

SC-7
19/9/12

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Miscellaneous Judicial Jurisdiction)

M.J.C. No. _____ of 2012

(Arising out of C.W.J.C. No.603 of 2008 disposed of on 07.05.2012)

Meera DeviPetitioner

Versus

The State of Bihar & othersOpposite Parties

Sub:- Contempt Matter.

I N D E X

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Miscellaneous Judicial Jurisdiction)

M.J.C. No. of 2012

(Arising out of C.W.J.C. No.603 of 2008 disposed of on 07.05.2012)

In the matter of an application under section
11 and 12 of the Contempt of Court Act read
with Article 215 of the Constitution of India.

AND

In the matter of

Meera Devi, wife of Late Lakshmi Kant Jha, resident of village-Ghosai, P.S.-Chousa,
District-Madhepura.Petitioner

Versus

1. State of Bihar
2. Sri Upendra Prasad, District Magistrate Madhepura, District-Madhepura.
3. Smt Asha Devi, Block Development officer Kumarkhand District-Madhepura.
4. Sri Ram Bilas Das Block Development officer Puraini District-Madhepura.
5. Accountant General Bihar Patna Opposite Parties

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 application is being filed for initiating contempt proceeding against the contemnor /opp. parties for wilful and deliberate violation of the order dt.07.05.12 passed by Hon'ble Mr. Justice. Kishore Kumar Mandal in C.W.J.C.No 603/08 by Which order Hon'ble Court has been pleased to disposed of the writ application with observations and directions to the concerned respondent no. 2 to decide the representation in accordance with law within a maximum period of six week from the date of receipt and/ or presentation of a copy of this order.
2. That the connected writ application was filed for direction to respondents to pay death-cum- retiral benefit of her husband to the petitioner and further give direction to respondent to pay death-cum- retiral benefit as well as family pension and pay all due, which was not paid in life time of her husband with compound interest to the petitioner to till date of the payment and further give direction to pay other legal consequential benefit attached to the post of her husband.
3. That detail facts have already been given in connected writ application and same is not repeated again for the sake of bravery.
4. That it is submitted that the connected writ application was heard several occassion ,lastly on 07.05.2012 and Hon'ble Court has pleased to disposed of the writ application with aforesaid observations and directions to the respondent District Magistrate ,Madhepure to considered the case of petitioner within six weeks , after filing representation by the petitioner.

4. That in view of direction by this Hon'ble High Court, petitioner filed application on 22.05.12 alongwith the order dated 07.05.12 but till today no any action has been taken for consideration of the case of petitioner,even she is being old widow.

A true/photo copy of application dt. 22.05.12 is .
annexed as Annexure-2 to this application.

5. That due to Non-Payment of admitted due amount and differences of pension of her husband and family pension of the petitioner, she is suffering from starvation alongwith her family member.

6. That it is needful to stated here that since date of this Hon'ble Court 's order ,respondent -Opposite parties is not paying family pension .

7. That the opp.parties has no regard the order passed by this Hon'ble Court and they are deliberately violating the order of this Hon'ble Court.

8. That on the above facts and circumstances of the case, petitioner is deserve relief by this Hon'ble Court.

9. That petitioner has not moved before this Hon'ble Court any time earlier for the relief sought for in this application except and otherwise mentioned in this application.

It is, therefore, prayed that your lordships may graciously be pleased to issue notice to show cause as to why the contempt be not initiated against the opp.parties for violation of the order of this Hon'ble Court and after 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, Meera Devi, aged about 70 years wife of Late Lakshmi Kant Jha, resident of village-Ghosai, P.S.-Chousa, 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 application and have fully understood the same. The statements made in paragraphs are true to my knowledge and 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 originals.

Ameyan :-

(5)

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.603 of 2008

Meera Devi

.... Petitioner/s

Versus

1. The State Of Bihar
2. District Magistrate, Madhepura
3. Block Development Officer, Kumarkhand, Madhepura
4. Block Development Officer, Puraini, Madhepura
5. Accountant General, Bihar Patna

.... Respondent/s

Appearance:

For the Petitioner/s : Mr. Sharda Nand Mishra
Mr. Dhananjay Kumar Gupta
Mr. Deepak Kumar
Mr. Alok Ranjan

For the State : Mr. Shashi Bhushan Kumar, S.C.7 with
Mr. Kumar Pankaj, A.C. S.C 7

For the Accountant General : Mr. J. P. Karn

**CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL**
ORAL ORDER

8 07-05-2012

Heard Mr. Mishra for the petitioner, Mr. Shashi Bhushan Kumar, S.C. 7 for the State and counsel for the Accountant General.

The husband of the petitioner was serving the State Government as Jansevak in the office of the BDO, Kumarkhand, Madhepura (respondent no.3). There is no controversy that he was also in charge of cash and certain advances were made to him. He retired with effect from 31.07.2002. Certain post retiral dues were paid to him but part of them were withheld. A proceeding was levied against the husband of the petitioner but the same could not be concluded. The husband of the petitioner died on 03.06.2005. While settling the dues, the respondents found that a sum of Rs. 2,44,288/- was outstanding with the petitioner which remained unaccounted for. The respondents thus adjusted part of the said amount from the retiral dues payable to the employee. The petitioner is aggrieved by the aforesaid action on the part of the respondents. Learned counsel submits that for recovering the amount, a proceeding ought to have

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Patna High Court

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been initiated against the husband of the petitioner. That having not been done, the respondents were wholly unjustified in directing recovery of the amount.

A counter affidavit has been filed on behalf of respondent nos. 2 & 3, paragraph 7 whereof reads as under:-

"7. That so far as payment of Gratuity and Earned leave are concerned it is stated that an amount of Rs. 2,44,288/- was lying due upon the Late Lakshmikant Jha which was taken by him as advance and the same has been adjusted against the sanctioned amounts of Gratuity (Rs.96,470/-) and earned leave (Rs.69,312/-). Even after the adjustment of the said amounts, Rs.78,506/- is still recoverable from the petitioner."

Learned counsel for the respondents relying on an order of this Court passed in the case of Smt. Bachchi Devi vs. State of Bihar & Ors. since reported in 2004(3) PLJR page 825, submits that if the employee was given certain advances and that remained unaccounted for, then for adjusting those amounts from the retiral benefits/dues payable to the employee, a formal proceeding is not required to be initiated.

This Court in paragraph 5 of the said case has held as under:-

"It is true that normally any deduction/recovery from the retiral dues of an employee, must firmly be based on findings regarding his responsibility for the pecuniary loss and the quantification of the loss arrived at in a departmental or judicial proceeding as provided under rule e 43(b) of the Pension Rules. But there may be cases, for instance, the actual handling of cash where all that is required is simply counting the money and comparing the total cash available with the figures in the cash book. In such simple and straight-forward case,

if certain amount is found missing, to my mind it can surely be recovered from the retiral dues of the employee without holding an enquiry under rule 43(b); after all what further may be shown in any elaborate enquiry? It would be an empty formality and a waste of time."

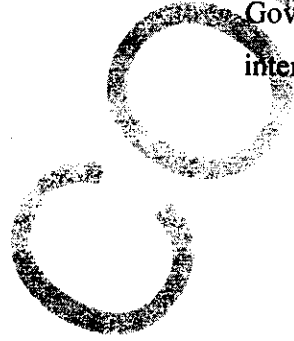
Learned counsel for the respondents submitted that the same view has been taken by this Court in 1999(2) PLJR 372 (Chandri Devi vs. State of Bihar).

In view of aforesaid, this Court is of the view that the case is fully covered by the view taken by this Court in Bachchi Devi (supra).

Learned counsel for the petitioner submits that some of the dues have not fully been paid. Counsel for the respondents, on the other hand, submits that entire admissible dues under diverse heads have already been paid.

In view of conflicting claim/counter claim, this Court would permit the petitioner to file a representation before the Respondent-District Magistrate, Madhepura in respect of the remaining claim of the petitioner excepting the claim of full payment of gratuity and leave encashment within five weeks ~~whereafter~~ the said respondent will examine the said grievance of the petitioner and will redress the same in accordance with law within six weeks therefrom. While doing so the respondent will keep in focus the rule- provision as well as the circular of the Government which may entitle the petitioner for grant of statutory interest on belated authorization of dues.

SK
(Kishore Kumar Mandal, J)



HR/- **RETURNED TO BE TRUE PHOTO COPY**

A. Rana
15.5.2012

**For Joint Registrar (J)
Patna High Court**

18-5-2012
21/5/12

प्रेषक: मीरा देवी,
पति स्व० लक्ष्मीकान्त झा, सा० घोषी,
थाना चौसा, जिला मधेपुरा।

James 2 (8)

सेवा में,
जिला पदाधिकारी,
मधेपुरा।

विषय:— मृत्यु-सह-सेवा निवृत्ति राशी एवं अन्य बकाया राशी का भुगतान करने के संबंध में।
प्रसंग:— माननीय उच्च न्यायालय, पटना के सी० डब्लु० जे० सी० सं० 603/2008 में पारित आदेश
दिनांक 07.05.2012 के अनुपालन हेतु।

महाशय,

अत्यन्त दुख के साथ कहना है कि मेरे पति स्व० लक्ष्मी कान्त झा की मृत्यु 03.06.2005 को हो चुकी है। लेकिन श्रीमान् के द्वारा अभी तक मृत्यु-सह सेवा निवृत्ति राशि एवं बकाया राशि का भुगतान नहीं किया गया है। मेरे पति के मृत्यु के तदोपरान्त श्रीमान् एवं अन्य पदाधिकारियों के समक्ष अनेकों बार आग्रह ही नहीं निवेदन किया गया कि मृत्यु-सह-सेवा निवृत्ति राशी एवं अन्य बकाया राशी का भुगतान किया जाए। लेकिन श्रीमान् लोगों का ध्यान मेरे उपर नहीं पड़ने के कारण अभी तक विचार नहीं किया गया। थक हार कर मुझे माननीय उच्च न्यायालय में सी० डब्लु० जे० सी० सं० 603/2008 दायर करनी पड़ी जिसकी सुनवाई अनेकों तिथि को होने के तदोपरान्त पुनः श्रीमान् के समक्ष अंतिम निर्णय हेतु मुझे भेजा गया।

आदेश दिनांक 07.05.2012 अनुलग्नक-1

माननीय उच्च न्यायालय द्वारा मुझे निदेशित किया गया कि श्रीमान् के समक्ष मृत्यु-सह-सेवा निवृत्ति राशी एवं अन्य बकाया राशी के लिए अपना आवेदन समर्पित करने हेतु उक्त आवेदन पर छः सप्ताह के अन्दर विचार कर उपर्युक्त निदेश निर्गत करेंगे।

मेरी पति जन सेवक पद पर प्रखण्ड कुमार खण्ड जिला मधेपुरा में पदस्थापित थे, वे 31.07.2002 को सेवा निवृत्त हो गये थे।

श्रीमान् के द्वारा ज्ञापांक 648 दिनांक 29.09.2001 के द्वारा निलम्बित कर विभागीय कार्रवाई चलाने हेतु आदेशित किया गया था तदोपरान्त श्रीमान् के आदेश दिनांक 11.09.2003 से 31.07.2002 निलम्बन मुक्त करते हुए विभागीय कार्रवाई चलाने हेतु निदेशित किया गया लेकिन लगाये गए आरोप के विरुद्ध न तो आरोप गठित किया गया न ही विभागीय कार्रवाई चलाई गयी अन्तोगत्वा मेरे पति का देहान्त दिनांक 03.06.2005 को हो गई। तदोपरान्त मेरे द्वारा दिनांक 26.06.2005, 05.07.2006, 07.03.2007 के द्वारा श्रीमान् एवं अन्य पदाधिकारियों से निवेदन किया गया कि मेरे पति के मृत्यु-सह-सेवा निवृत्ति राशी एवं अन्य बकाया राशी, क्रमशः अन्तर वेतनमान, निलम्बन अवधि अन्तर वेतनमान पुनरिक्षित वेतनमान 01.01.1996, भविष्य निधि, ग्रेच्युटी, अर्जित अवकाश, एवं अन्य लाभ हेतु।

श्रीमान् के द्वारा मेरे पति के सेवा निवृत्ति के तदोपरान्त नियम 43(बी०) बिहार पेंशन नियमों के तहत विभागीय कार्रवाई चलायी गयी, क्यों कि मेरे पति की सेवा दिनांक 31.07.2002 को सेवा निवृत्त हो चुके थे। लेकिन उनके मृत्यु तक किसी प्रकार का आरोप गठन न किया गया, और न ही विभागीय कार्रवाई चलाई गयी, स्वतः नियम 43 (बी०) बिहार पेंशन नियमों के तहत 4 वर्षों के बाद विभागीय स्वतः समाप्त हो जाती है। अतः मेरे पति पर लगाये गये आरोप साबित नहीं होता है। तदोपरान्त श्रीमान् के द्वारा किसी प्रकार का आर्थिक दण्ड मुझे नहीं देनी चाहिए।

ज्ञातब्य हो कि मेरे पति पर आरोप लगाया गया था कि कुछ योजनाओं की राशि प्राप्त करने के बाद भी योजना को पुरा नहीं किया गया। जब कि मेरे पति द्वारा दी गयी योजना को पूर्ण कर दी गयी थी और कुछ योजना की बकाया राशि नजारत में जमा कर दिया गया था जिसकी छानबीन श्रीमान् के द्वारा की गयी। उक्त छानबीन के आधार पर 80,000/-रु० के आसपास वसूलनीय है, उक्त राशि कटौति करने के बाद बाकाया राशि देने हेतु निदेशित करने की कृपा कर सकते हैं।

जैसा कि श्रीमान् के आदेश दिनांक 16.04.2010 के द्वारा दी गयी लेकिन संबंधित पदाधिकारी द्वारा 2,44,288/- रूपया (दो लाख चौवालीस हजार दो सौ अट्ठासी रूपया मात्र) का समायोजन ग्रेच्युटी एवं अर्जित अवकाश की राशि से कर ली गयी है। जब कि मेरे पति पर बकाया राशि लगभग 80,000/- है। जिसका पुनः छानबिन कर सकते हैं।

अभी तक श्रीमान् के द्वारा औपबंधिक पारिवारिक पेंशन, कुछ भविष्य निधि राशि एवं जीवन बीमा की राशि दी गई, जबकि भविष्य निधि की राशि की गणना करने के तदोपरान्त लगभग 6,30,000/- से अधिक बनता है। जबकि श्रीमान् के द्वारा मात्र 1,18,596/- रूपया ही गयी है। अतः श्रीमान् से निवेदन है कि भविष्य निधि राशि की गणना पुनः करते हुए गणना की छायाप्रति साथ ही बकाया राशि का भुगतान करने हेतु निदेश करने की कृपा करेंगे।

श्रीमान् से निवेदन है कि मेरे पति पर चलाये गए विभागीय कार्रवाई के फलाफल किसी प्रकार का आरोप साबित नहीं हो पाया है। इसलिए नियमानुसार श्रीमान् को किसी प्रकार का वसूली नहीं करनी चाहिए जैसा कि भिन्न-भिन्न वादों में माननीय न्यायालय एवं उच्चतम न्यायालय का आदेश हैं। अन्तोगत्वा माननीय उच्च न्यायालय में आवेदक के रिट पिटिशन का निष्पादन श्रीमती बच्ची देवी के वाद के आलोक में किया गया उक्त वाद में निदेशित किया गया है कि यदि कोई पैसा वसूलनीय है तो उसे उपलब्ध पुस्तिका के आधार पर छानबिन करते हुए वसूली कर सकते हैं। लेकिन बकाये सेवा निवृत्ति राशी की भुगतान 7.5 प्रतिशत के लाभ देते हुए भुगतान करेंगे। उक्त आलोक में मैं भी भुगतान लेने के लिए तैयार हूँ। लेकिन श्रीमान् से आग्रह है कि मेरे पति के उपर बकाया राशि को मेरे समक्ष छानबीन कर एवं बकाया राशि कटौती कर भुगतान देने की कृपा करें। क्यों कि बिना किसी छानबीन किये श्रीमान् के द्वारा 2,44,288/- रूपया वसूली कर ली गयी है जोकि नियमानुसार नहीं है।

अतः श्रीमान् से निवेदन है कि माननीय उच्च न्यायालय के आदेश के आलोक में मेरे पति के मृत्यु-सह-सेवा निवृत्ति राशी एवं अन्य बकाया राशी, क्रमशः अन्तर वेतनमान, निलम्बन अवधि अन्तर वेतनमान पुनरिक्षित वेतनमान 01.01.1996, भविष्य निधि, ग्रेच्युटी, अर्जित अवकाश, एवं अन्य लाभ सूद सहित देने हेतु निदेशित करने की कृपा करेंगे।

इसके लिए मैं श्रीमान् का जिवन भर आभारी रहूंगा।

विश्वासभाजन
मीरा देवी

दिनांक 22.5.12

(मीरा देवी)

भारतीय डाक

RL PATNA HIGH COURT <800028

B RF03/27353291N

Counter No:2, OP-Code:RFOU

To: D M,

Madhepura S.O., PIN:852113



India Post

Wt:30grams,

Ant:27.00, 22/05/2012, 11:42

<<Have a nice day>>

भारतीय डाक

RL PATNA HIGH COURT <800028

B RF03/27353291N

Counter No:2, OP-Code:RFOU

To: SANDAY KUMAR MISHRA,

Madhepura S.O., PIN:852113



India Post

Wt:25grams,

Ant:27.00, 22/05/2012, 11:43

<<Have a nice day>>