

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No. 1045 of 2019**

**In**

Civil Writ Jurisdiction Case No. 3487 of 2018

- =====
1. The State of Bihar
  2. The Principal Secretary, Department of Home, Govt. of Bihar, Old Secretariat, Patna.
  3. Special Work Officer cum In-Charge J.P. Koshank, Department of Home, Govt. of Bihar, Old Secretariate.
  4. Deputy Secretary cum Lok Suchna Padadhikari, Department of Home, Special Branch, Bihar, Patna.
  5. J.P. Senani Samman Yojna, Home Special Department, Bihar, Patna.

... ... Appellant/s

Versus

Devta Devi W/o Late Sachchidanand Singh Resident of Village Teghra, P.S. Bakhtiyarpur, Dist.Saharsa.

... ... Respondent/s

- =====
- **Letters Patent Appeal of the High Court---** *Maintenance of Internal Security Act (MISA)---* *appeal against order dated 19.4.2019 passed in C.W.J.C. no.3487 of 2018 whereby the writ petitioner/respondent was held entitled for family pension under the J.P. Samman Pension Scheme (the 'scheme') on account of her husband's death prior to the scheme coming into effect---* *argument on behalf of Appellant that while the husband of the respondent herein died in the year 2004, the scheme came into effect only on 5.6.2009---* *further argument that even prior to coming of the scheme, the State Government had taken a decision and the last date for applications to be filed was 31.12.2007 and as the husband of the writ petitioner -respondent had already died, he could not be given benefit of the scheme.*

- Findings:** according to the scheme family pension was to be given to those persons and their spouses who had participated in the movement launched under the leadership of Lok Nayak Jayaprakash Narayan and, vide resolution dated 15.7.2015, the aforesaid scheme pension was also to be paid to persons who had been detained in prison under MISA for a period of 1 month to 6 months, for the period exceeding 6 months and those who had died in jail or in police firing--- it further provided that after the death of the pensioners of all these categories under the scheme, pension and other facilities shall be given to their spouses at the same rate---not disputed that husband of respondent was taken into custody under the MISA and remained in custody from 21.9.1975 to 23.3.1977--- though a decision was taken by the State of Bihar in the year 2007 and the last date for making an application was 31.12.2007 for the scheme which started on 1.6.2009, obviously the husband of the writ petitioner-respondent could not have made an application as he had died on 27.8.2004.--- no provision of the said scheme disentitles any person from the benefits thereof on account of having died--- So far as grant of family pension to the spouse of persons eligible for the said scheme is concerned, the same came into effect only by resolution dated 15.7.2015 and respondent applied soon thereafter--- rejection of the application of the writ petitioner-respondent was illegal and not sustainable and was rightly quashed by the learned Single Judge---appeal dismissed--- Principal Secretary, Department of Home, Government of Bihar directed to pay respondent the total amount due and payable to her under the Scheme with effect from 15.7.2015 till the present date within a period of 4 months. **(Para-7, 9-11, 13-16)**

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  2. The Principal Secretary, Department of Home, Govt. of Bihar, Old Secretariat, Patna
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... .. Appellant/s

Versus

Devta Devi W/o Late Sachchidanand Singh Resident of Village Teghra, P.S. Bakhtiyarpur, Dist.Saharsa.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Md. Irshad, AC To SC 1  
For the Respondent/s : Mr. Ratan Kumar, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)**

**Date : 24-07-2024**

1. Heard learned counsel for the appellants and learned counsel for the respondent.



2. The instant appeal has been preferred against the order dated 19.4.2019 passed in C.W.J.C. no.3487 of 2018.

Re: I. A. no. 2 of 2019

3. The instant interlocutory application has been filed by the appellant praying therein to condone the delay of 95 days in filing of the instant appeal.

4. Having heard learned counsel for the parties and having perused the contents of the interlocutory application, this Court is satisfied that the appellant had made out a case for condonation of delay in filing the appeal. The delay in filing of the appeal is condoned.

5. I.A. no.2 of 2019 is allowed.

Re: L.P.A. no. 1045 of 2019

6. The case of the writ petitioner-respondent in brief is that her husband participated in the J.P. Movement and for this reason was arrested and sent to jail under the Maintenance of Internal Security Act (MISA) vide order no.1034 dated 19.9.1975 passed by the Collector, Chaibasa. He remained in jail from 21.9.1975 to 23.3.1977 ie for 1 year 6 months. He later died on 27.8.2004.

7. It is the case of the writ petitioner - respondent that the State Government came out with the J.P. Samman Pension



Scheme with effect from 1.6.2009. The Home (Special) Department came out with the resolution dated 15.7.2015 published in the Bihar Gazette (Extraordinary) on 17.7.2015 under the orders of the Governor, Bihar according to which after the death of the pensioners of all categories which included persons who had been detained under MISA, it was decided that pension and other facilities shall be given to their spouses at the same rate. Thus the writ petitioner-respondent applied for family pension on 15.7.2017 and again on 19.9.2017, however, she did not receive any reply to the same. On an application having been filed by her under the Right to Information Act, she received a letter dated 4.12.2017 under the signature of the Additional Secretary- cum- Public Information Officer, Home Department, Bihar informing her that as her husband had died on 27.8.2004 and the J.P. Samman Pension Scheme came into effect only on 1.6.2009, pension is not payable to such widows.

8. A counter affidavit was filed on behalf of the State of Bihar in the writ application wherein a letter dated 6.12.2017 sent by the Home Department, Bihar to the writ petitioner-respondent was brought on record stating therein that as per the fresh advertisement published in the month of November, 2007, the last date for making an application was 31.12.2007 and the



scheme came into effect on 1.6.2009. It further stated that as her husband had died on 27.8.2004, prior to coming into effect of the scheme, she was not entitled for family pension under the said scheme.

9. The writ petitioner -respondent moved this Court against the communication received by her as contained in letter dated 4.12.2017 informing her that she was not entitled for benefit under the J. P. Samman Pension Scheme. The learned Single Judge by his order dated 19.4.2019 allowed CWJC no.3487 of 2018, quashed the order contained in Annexure-D to the counter affidavit whereby the Home (Special) Department, Bihar had communicated to the writ petitioner-respondent of her not being entitled for family pension under the scheme on account of her husband's death prior to the scheme coming into effect. The learned Single Judge, further remitted the matter back to the State of Bihar to consider the claim of the writ petitioner- respondent sympathetically as the benefit available to the participants of the J.P. Movement stood satisfied in the case of the writ petitioner-respondent also. It is against this order dated 19.4.2019 of the learned Single Judge that the instant appeal has been preferred.

10. Learned counsel for the appellant-State of Bihar



submitted that while the husband of the respondent herein died in the year 2004, the scheme came into effect only on 5.6.2009. Even prior to coming of the scheme, the State Government had taken a decision and the last date for applications to be filed was 31.12.2007. It was thus submitted that as the husband of the writ petitioner -respondent had already died, he could not be given benefit of the scheme.

11. Having heard learned counsel for the appellant-State of Bihar as also learned counsel for the writ petitioner-respondent and having perused the material on record, this Court finds that while the husband of the respondent died on 27.8.2004, the State of Bihar came out with the resolution dated 27.4.2007 under the signature of the Commissioner-cum-Secretary, Home (Special) Department, Bihar stating therein that a decision had been taken to honour those persons who had either gone to jail or lost their lives as also the dependents of such persons who were no longer alive and a committee had been formed to make recommendations for the same. By resolution dated 5.6.2009, the Home (Special) Department, Government of Bihar came out with the J.P. Samman Pension Scheme ('the Scheme' in short) which was effective from 1.6.2009 and according to which family pension was to be given



to those persons who had participated in the movement launched under the leadership of Lok Nayak Jayaprakash Narayan during the period 18.3.1974 to 21.3.1977. It further provided that pension would also be given to the spouses of those persons in the same category who died in jail or in police firing during relevant period. Subsequently the Home (Special) Department came out with a resolution dated 15.7.2015, according to which under the aforesaid scheme pension was to be paid to persons who had been detained in prison under MISA for a period of 1 month to 6 months, for the period exceeding 6 months and those who had died in jail or in police firing. It further provided that after the death of the pensioners of all these categories under the scheme, pension and other facilities shall be given to their spouses at the same rate.

12. Relevant clause (K) of the resolution dated 15.7.2015 of the Home (Special) Department, Government of Bihar published in the Bihar Gazeett (Extra Ordinary) on 17.7.2015 is reproduced hereinbelow for ready reference:

*“(K) Under the said scheme, those pensioners whose period of detention in prison under MISA/DIR was for period of one month to six months, the pension shall be increased from Rs. 2500/- (Two Thousand Five Hundred) to Rs. 5000/- (Five Thousand) and the pension of the*





*pensioners detained in prison for a period exceeding six months shall be increased from Rs. 5000/- (Five Thousand) to Rs.10,000/- (Ten Thousand) and the monthly Samman Pension to the spouses of persons of the same category who died in jail or in police firing during the relevant period shall be increased from Rs. 10,000/- (Ten Thousand) and monthly Samman Pension to those persons who were injured in police firing shall be increased from Rs. 2500/- (Two Thousand Five Hundred) to Rs. 5000/- (Five Thousand) and after the death of the pensioners of all the above categories under this scheme, the pension and other facilities shall be given to their spouses at the same rate.”*

(emphasis supplied)

13. Coming to the facts of the instant case, against the categorical assertion of the writ petitioner-respondent that her husband was taken into custody pursuant to order no.1034 dated 19.9.1975 of the Chaibasa Collector under the MISA and remained in custody from 21.9.1975 to 23.3.1977, the said fact has no where been denied by the appellant-State of Bihar. In both the letter dated 4.12.2017 (Annexure-8 to the writ application) as also the letter dated 6.12.2017 (Annexure-D to the counter affidavit in writ application), both sent by the Home Department to the writ petitioner- respondent, the reason given



for denial of family pension to her is that her husband having died on 27.8.2004 much prior to coming into effect of the J.P. Samman Scheme on 1.6.2009, she will not be entitled for the family pension under the said Scheme.

14. In the opinion of the Court though a decision was taken by the State of Bihar in the year 2007 and the last date for making an application was 31.12.2007 for the scheme which started on 1.6.2009, obviously the husband of the writ petitioner-respondent could not have made an application as he had died on 27.8.2004. So far as grant of family pension to the spouse of persons eligible for the said scheme is concerned, as stated above the same came into effect only by resolution dated 15.7.2015 of the Home Special Department.

15. Having gone through the provisions of the J.P. Samman Scheme as also the subsequent resolution dated 15.7.2015, this Court finds that no provision of the said scheme disentitles any person from the benefits thereof on account of having died. In fact the opening paragraphs of both the resolution dated 5.6.2009 as also 15.7.2015 provides benefit to the spouses of those persons who died in jail or in police firing. The writ petitioner-respondent having been entitled to the scheme only pursuant to the resolution dated 15.7.2015, made



her application soon thereafter. The rejection of the application of the writ petitioner-respondent was illegal and not sustainable and was rightly quashed by the learned Single Judge.

16. In the facts and circumstances of the case, this Court holds the writ petitioner-respondent entitled for family pension under the J.P. Samman Scheme with effect 15.7.2015 ie the date spouses of persons who had remained in custody under MISA for period exceeding 6 months were entitled to pension, as provided in Clause- K of the said resolution quoted hereinabove.

17. The Court finds no merit in the instant appeal of the State of Bihar and the same is dismissed.

18. The Principal Secretary, Department of Home, Government of Bihar shall pay to the writ petitioner-respondent the total amount due and payable to her under the Scheme with effect from 15.7.2015 till the present date within a period of 4 months of receipt/communication of a copy of this order and shall also pay family pension regularly in future in accordance with the provisions of the Scheme. If the payment of arrears is not made as directed herein, then the amounts due shall carry interest at the rate of 5% from the due date till the date of payment and in the event of such liability to interest being incurred by the State, it shall be paid by the State and the State



shall be entitled to recover the interest amounts so paid from the officer/officers who occasioned such delay. The payment of pension shall also commence from August, 2024.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.7.2024
Transmission Date	NA

