(2008) 07 PAT CK 0022

In the Patna High Court

Case No : LPA No. 1174 of 2000

Janki Devi — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:
Penal Code, 1860 (IPC) — Section 340

Citation : (2008) 4 PLJR 299

Hon'ble Judges : Jayanandan Singh, J;Barin Ghosh, J

Bench : Division Bench

Advocate : Jagannath Singh, for the Appellant; S.K. Sharma, for the Respondent

Judgement

Barin Ghosh and Jayanandan Singh, JJ.—Heard Learned Counsel for the parties. In CWJC No. 5899 of 2000, the appellant in this appeal approached this Court seeking a direction upon the State Government to release the amount of pension sanctioned by the State Government in favour of her late husband, the remaining pension to which he was entitled to and the family pension payable to her. In the writ petition the petitioner had annexed copies of the correspondence which resulted in ultimate sanction of 75% of pension payable to her husband. The respondents in the writ petition did not file any counter affidavit to the writ petition.

2. When the writ petition was heard, the learned Single Judge felt that the husband of the appellant was not a Government servant and, accordingly, dismissed the writ petition. Unfortunately, the counsel appearing on behalf of the appellant could not bring to the notice of the learned Judge the sanction accorded by the State for payment of 75% of pension payable to the husband of the appellant. Proceeding on the basis that the husband of the appellant was not a Government servant, by the judgment and order under appeal the learned Judge dismissed the writ petition.

3. The respondents in the appeal wanted to file a counter affidavit but ultimately

did not file the same fearing that the same would expose them to proceedings being initiated u/s 340 of the Indian Penal Code. However, a copy of that counter affidavit was served upon the Learned Counsel for the appellant which we direct the Learned Counsel for the appellant to file in connection with this appeal for the purpose of keeping the same on record.

4. It is interesting to note that in the counter affidavit the correspondence leading to sanction for payment of 75% of pension to the husband of the appellant had not been denied or disputed and at the same time the sanction so accorded was also not denied or disputed but without explaining such sanction it was untruly and most irresponsibly stated that the husband of the appellant was not a Government servant and, accordingly, he was not paid pension despite such sanction.

5. Sanction for payment of 75% of pension to the husband of the appellant having been accorded, it signifies that at the time of retirement of the husband of the appellant, as recorded in the said sanction order, the husband of the appellant was a Government employee for he, immediately prior thereto, was serving as a Government employee in a Primary School owned by the Government.

6. In the counter affidavit which was intended to be filed, but ultimately not filed, it was contended that though the husband of the appellant retired in November, 1971 but until his death in December, 1985, he did not get any pension and the appellant also approached this Court in 2000 for family pension. It was suggested that there was unjust and undue delay.

7. We feel that before making such averment on an affidavit intended to be filed in a Court proceeding, it was obligatory on the part of the Government and its Officers to make self-introspection and to ascertain why, despite being entitled to, a Government servant is required to approach the Court for the purpose of obtaining pension or family pension. It was not contended that there was delay on the part of the husband of the appellant to apply for pension and, accordingly, sanction thereto was delayed. On the other hand, it was shamelessly contended that there was unexplained delay. On the other hand, being aware of the fact that there are laches on the part of the Government Officers to accord sanction on time resulting in exposure of the State exchequer to make payment of interest, the Government of its own has decided that in case there is delay in release of pension, the same shall carry interest at the rate of 5% per annum.

8. On the basis of what has been recorded above, we allow the appeal with costs assessed at Rs. 5,000/- (Five thousand) and set aside the judgment and order under appeal and also direct the State Government to pay to the appellant full pension, which is due and payable to the husband of the appellant and not 75% thereof, as was sanctioned in 1985, to the appellant until the date of death of the husband of the appellant, i.e. until 31st December, 1985, and thereupon family pension payable to the appellant from 1st January, 1986 until today within a

period of three months from today together with interest at the rate of 5% from the due date thereof until payment.

9. In the event the time frame, as above, is not followed, the rate of interest as fixed by the Government and as mentioned above, i.e. 5% shall stand increased to 15% per annum. The appeal is accordingly disposed of.

