. That petitioner is citizen of India and he is entitled for the right guarantee under the Constitution of India.

4. That the father of petitioner was working in the office of District Superintendent of Education, Madhepura and he is superannuated from service on 31.01.94, on the post of Head Clerk, soon after superannuation, retiral benefit as well as other benefit has been granted and pension of her husband was sanctioned w.e.f. 01.02.94 .

5. That it is needful to stated here that mother of petitioner is legal wife of late Kapleshwar Arya even ,she is 2 nd wife of her husband thus she was entitled for family pension, since date of death of her husband on 11.07.2004 and full family pension since death of 1 st wife on 04.08.08 but respondent did not consider rather considered the case of petitioner, who is son of 2nd wife of late Kapleshwar Aryaas minor son is taking studies .

6. That mother of the petitioner namely Fula Devi @ Smt. Fulo Devi filed CWJC No. 5273/ 20012 before this Hon'ble Court for payment of family pension, aforesaid writ applica tion was heard on 16.10.2012, Hon'ble Court has been pleased to disposed of the matter with direction to the respondent to grant family pension to the petitioner.

A true photo copy of the order dt. 16.10.2012 is annexed as Annexure - 1 of this writ application.

7. That in pursuance of the direction of this Hon'ble Court, respondent authority has been granted family pension to the petitioner w.e.f. 05.08.08, whenever he is entitled since 2004

A true photo copy of letter dt. 27.12.2012 is an nexed as Annexure - 2 to this application.

That respondent authority has been granted family pension to the petitioner worth of Rs. 1750/- as fix family pension Rs. 3500.

A true photo copy of the letter dt. 28.02.2013 is annexed as Annexure - 3 to this application.

9. That it is needful to stated here that the father of the petitioner died on 11.07.004 but family pension given either Dorakhi Devi 1 1st wife of his father nor mother of the petitioner (2nd wife), meaning thereby the arrear of the family pension is still pending before the respondent for payment.

10. That in pursuance of the order of this Hon'ble Court ,the petitioner is entitled for family pension soon after death of his father i.e. 11.07.04 but respondent authorities is granted family pension w.e.f. 05.08.2008, the family pension to the petitioner has given is minimum scale of family pension without including D.A. or Medical Allowance or its revised pension ,which has been made time to time as per the Government. Thus, the petitioner is entitled for the arrear of the pension from 04.07.2004 to 05.08.2008 and aear of revised pension .

11. That mother of petitioner filed application on 21.05.14 before respondent for grant family pension in the light order of this Hon'ble court , minimum worth of Rs. 3500/ since death of her husband, who died on 11.07.04 ,but same has not consider till today , which is pending for due consideration.

A true photo copy of the application dt. 21.05.14 is annexed as Annexure - 4 to this application.

12. That above facts and circumstances, it is fit case for allow

13. That petitioner is facing very position alongwith his all employee due to non payment of due contract amount of the petitioner.

14. That action of the respondents are illegal,arbitrary,malafide and miscourage of justice

15. That petitioner has no efficacious and alternative remedy save and except to file this

writ application.

16. That petitioner has not moved any time earlier before this Hon'ble Court for the relief sought in para-1 of the writ application except and otherwise mentioned in the writ petition.

It is, therefore, prayed that your lordships may graciously be pleased to issue notice to show cause as to why the relief sought for in para-1 of the writ application be not granted to the petitioner and upon cause being shown if any and after hearing the parties pass such other order/orders as your lordships may deem fit and proper in the facts and circumstances of the case.

And for this the petitioner shall ever pray.

AFFIDAVIT

I, Anant Kumar Son of Late Kapileshwar Arya, residing at Guljarbagh, ward no. 20, Madnepura, P.S+District Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am petitioner in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this writ application and have fully understood the same. The statements made in paragraph no 3, 7, 8 and 10 are true to my knowledge and paragraph no. 4, 5, 6 and 9 information derived from the records of the case and rest are by way of submission before this hon'ble Court.
3. That the annexures are true/photo copies of the originals.

Anant Kumar

DEPARTMENT OF POST भारत
BIHAR CIRCLE

STAMP DUTY

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Consent for Certified Copy
Patna High Court

0000003

BIHAR
8.19.2012

Patna High Court CWJC No.

AUTH NO. 31815 D.T. 16/12/2008

372403

BIHAR

INDIA

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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5273 of 2012.

1. Fulo Devi @ Smt. Fulo Devi W/O Late Kapileshwar Arya Residing At
Guljarbagh, Ward No. 20, Madhepura, P.S.+District- Madhepura

..... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Government Bihar, Patna
3. The District Education Officer, Madhepura, District- Madhepura
4. The District Programme Officer (Establishment), Madhepura, District- Madhepura
5. The Accountant General, Government Bihar, Patna

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sharad Nand Mishra
For the State : Mr. Anil Kumar Jha, J.C. to S.14
For Accountant General : Mrs. Namita Mishra

CORAM: HONOURABLE JUDGE JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

7 16-10-2012 Heard learned counsel for the petitioner and learned
counsel for the State and for the Accountant General, Bihar.

The petitioner is aggrieved by the order dated 23.11.2011
passed by the District Education Officer, Madhepura, by which he
has rejected the claim of the petitioner for payment of family
pension. It is stated in the said order that the petitioner being the
second wife and having married to the deceased employee while the
first wife was still alive is not entitled to payment of any family
pension in terms of the Finance Department letter No.10059 dated
6.9.1996. It is, however, stated in the said order that the case of the
minor son of the petitioner would be considered in terms of the

letter dated 6.9.1996 since the facts are not in dispute.

It is also not disputed that the deceased employee after his retirement on 31.1.1994 had received all the post-retiral dues and subsequently died on 11.7.2004. His first wife Datta Devi died on 4.8.2008.

In view of the provisions of the letter dated 6.9.1996, learned counsel for the petitioner does not press the application for quashing the order dated 23.11.2011 to the extent that the claim of the petitioner with respect to family pension has been denied. However, he submits that the respondents may be directed to ensure that the family pension in terms of the letter dated 6.9.1996 is paid to the minor son of the petitioner.

In the above facts and circumstances, the writ application is disposed of with a direction to the respondents to ensure that the family pension is paid to the dependents of the deceased employee including the son of the petitioner in terms of the letter dated 6.9.1996 of the Finance Department within a period of four months from today and in case there is a dispute among the claimants as to share in the family pension, the parties must be given an opportunity of being heard in the matter before taking a final decision.

V.P.Sinha/-

scf
(Ramesh Kumar Datta, J)

STAMP TO BE TRUE PHOTO COPY

A. Agar
21/11/12
99/219238

21/11/2012
For Joint Registrar (J)
Patna High Court

Established by Act of 1878

TYPE COPY

Annexure - 2

महालेखाकर (ले० एवं ह०) का कार्यालय, बिहार, पटना

OFFICE OF THE ACCOUNTANT GENERAL (A & F), BIHAR, PATNA

सेवा में

कोषागार पदाधिकारी,
मधेपुरा।

विषय— दोरखी देवी प्रथम पत्नी स्व० कपिलेश्वर शर्मा की मृत्यु दिनांक 04.08.2008 को हो जाने के कारण श्रीमती फूलो देवी द्वितीय पत्नी स्व० कपिलेश्वर आर्य से उत्पन्न नबालिग पुत्र श्री अन्नत कुमार को पारिवारिक पेंशन का आधा भाग भुगतान के संबंध में।

प्रसंग — जिला कार्यक्रम पदाधिकारी (स्थापना) मधेपुरा का पत्रांक 69 दिनांक 31.01.2012

महाशय,

उपर्युक्त विषय के संदर्भ में सूचित करना है कि प्रसंगाधीन पत्रांक द्वारा इस कार्यालय को सूचित किया गया है कि दोरखी देवी पत्नी स्व० कपिलेश्वर आर्य की मृत्यु दिनांक 04.08.2008 को हो गई है। कपिलेश्वर आर्य की प्रथम पत्नी के पक्ष में पारिवारिक पेंशन इस कार्यालय द्वारा निर्गत पी०पी०ओ० संख्या - 227478 द्वारा पूर्व में ही प्राधिकृत किया गया है। दोरखी देवी के मृत्यु के पश्चात् पी०पी०ओ० संख्या - 227478 के द्वारा पारिवारिक पेंशन किसे भुगतान किया जा रहा है इसकी सूचना अप्राप्त है स्व० कपिलेश्वर आर्य की द्वितीय पत्नी श्रीमती फूलो देवी से उत्पन्न बच्च अन्नत कुमार के पक्ष में पारिवारिक पेंशन हेतु विभाग द्वारा अनुशंसा की गई है, के आधार पर पी०पी०ओ० संख्या - 227478 द्वारा पूर्ण पारिवारिक पेंशन का आधा भाग का भुगतान दिनांक 05.08.2008 से अन्नत कुमार को नाबालिग पारिवारिक पेंशन 25 वर्ष की उम्र अथवा नौकरी/विवाह जो पहले हो कि तिथि तक इस पत्र को प्राधिकार पत्र मानते हुए आवश्यक जाँचोपरान्त एवं आवश्यक कागजात फोटो, हस्ताक्षर नमूना, पहचान चिन्ह, आदि विभाग से अभिप्रमाणित प्राप्त कर भुगतान की दिशा में कार्रवाई की जाय। तथा इसकी सूचना इस कार्यालय को भी दी जाय।

भवदीय

ह०/

वरीय लेखा अधिकारी, बिहार, पटना।

ज्ञापांक-पेन-14 सं० 2379

दिनांक 27.12.2012

आलाप एवं सूचनार्थ :-

- जिला कार्यक्रम पदाधिकारी (स्थापना) मधेपुरा के पत्रांक - 69 दिनांक 31.01.2012 के आलोक में सूचनार्थ एवं स्व० आर्य की सेवापुस्त मूलरूप में संलग्न अनुलग्नक - सेवापुस्त मूलरूप में संलग्न
2. श्रीमती फूलोदेवी, पत्नी स्व० कपिलेश्वर आर्य, गुलजारबाग वार्ड नं० - 20, थाना - मधेपुरा, जिला

ह०/

सहायक लेखा अधिकारी।

पत्रांक.....

प्रेषक,

कोषागार पदाधिकारी
मधेपुरा।

सेवा में,

मुख्य प्रबंधक
भारतीय स्टेट बैंक
मधेपुरा।

मधेपुरा, दिनांक.....

श्री अनन्त कुमार (नवालिंग) धारक पी० पी० ओ० नं० 227478 के पारिवारिक पेंशन के भुगतान के संबंध में।

प्रसंग :- आपका पत्रांक टी० आर० ई०/ 17 दिनांक 23/02/2013

महाशय .

उपर्युक्त विषयक प्रासंगिक पत्र के संबंध में कहना है कि श्री अनन्त कुमार (नवालिंग) के पारिवारिक पेंशन का निर्धारण @ 3500/-- की दर से पेंशन का आधा भाग @ 1750/-- (एक हजार सात सौ पचास रुपया) मात्र होता है। उसी के आधार पर पेंशन की गणना कर पत्र के साथ संलग्न कर दिया गया है। चूंकि मामला माननीय उच्च न्यायालय से संबंधित है।

अतः अनुरोध है कि अविलम्ब भुगतान कर अद्योहस्ताक्षरी को सूचित करने की कृपा की जाय।

अनुलग्नक :- संवितरक भाग की मूल प्रति सभी कागजातों के साथ।

विश्वासभाजन

-R O -

कोषागार पदाधिकारी
मधेपुरा।

पत्रांक.....109.....मधेपुरा, दिनांक.....28/02/13

प्रातालाप :- श्री अनन्त कुमार, पिता स्व० कपिलेश्वर आर्य ,
गुलजारबाग, वार्ड नं० - 20, मधेपुरा।

कोषागार पदाधिकारी
मधेपुरा।
28/02/13

सेवा में,

जिला कार्यक्रम पदाधिकारी, (स्थापना)

मधेपुरा।

विषय :- सी०डब्लू०जे०सी० सं०- 5273/12 श्रीमती फूलो देवी द्वितीय पत्नी स्व० कपिलेश्वर आर्य बनाम बिहार सरकार के संबंध में।

महाशय,

उपरोक्त विषय पर महालेखाकार बिहार पटना के पत्रांक- 69 दिनांक 25.04.2014 जो सीधे आपको संबोधित है के संबंध में सादर सूचित करना है कि इस संबंध में पूर्व में भी उनके पत्रांक- 693 दिनांक 26.08.13 द्वारा उक्त केस से संबंधित परिवारिक पेंशन भुगतान हेतु लिखा गया था। पुनः इस संबंध में आप से सूचना की मांग की गई है।

इस संबंध में कहना है कि स्व० कपिलेश्वर आर्य के द्वितीय पत्नी के नावालिंग पुत्र अनन्त कुमार को दिनांक 05.08.08 में पारिवारिक पेंशन प्राप्त हो रहा है। जबकि स्व० आर्य की पहली पत्नी दौहरवी देवी की मृत्यु दिनांक 04.08.08 को ही हो गया है। नियमानुसार मेरे नावालिंग पुत्र को पति की मृत्यु की तिथि के एक दिन बाद यानी दिनांक 12.07.04 से ही पारिवारिक पेंशन की पूरी राशि न्यूनतम 3500 रुपये मिलना चाहिये।

अतः अनुरोध है कि कृपया इस संबंध में अपने स्तर से महालेखाकार बिहार, पटना को स्पष्ट प्रतिवेदन भेजने की कृपा की जाय ताकि मेरे नावालिंग पुत्र को पारिवारिक पेंशन का पूरी राशि मेरे पति के मृत्यु के बाद से ही भुगतान हो सके।

विश्वासभाजन

कुमारी

(श्रीमती फूलो देवी)

पति- स्व० कपिलेश्वर आर्य

गुलजारबाग, वार्ड नं० 20,

मधेपुरा

दिनांक 21-5-2014