
(2000) 03 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 3738 of 1998

Smt. Bindhya Basini Mishra	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Citation : (2000) 3 PLJR 131

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Sarwan Kumar Singh, for the Appellant; Ganga Prasad Rai, for State and J.P. Karn, for Accountant General, for the Respondent

Final Decision : Dismissed

Judgement

Radha Mohan Pd., J.—In this writ petition the Petitioner is widow of the deceased Government servant late S.N. Mishra, who died while performing his duty as a result of attack by the extremists on 16.8.1997. The deceased husband was Superintending Engineer at the time of his death in the Department of Water Resources at Palamau.

2. It appears that the Bihar Engineering Service Association moved for grant of ex-gratia payment to the widow Petitioner on account of killing of her husband by the extremists and the State Government paid Rs. 10 lacs as ex-gratia payment and also sanctioned payment of family pension vide Annexure 15, which the Petitioner is already getting. The Petitioner, however, in the present writ petition has claimed that besides the said payment she is also entitled to get family pension under extraordinary rules equal to the full pay last drawn by the deceased Government servant until her life or remarriage.

3. In paragraph 10 of the writ petition it is stated that the State Government has adopted the Central Civil Service (Pension) Rules, 1972 with effect from 1.1.1986, which according to the learned Counsel for the Petitioner, provides for payment of the aforesaid family pension under Extraordinary Pension Rules.

4. A counter affidavit has been filed on behalf of Respondent Nos. 1 to 4 in which the said Respondents have denied the existence of any such rule. In the supplementary counter affidavit the said Respondents though have admitted that the husband of the Petitioner was killed by the extremists while on duty, but they have specifically stated that there is no such provision in the Bihar Service Code. The only provision is for appointment of the widow of the deceased on compassionate ground, or on her recommendation, of the dependant of the deceased as per Government Circular. The Respondents have further explained about the calculation on which the said ex-gratia payment was made to the Petitioner.

5. The learned Counsel for the Petitioner has failed to show any such provision applicable to the State Government employees wherein the widow of the deceased Government servant on account of killing of her husband by the extremists can claim for family pension under Extraordinary Pension Rules equal to full pay last drawn by the deceased Government servant until her life or remarriage.

6. The learned Additional Advocate General No. 3 has submitted that a sum of Rs. 10 lacs was paid to the Petitioner as per decision taken on discussion by the Bihar Engineering Service Association with the Hon"ble Chief Minister. He further submitted that the said payment also includes full salary admissible from the date of death of the deceased till the due date of his superannuation at the rate of last pay drawn by him which roughly was worked out at Rs. 4,50,000/ -. However, the Hon"ble Chief Minister, while exercising her discretionary power, granted a lumpsum amount of Rs. 10 lacs besides grant of family pension to the Petitioner keeping in view the tragedy which one is faced after death of her husband. Thus, according to him, full pay as admissible to the rate of last pay drawn by the deceased has been paid from the date of his death till due date of his superannuation. It has further been submitted by the learned Additional Advocate General No. 3 that in absence of any rule entitling the widow for extraordinary pension until her life or re-marriage, the Petitioner is not entitled for any relief in that regard as prayed in the writ petition. This Court finds substance in the submission of the learned Additional Advocate General No. 3, appearing for the State. The learned Counsel for the Petitioner has failed to show any provision, much less statutory provision under which the Petitioner can claim for grant of extraordinary pension equal to the pay last drawn by the deceased until her life or re-marriage.

7. Under such circumstances this Court does not find any merit in the writ application and the same is, accordingly, dismissed but without cost. However, this judgment/order will not preclude the Petitioner from agitating her claim before the authority concerned.