(2006) 12 PAT CK 0006

In the Patna High Court

Mosomat Rabiya Khatoon APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Citation : (2007) 2 PLJR 12

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Judgement

Barin Ghosh, J.—The husband of the petitioner retired from the services of the Government on 30th April. 1991. He filed a writ petition, which was registered as CWJC No. 2218 of 2001, seeking a mandamus of this Court directing the respondents in the said writ petition to release an pay to him his lawful retiral dues and claims. At that stage it was abated by the respondents in the writ petition that the Service Book of the husband of the petitioner is not available and that his Last Pay Certificate is also not traceable. The Court directed reconstruction of the Service Book and at the same time directed payment of all retiral dues due and payable to the husband of the petitioner. After the said order was passed but before any step was taken to implement the directions contained in the said order, the husband of the petitioner died. The husband of the petitioner was a Junior Engineer in the Minor Irrigation Department of the Government of Bihar. Even thereafter the retiral dues payable to the husband of the petitioner were not released and paid to the petitioner and hence she was constrained to file the present writ petition.

2. In the counter affidavit it was held out that the matter pertaining to the services rendered by the husband of the petitioner has been gone in and it transpired that the husband of the petitioner has taken advances from the State but did not return or accounted for the same and also did not account for the materials entrusted by the State to him aggregating to total sum of Rs. 8.87 lacs and odd. It was then stated that the petitioner on account of retiral dues is entitled to roughly about Rs. 3.44 lace, and accordingly after appropriation of Rs.

3.44 lacs, the petitioner is required to refund Rs. 3.82 lacs to the State.

3. In such view of the matter, the Court called upon the State to produce the receipts under which moneys were taken as advance by the husband of the petitioner which, according to the State, have not been refunded, and also documents to suggest that the husband of the petitioner was given in custody materials which he did not account for at or before his retirement Except two receipts aggregating for a sum of Rs. 16,652/-. Nothing else has been brought on record. The State has not brought on record even one single letter addressed to the petitioner after his retirement asking him to return any material whatsoever. In such circumstances, these two receipts are also suspect documents but, however, on the basis of suspicion, the Writ Court cannot pass any order. This Court, therefore, makes it abundantly clear that it shall be open to the petitioner to challenge the admissibility of those two receipts and, in particular, that the moneys received under those receipts had not been accounted for, by taking appropriate action in accordance with law.

4. There being nothing on record to suggest that the husband of the petitioner had taken any other advance apart from the sum of Rs. 16,852/-, on record, there is nothing to suggest that any other money taken by the husband of the petitioner remains unaccounted for. Though several affidavits have been filed and despite specific opportunities given for bringing on records materials to suggest that the husband of the petitioner retained in his custody any material belonging to the State and did not return the same, the State has failed to bring on record* even one single scrap of document. As such the claim that the husband of the petitioner was required to return anything to the State on account of materials kept by him under his custody and not accounted for is not sustainable. On the basis of such mere averment, the State cannot ask for adjustment of otherwise lawful dues of the husband of the petitioner.

5. While calculating the retiral dues of the husband of the petitioner it was shown that the qualified service of the petitioner was 19 years and odd. In such view of the matter, the reconstructed Service Book of the husband of the petitioner was called for and the same has been produced. In the second page of the said reconstructed Service Book, it has been acknowledged that the husband of the petitioner was rendering services from 1st March, 1951. If the husband of the petitioner was rendering services from 1st March, 1951 and he having been admittedly retired on 30th April, 1989, the question of showing the qualified service of the husband of the petitioner at 19 years and odd did not arise. The respondents are, therefore, directed to show that the qualified service of the husband of the petitioner started from 1st March, 1951 and ended with 30th April, 1991 and issue appropriate certificate to that effect to the Office of the Accountant General, Bihar, Patna within a period of one month from today.

6. After I started dictating the order, as is the usual habit, the learned Counsel for the State started referring to many documents and one of them was a letter by which the husband of the petitioner way back in 2000 was asked to account

for the goods allegedly in his custody.

7. Rule 43B of the Bihar Pension Rules authorizes stoppage of pension in full or part in the event a pensioner has caused any pecuniary loss to the Government by misconduct or negligence during his service rendered not more than four years before the institution of proceedings for (sic) inflicting an order under the said rules. The letter of 2000, therefore, was brought on record as an eye-wash and to defeat the lawful and legitimate right of a widow to recover her lawful dues. It is significant to note that this letter of 2000 was not highlighted when the writ petition of the husband of the petitioner was disposed of by this Court. The action in refusing to pay the lawful and legitimate retiral dues of the husband of the petitioner to the petitioner) appears to me, to be utterly mala fide and accordingly the State is directed to pay interest at the rate of 18% per annum from the due date on which such payments accrued due until payment with a direction upon the State to recover such interest from such Officer/Officers of the State who acted in the manner as deprecated above.

8. It is for the knowledge of the State and its Officers that no part of the Gratuity or Provident Fund payable to an employee can be adjusted against any lawful claim of the State against the employee, but, in the instant case, even the gratuity amount was purported to be adjusted This is another incidence of mala fide.

9. The Accountant General is directed to ensure that within a month from the date of receipt of the certificate pertaining to qualified service, the entire retiral dues of the husband of the petitioner is settled and paid along with interest at the rate as above to the petitioner.

10. Let a copy of this order be supplied to the learned Counsel for the State.

11. The writ petition accordingly stands disposed of.

