

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7652 of 2023

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Muniya Devi W/o Late Mundrika Choudhary Resident of Village-Raja Bazar,
Choudhary Tola, Salimpur Dumra, Post-Bihar Veterinary College, Police
Station-Hawai Adda, District-Patna (Bihar) Pin-800014.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secreary Home Department Patna.
2. The Additional Director General, Bihar Military Police, Sardar Patel Bhawan, Bailey Road, Patna.
3. The Commandant, Bihar Military Police-2, Dehri-on-Son, District-Rohtas, Pin-821307
4. The Accountant General, Bihar Having its Office at Veerchand Patel Road Area, Near R. Block Chowk, Patna-800001
5. The Senior Accounts Officer, A.G. Office, Veerchand Patel Road Area, Near R. Block Chowk, Patna-800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. M. N. Parbat, Sr. Adv. With Mr. Sanjay Kumar Mishra, Adv.
For the State	:	Mr. Dhirendra Kumar, AC to GP 5
For the Accountant General	:	Mr. Ram Yash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-01-2024

Heard Mr. M N Parbat, learned senior counsel duly
assisted by Mr. Sanjay Kumar Mishra, learned counsel
appearing on behalf of the petitioner, Mr. Dhirendra Kumar,
learned counsel representing the State and Mr. Ram Yash Singh,
learned counsel for the Accountant General.

2. The petitioner, who is a hapless widow of late
Mundrika Choudhary, by invoking the extraordinary
jurisdiction of this Court under Article 226 of the Constitution



has filed the present writ petition seeking a direction upon the respondents to issue an amended PPO after making correction of date of enhanced family pension of the petitioner to 31.10.2023 or 7 years from the death of her husband instead of fixing the date from 31.03.2014 or 7 years from the death of her husband, whichever is earlier, as per the Bihar Pension Rules, 1950.

3. It is the case of the petitioner that her husband joined the post of Constable on 23.02.1997 in Bihar Military Police and after having served more than 30 years of his unblemished service took voluntary retirement from the post of Constable while he was posted in BMP-2 at Dehri-on-Sone under the supervision of Commandant BMP-2. It is submitted that although the actual date of retirement of her husband was 30.11.2016 but on account of some personal difficulty he took voluntary retirement on 31.03.2007 just 9 years prior to the date of his superannuation.

4. The respondents No. 2 and 3 having accepted the voluntary retirement of the husband of the petitioner with effect from 31.03.2007 sent the necessary documents/service book to the office of the Accountant General and accordingly PPO No. 429433 (V) dated 25.05.2007 has been issued fixing the



pension @ Rs.4371/- per month with effect from 01.04.2007. The pension of the petitioner's husband, late Mundrika Choudhary had been subsequently revised and fixed @ Rs.7373 per month vide letter dated 13.10.2010. The petitioner's husband later on died on 09.02.2016 and thus the petitioner claimed for enhanced family pension before the concerned Department as per the Bihar Pension Rules, 1950. Irrespective thereof, the petitioner has been paid family pension since 10.02.2016 @ Rs.2948/- per month. After having come to know the aforesaid facts, the petitioner vide her representation dated 18.10.2020 represented before the Department as well as the Senior Account Officer (A.G., Bihar) requesting therein to make proper fixation of family pension.

5. The Commandant, Bihar Military Police-2, Dehri-on-Sone after considering the representation of the petitioner sent a letter to the Accountant General, Bihar, Patna vide Memo No. 623 dated 08.02.2021 with a recommendation to ensure the enhanced family pension till attainment of 67 years of age or till 7 years after the death of pensioner, whichever is earlier. In response to the aforesaid letter, the Senior Accounts Officer, A.G., Bihar vide its letter No. 1132 dated 10.02.2021 came out with a decision that the enhanced



family pension is payable only to whom who is in service from 01.04.2007 or up till 10 years after the said person died during his service period as per the resolution No. 1206 dated 22.08.2013.

6. It is submitted on behalf of the petitioner that the claim of the petitioner has wrongly been rejected by referring to resolution No. 1206 dated 22.08.2013 as the same would not be applicable in the case of the petitioner. Learned counsel for the petitioner made reliance upon Memo No. 1764 dated 26.09.2006 issued by the Finance Department, Government of Bihar and with reference thereto he submits that the enhanced family pension would also be applicable in the case where the employee died during and after his superannuation till seven years from the date of death or completion of 65 years whichever is earlier. However, subsequently the age of 65 years has been enhanced to 67 years. He further submitted that so far the resolution No. 1206 dated 22.08.2013 is concerned, the same contemplates enhanced family pension for 10 years in respect to the family of the employees, who died on or after 01.04.2007 or subsequent thereto died during service.

7. It would be worth noting that during pendency of the present writ petition, the pending representation of the



petitioner had been rejected in the same fashion as noted hereinabove, vide letter No. 478 dated 24.08.2023 issued by the Senior Accounts Officer, Bihar, Patna. The said letter has also been put to challenge by filing I.A. No. 1 of 2023 in the present case.

8. Respective counter affidavits have been filed on behalf of the Accountant General, Bihar, Patna, as well as the Commandant, Bihar Military Police-II, Dehri-on-Sone, Rohtas. It is the stand of the respondents that the husband of the petitioner took voluntary retirement on 31.03.2007 and he died on 09.02.2016 and thus in such eventuality, the enhanced family pension shall be admissible from the date of voluntary retirement, i.e. 31.03.2007 and not from 09.02.2016. Referring to the resolution No. 1206 dated 22.08.2013 issued by the Finance Department, Government of Bihar, submission has been made that if the government servant dies while in service, enhanced family pension is admissible for 10 years from the date of death but as the husband of the petitioner took voluntary retirement on 31.03.2007, the petitioner would be entitled for enhanced family pension for 7 years from the date of voluntary retirement.

9. The learned counsel for the respondent harps on



the Court that the case of the petitioner would be governed by resolution No. 1206 dated 22.08.2013, which in no uncertain terms stipulates that the enhanced family pension is payable for 10 years to only those employees who have died on or after 01.04.2007 or during their service period, but not after the retirement.

10. This Court has anxiously heard the learned counsel appearing on behalf of the respective parties and also perused the materials available on record. Having gone through the resolution No. 1206 dated 22.08.2013, *prima facie*, its applicability is restricted only to those employees, who have died on or after 01.04.2007 or died during their service period and if that is so happened, in such circumstances the enhanced family pension is payable for 10 years but it would not be applicable to the employees, who died after the retirement. Undoubtedly, the voluntary retirement of the petitioner's husband was approved with effect from 31.03.2007, which is the date of his retirement and thus resolution No. 1206 dated 22.08.2013 would certainly be not applicable in the case of the husband of the petitioner.

11. Now coming to the resolution issued by the Finance Department, Government of Bihar contained in Memo



No. 1764 dated 26.09.2006 is concerned, the same is quoted hereinbelow:

“वर्द्धित दर पर पारिवारिक पेंशन प्राप्ति की सीमा अवधि का विस्तार

[बिहार सरकार, वित्त विभाग, ज्ञापांक वि० (27) पें०को०—82/06/1764/वे०, दिनांक 26.09.2006 की प्रतिलिपि।]

विषय: वर्द्धित दर पर पारिवारिक पेंशन प्राप्ति की सीमा अवधि विस्तारित किये जाने के संबंध में।

वित्त विभाग के पत्रांक 9251, दिनांक 05.12.2006 के तहत यह प्रावधान है कि यदि सेवा के दौरान सरकार कर्मों की मृत्यु हो जाती है, तो उनके आश्रितों को मृत्यु की तिथि से सात वर्षों तक या कर्मों की वार्द्धक्य सेवानिवृत्ति की आयु यदि वह जीवित होता तक, जो भी पहले हो, वर्द्धित दर पर पारिवारिक पेंशन अनुमान्य होगा। संकल्प संख्या 6796, दिनांक 15.07.1975 द्वारा उक्त प्रावधान को सरलीकृत कर सेवानिवृत्ति के बाद मृत कर्मियों को भी शामिल करते हुए यह प्राधान किया गया है कि सेवाकाल/सेवानिवृत्ति के बाद मृत्यु की तिथि से सात वर्ष या 65 वर्ष की आयु जो पहले हो, तक किया जाएगा।

2. केन्द्र सरकार द्वारा सेवानिवृत्ति की आयु 58 वर्ष से बढ़ाकर 60 वर्ष किये जाने के उपरान्त बढ़ी हुई दर पर पारिवारिक पेंशन भुगतान की अवधि 65 वर्ष से बढ़ाकर 67 वर्ष, जो भी पहले हो, तक का प्रावधान किया गया है।

3. बिहार सरकार द्वारा सेवानिवृत्ति की तिथि 60 वर्ष किये जाने के बाद भारत सरकार के उक्त प्रावधानों के आलोक में सम्यक् रूप से विचारोपरान्त वित्त विभाग के ज्ञापांक 9251, दिनांक 05.12.1966 में निहित प्रावधानों के अनुसार वर्द्धित दर पर पारिवारिक पेंशन दिये जाने हेतु संकल्प सं०—6796, दिनांक 15.07.1975 की कंडिका ।। की उप-कंडिका ‘ए’ एवं ‘बी’ का निम्न रूप में संशोधित किया जाता है—

“सेवा काल में/सेवानिवृत्ति के बाद कर्मों की मृत्यु होने पर सात वर्षों तक या मृतक के 67 वर्ष की आयु प्राप्त करने तक जो भी कम हो, बढ़े दर पर पारिवारिक पेंशन देय होगा। सेवानिवृत्ति के बाद मृत्यु होने की स्थिति में बढ़ी हुई दर पर पारिवारिक पेंशन किसी भी स्थिति में मृत सरकारी सेवक को अनुमान्य पेंशन से अधिक नहीं होगा।”

एतद् संबंधी पूर्व में सभी आदेशों को इस हद तक संशोधित समझा जाए।”

12. The resolution as noted hereinabove, while



amending sub clause A and B of Clause 2 of resolution No. 1764 dated 26.09.2006, clearly stipulated that the employee(s) died during service period or after his superannuation shall be entitled to get enhanced family pension till 7 years of the eventuality of death or upto 67 years of age of deceased employee. However, in no case the enhanced family pension shall be excess to the basic pension of the dead employee.

13. Having considered the aforesaid resolution, this Court has no hesitation to hold that in the case in hand, the husband of the petitioner retired w.e.f 31.03.2007 and died in the year 2016, thus in such an eventuality the resolution No. 1764 dated 26.09.2006 would only be applicable, hence, the petitioner would be entitled for enhanced family pension upto 7 years of the death of her husband or upto 67 years of age of the deceased employee, whichever is earlier.

14. In view thereof, the impugned order contained in letter No. 1132 dated 10.02.2021 as also the letter No. 478 dated 24.08.2023 issued by the Senior Accounts Officer, Bihar, Patna rejecting the claim of the petitioner for enhanced family pension stands quashed.

15. Accordingly, the respondent Accountant General, Bihar is hereby directed to consider the claim of the



petitioner for enhanced family pension in light of the resolution of the Finance Department, Government of Bihar contained in Memo No. 1764 dated 26.09.2006 and ensure consequential benefits preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

16. The present writ petition stands allowed.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	09.01.2024
Transmission Date	

