
(1992) 12 PAT CK 0014

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4098 of 1991

Madhvi Devi

APPELLANT

Vs

State of Bihar and others

RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Citation : (1993) 1 PLJR 75

Hon'ble Judges : S.B. Sinha, J;I.P. Singh, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, for the Appellant; R.N.P. Yadav for the State, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha and I.P. Singh, JJ.—In this writ application the petitioner has prayed for a direction to the respondent No. 2, the Home Commissioner, Department of Home (Police) to make necessary payment of arrears of salary which is due to her deceased husband for the period of his suspension and dismissal. The petitioner has also prayed for time bound promotion/increment in pay allegedly due to her husband (deceased) during his service tenure. The husband of the petitioner was appointed as a Clerk in the office of the Superintendent of Police, Saharsa on 16.11.1956 wherefrom he was transferred to Begusarai and subsequently to the office of the Superintendent of Police, Sahebganj. On 30.7.1966 the husband of the petitioner was put under suspension and three departmental proceedings were initiated against him. Finally in the year 1969 the husband of petitioner was dismissed from the services in a departmental proceeding being No. 44/66. The husband of the petitioner filed an appeal to the Inspector General of Police and thereafter a memorial to the State Government was also filed. The State Government directed reinstatement of the husband of the petitioner in service. However, it was also ordered that three increments from his salary with cumulative effect be withheld and a censure be recorded in his service book. It was further ordered that the husband of the petitioner will not be

entitled to the full pay and allowances for the period he was not in service. The order of the State Government was communicated to Lambodar Mishra, which is contained in Annexure-1 to the writ application.

2. The husband of the petitioner thereafter filed a writ petition in this Court being CWJC No. 2534 of 1982 and by a judgment of this Court dated 7th October, 1988 as contained in Annexure-2 to the writ application, this Court held as follows :?

In the result, that part of the order contained in Annexure-1, treating the period of suspension of the petitioner as on duty for the purpose of pension and gratuity, and that he will not get anything beyond the subsistence grant already received by him in the said period is struck down as invalid. It would, however, be open to the competent authority to consider this part of the question de novo after giving the petitioner a reasonable opportunity to show cause against the action proposed against him. There will be no order as to costs.

3. The husband of the petitioner died in January, 1990. It is, therefore, clear that the respondents did not take the benefit of observations made in their favour by this Court in the aforementioned writ application.

4. It appears that the husband of the petitioner had filed a representation before the State Government which is contained in Annexure 4 to the writ application whereby a prayer had been made for giving him time bound promotion. The said representation of the petitioner had also not been disposed of.

5. A counter affidavit on behalf of the respondent No. 3 has been filed in which nothing has been stated as far as the payment of full salary is concerned to the husband of the petitioner for the period he was either suspended or he was not in service. So far as the matter of time bound promotion is concerned, it has been stated that the husband of the petitioner was not found fit for time bound promotion and this was communicated according vide memo No. 1142 dated 21.6.1989. It has also been stated that the matter is closed for ever and has been finally decided.

6. Mr. Ajay Kumar Thakur, Learned Counsel appearing on behalf of the petitioner submitted that in the facts and circumstances of the case, the husband of the petitioner became entitled to full pay for the period he was not in service.

7. As indicated hereinbefore, it is evident that in view of the judgment of this Court passed in CWJC No. 2534 of 1982 the husband of the petitioner became entitled to the entire salary for the entire period, inasmuch as no fresh departmental proceeding had been initiated as against him.

8. Consequently the petitioner has also become entitled to receive the aforementioned amount which became due to her husband. As the respondents intentionally and deliberately have not paid the said amount she will be entitled to interest at the rate of 12% per annum on the lawful dues from the date of death of her husband till the date of actual payment. The respondents are directed to make payment to the petitioner all lawful dues as early as possible

and preferably within a period of six weeks from the date of the receipt of a copy of this order.

9. So far as the matter relating to time bound promotion is concerned, the same has to be considered by the respondents. It may however, be mentioned that time bound promotion is granted in terms of the recommendations of the Fourth Pay Revision Committee subject to suitability of the candidates.

In terms of the Fourth Pay Revision Committee the employee concerned may not be entitled to the next higher post but he may be considered for promotion to the next higher scale of pay. This, however, is subject to the conditions that the person is otherwise eligible and/or suitable for purpose of promotion.

10. The petitioner's husband in view of the order of reinstatement must be held to have all along been in service of the State.

11. In this view of the matter, the respondents are bound to consider the case of the petitioner's husband as to whether he became entitled for time bound promotion. The concerned respondents are hereby directed to take a decision in this regard within six months from the date of the receipt of a copy of this order. It goes without saying that all necessary consequent monetary benefits pursuant to any order of time bound promotion that may be passed by the respondents, should be paid to the petitioner with utmost expedition.

This application is allowed to the extent mentioned hereinbefore, but there will be no order as to costs.