

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9735 of 2021

Kaushlya Devi, Wife of Late Ram Vilash Ram @ Ram Nandan Singh,
resident of Maheshwara, Police Station Hathouri, District Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Home, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Purnea.
4. The Superintendent of Police, Katihar.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Singh, Advocate
For the Respondent/s : Mr. Fazle Karim, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 11-01-2023

Heard Mr. Jagdish Prasad Singh, learned counsel for the petitioner and Md. Fazle Karim, learned AC to SC-1.

2. By invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution, the petitioner, who is hapless widow of late Late Ram Vilash Ram @ Ram Nandan Singh seeks direction upon the respondents to pay to her family pension, death-cum-retiral gratuity, leave encashment salary and group insurance etc. with effect from 03.03.2002, the date on which her husband, who was ASI of police, declared civil death, during his service period.

3. The undisputed facts is that the husband of the petitioner had joined the police service on 14.09.1976 on the post



of constable pursuant to the Katihar Rail District Order No. 527/76 dated 14.09.1976. After serving so many places, the petitioner's husband was transferred from Balrampur police station to Salmari O.P. vide District Order No. 1763/1994 dated 01.09.1994 and accordingly he submitted his joining at Salmari O.P., as Assistant Sub-Inspector of police. On 03.03.1995, he left the Salmari O.P. to Katihar for certain necessary work at 9.00 A.M, but could not return back till 07.03.1995 and, as such, having found him trace less, Station Diary Entry No. 131 dated 08.03.1995 was registered for disappearance of late husband of the petitioner and a Special Messenger was deputed for Katihar, his native village and other place to get information about him, but his whereabouts could not be traced out.

4. Since the petitioner's husband remained trace less for seven years, in such circumstances through Katihar District Order No. 620/02 dated 22.03.2002, he was declared civil death with effect from 03.03.2002 and this information has been given to the concerned Superintendent of Police and the petitioner, who appeared before the Pension Branch, Police Line, Katihar along with all the requisite documents.

5. It is the case of the petitioner that pursuant to the aforesaid information, the petitioner submitted all the required



pension papers, but she has not been allowed any terminal benefit of her late husband. Later on, certain documents were also asked for by the office of the Superintendent of Police and the same has also been handed over, but the matter remained pending. In the meantime, the petitioner also filed application/representation for payment of admitted death-cum-retiral benefit and family pension. However, the same went in vain, which resulted into filing of C.W.J.C. No. 15290 of 2019 before this Court. The aforesaid writ application was, however, withdrawn by the petitioner after faced with the issue of delay and laches with liberty to take recourse to such other remedies as are available under the law. The copy of which is annexed as Annexure-4 to the writ petition. Subsequently, the petitioner approached the Superintendent of Police, Katihar along with the order of this Court and also moved before the Public Grievance Redressal Forum, but she did not get any solace, hence the present writ application.

6. A counter affidavit has been filed on behalf Superintendent of Police, Katihar (respondent no.4) stating, inter alia, that on receipt of the representation of the petitioner claiming death-cum-retiral benefit of her husband and family pension, a report was called for from the Sergeant Major, Police Line,



Katihar and vide Memo No.1305 dated 17.05.2021 a report has submitted to the Superintendent of Police, Katihar.

7. Learned counsel for the State by referring to the materials brought in the report vehemently submits that after the death of the petitioner's husband she was advised to submit the required pension papers and she was also given reminders for the same and in the meantime, the Police Inspector Manihari/Barsoi Anchal was also directed to enquire the matter of death as well as family details of the erstwhile employee. The Sub-inspector and the Circle officer Shivjee Nagar Circle were also requested to enquire regarding the death and caste of the erstwhile employee. During enquiry it was found that the petitioner's husband, namely, Ram Vilash Ram known as Ram Vilash Singh in his village. He was "Kurmi" by caste, but he obtained his caste certificate of "Ravidas" (Harijan) Scheduled caste and on the basis thereof the petitioner's husband obtained the appointment. In the aforesaid circumstances, it is submitted that as the husband of the petitioner obtained the appointment on the basis of forged certificate, the pension and other benefits have not been decided till date and guideline has been sought for from the police headquarter.

8. In response to the averments and the submissions made on behalf of the learned counsel for the State, Mr. Jagdish



Prasad Singh, learned counsel for the petitioner submits that the petitioner's husband was appointed way back in the year 1976 and to be more specific on 14.09.1976 and after having verified all the certificates/testimonials his joining was accepted and during his life time he was also allowed promotions twice and before he found trace less in the year 1995, at no point of time any show-cause notice has been served on the erstwhile employee nor any enquiry has been conducted in this regard. However, after more than four decades, all of a sudden, the respondent has come out with a dispute regarding caste of the petitioner's husband and making a frivolous allegation with regard to obtaining appointment on the basis of forged certificates. He submitted that the husband of the petitioner was by caste "Kurmi" and he never took the benefit of scheduled castes, as claimed by the respondent nor the respondent has come out with any paper showing that at any point of time he has obtained the benefit on the basis of forged caste certificate. In order to buttress his submission, he further submits that admittedly the husband of the petitioner has been declared civil death way back in the year 2002 with effect from 03.03.2002 and at no point of time neither any judicial enquiry nor departmental proceeding has ever been initiated against the erstwhile employee and now any enquiry behind the back of the



erstwhile employee, after his death without providing any opportunity of hearing is nullity in the eye of law as well as on facts.

9. This Court heard the learned counsel for the parties and considered the materials available on record carefully.

10. Before coming to the issue involved in the present writ application, this Court cannot lose sight of the fact that earlier the petitioner come before this Court in C.W.J.C. No. 15290 of 2019 and she withdrew her application faced with the situation of delay and laches and subsequently for the same cause of action, the present writ application has been filed. It would be relevant to observe that no law of limitation applies to be given pension, which is not a bounty. To receive post retiral benefit is a right of service, which comes inherent with the service. Reliance may be taken of a judgment rendered by the Division Bench of this Court in the case of **Union of India & Ors. Vs. Braj Nandan Singh & Anr.**, reported in **2003 (3) PLJR 409**. The real test to determine is whether a parallel right is created in favour of others, as a result of lapse of time and the test is not physical running of time. To receive post retiral benefit is a continuing right and in the opinion of this Court, it cannot be curtailed on account of delay and laches, as the respondent State being a model employer is duty bound to



ensure the payment of post retiral benefits/family pension to its employees, which he/she earned on account of his/her unblemished sincere service rendered to the State.

11. It is well settled that whether a document is fake and fabricated itself is a matter of enquiry, in which the delinquent has to be involved and heard, for that there can be no ex parte assessment and finding in this regard it is equally well settled that an order, which prejudicially affects a person in breach of principles of natural justice, such an order would be a nullity. The Division Bench of this Court in LPA No. 568 of 2013 (**The State of Bihar and others Vs. Meera Sinha**) and other analogous cases held in specific “that forgery is a question of fact. To allege that a person obtained appointment on basis of forgery, cast an aspersion and stigma. The procedure for it therefore has to be fair and proper by holding a proper enquiry with due opportunity of defence and consideration of the defence followed by a reasoned order. The law stands well settled that even in the matter of forged appointment, proper proceedings are required to be held with an opportunity of defence.” Reference may be made to paragraph nos. 15 and 17 of the judgment in the case of **Rohit Raj Vs. The State of Bihar & Ors**, reported in **2023 (1) PLJR 206**.



12. The law stands well settled that even in the matter of forged appointment proper proceedings are required to be held with an opportunity of defence. It would be apt to quote paragraph 5 of the judgment reported in (2007) 12 SCC 146 (**Punjab State Electricity Board and Ors. Vs. Leela Singh**) observing at paragraph 5 as follows:

“The charge against the respondent is that he has committed fraud in obtaining the appointment by production of a forged experience certificate. The said charge, in our considered opinion, was required to be proved in a duly constituted departmental proceeding. The services of the appellant could not have been directed to be terminated relying on and/or on the basis of the decision of the Board in the case of another employee.”

13. Further, paragraph 8 of the judgment rendered in the case of **Shridhar s/o Ram Dular Vs. Nagar Palika, Jaunpur and others**, reported in **1990 (Supl) SCC page 157**, which is as follows:-

“The High Court committed serious error in upholding the order of the government dated February 13, 1980 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of



hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's order had been passed without affording any opportunity of hearing to the appellant therefore the order was illegal and void. The High Court committed serious error in upholding the Commissioner's order setting aside the appellant's appointment. In this view, orders of the High Court and the Commissioner are not sustainable in law.”

14. It would also be relevant to observe that the certificate produced at the time of appointment scrutinized at the earliest and with utmost expeditious. In the present case, the husband of the petitioner was appointed in the year 1976 and he became trace less in the year 1995 and in the meantime he was promoted twice and finally he was promoted to the post of ASI, on being found his satisfactory service and after verification of his service records. Even, if it is decided that the employee does not belong to SC/ST that cannot invalidate, the appointment unilaterally without there being any enquiry in presence of the petitioner or departmental proceeding after giving proper opportunity of hearing to the delinquent in accordance with law and any decision taken unilaterally depriving the erstwhile employee of terminal benefits is not countenanced by any law.



15. It is needless to state that the post-retiral benefits of an employee can be withheld only in accordance with the Rules governing the services of the petitioner and for the said purpose the Bihar Pension Rules, 1950 clearly stipulates certain circumstances where the pension/family pension can be withheld, if the pensioner is found in departmental or judicial proceeding to have been guilty of grave misconduct or to have caused pecuniary loss by misconduct or negligence during his service or on re-employment after retirement, as has been envisaged under Rule 43(b) of Bihar Pension Rules, 1950. Further the State Government reserves to themselves the power of withholding full or part of the pension in case services of the pensioner is found not thoroughly satisfactorily or there was proof of grave misconduct on his part while in service, as per Rule 139 of the aforesaid Rules.

16. It is settled proposition of law that judicial enquiry or departmental proceeding against a delinquent totally abates on death of an employee for the simple reason that in order to punish an employer, there must be subsistence of employer and employee relationship. Once an employee died the said relationship ceases. The defence, if any, is a personal defence available to the employee and no person can be substituted in place of dead employee; and defend the conduct of a dead employee and, as



such, no order could have been passed withholding the retirement or any outstanding dues.

17. In view of the discussions made hereinabove, the impugned action of the respondent in not making payment of retiral outstanding dues and the family pension of the petitioner is wholly unjustified and not sustainable in the eyes of law.

18. Accordingly, this Court directs the concerned respondent to ensure payment of all the admissible death-cum-retiral outstanding dues to the petitioner with effect from 03.03.2002, the date on which the erstwhile employee declared civil death along with the admissible statutory interest as payable under the law as early as possible preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.

19. The present writ application stands allowed. There shall be no order as to costs.

(Harish Kumar, J)

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