(1999) 10 PAT CK 0016

In the Patna High Court

Case No : C.W.J.C. No. 9686 of 1998

Smt. Durgesh Nandini APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:

Citation : (2000) 1 BLJR 331

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—The petitioner in this writ application is widow of late Sushil Kumar Singh, who was Principal in Jagdamb College, Chhapra, then under the control of Bihar University now Baba Sahab Bhim Rao Ambedkar University, Muzaffarpur. The husband of the petitioner retired from service on 31-1-1991 and ultimately, he died on 26-1- J992 without finalisation of is pensionary benefits. Petitioner in terms of general directions of this Court in the case of Rukmini Devi v. State of Bihar and Ors. reported in 1996(2) P.L.J.R. 348, sent legal notice long back on 14-9-1996 (Annexure-3) to the Vice-Chancellor, Finance Officer and the Registrar of the said University but the claim was not considered and disposed of in terms of the said general directions.

2. Earlier a criptic counter-affidavit was filed on behalf of the said authorities of the University without giving any details about the amount found payable to the petitioner after the death of her husband or the amount if any paid in that regard for which this Court deprecated the manner and attitude of the said Respondents in dealing with such matter, where a widow has been harassed for over several years so much so that she has to file this writ application for the redressal of her legitimate grievance.

3. Having regard to the facts that the general directions of this Court was not complied, this Court directed the said authorities to appear before this Court and

file their show cause on 23-8-1999 as to why contempt proceeding be not initiated against them and they be not adequately punished for not complying with the general directions of this Court. However, this Court further directed that if the order of this Court is complied, the personal appearance of the respondents shall stand dispensed with. After grant of repeated indulgence, the Vice-Chancellor considered the grievance of the petitioner and disposed of the legal notice vide order dated 21-8-1999, contained in Annexure-D, in which he alleged that the matter relating to the petitioner''s grievance as well as the orders of the Hon''ble Court was brought to his knowledge only on 16-8-1999. It is further stated that undue delay caused in disposal of petitioner''s grievance submitted through local notice dated 14-9-1996, while his predecessor was in office, is regretted. He has further summarised the grievance of the petitioner as follows:

(a) payment of deducted portion of Gratuity & Pension arrear ;

(b) payment of difference of U.G.C. scale salary arrear from 1-1-1986 to 31-12-1989;

(c) payment of Group Insurance contribution;

(d) D.C.A. & Interim relief arrear payment;

(e) leave encashment arrear payment; and

(f) re-fixation of pension consequent upon revision of pay-scale with increments.

In the said order, it is stated that the office took immediate cognizance of petitioner''s legal notice dated 14-9-1996 and communicated vide letter No. A/G-IV-2394 dated 8-2-1997 to S.B.I., University Campus Branch, Muzaffarpur, with a copy to the petitioner''s lawyer for ensuring credit of Rs. 72,303.13 to petitioner''s account after deducting unadjusted amount of advance. Subsequently, the University vide Memo No. A/C-IV-2883-84 dated 23-6-1999 requested Registrar, J.P. University to inform payment of four instalments of U.G.C. salary arrear grant which was released to respective Universities. It is also stated that in terms of para 2 of enclosure to State Government letter No. 1282 dated 16-7-1996 such payment was the liability of J.P. University. In the same order, it is further stated that the University has envisaged in State Government letter No. 1044 dated 7-8-1989 moved the State Government vide its letter No. B/1462 dated 2-7-1999 for release of difference of salary arrear in U.G.C. scale for the period 1-1-1986 to 31-7-1989 to the tune of Rs. 36684.00 for payment to the petitioner for her husband''s salary arrear. It is also stated that the examination of statement of outstanding advance on account of petitioner''s late husband still lying unadjusted due to non-submission of relevant bills, shows that after adjustment of all available bills a sum of Rs. 82539.44 is still the unreconciled liability of petitioner''s late husband. It is, thus, stated that as against the outstanding liability as detailed in the statement of account, the University has adjusted only Rs. 70,596.87 (1,42,900-72, 303.13) and Rs. 20,121.83 against gratuity, arrear pension and earned leave encashment due to late Sushil Kumar Singh and further claim on this account is entertainable only after the petitioner submits unadjusted bills in the University. It is also mentioned that the petitioner''s late husband has already been paid Group insurance contribution and earned leave encashment after adjusting part of University advance. The last slab of arrear D.A. payable for January, 1990 to September, 1990 was also paid to the deceased. It has, thus, been found that her claimed payment of deduction of Rs. 70,596.87 has to be reconciled with outstanding University advance of Rs. 82,539.44.

4. The facts of this case clearly show the gross negligence on the part of the University-authority including the Vice-Chancellor in dealing with the claim of the widow relating to death-cum-retirement dues payable to her after the death of her husband, so much so that even after the death of her husband on 26-1-1992 the claim has not yet been finally settled, despite orders of this Court and ample opportunity granted to the University-authorities.

5. In the supplementary show cause filed on behalf of Finance Officer-Respondent No. 3, it is stated that the amount of net outstanding advance against the petitioner was reduced to Rs. 30,539.44 and the balance liability showed Rs. 40,057.43. This has again been changed to Rs. 1,08,733.05 vide. Annexure-D/1 to the further affidavit filed on behalf of Finance Officer on 30th August, 1999 and after adjustment of portion of gratuity-cum-arrear pension the amount withheld by the University against unreconciled outstanding advance of Rs. 70,596.87 a sum of Rs. 38,136.18 has been shown as balance amount to be recovered. These facts simply have been mentioned to show that how the petitioner is being harassed by the shifting stands taken on behalf of the University from time to time.

6. In short, the contention on behalf of the University was that the gratuity-cum-arrear pension was withheld on account of the fact that certain amounts were advanced during the period 1979 to 1991 while the petitioner''s husband was Centre Superintendent. However, when the learned Counsel for the petitioner with reference to various Annexures -5, 5, 8, 10 & 12 showed that no dues certificate was issued long back including in regard to car advance vide Annexure-12 for payment of dues of the petitioner by the Principal of the College, Learned Counsel for the University admitted that the amount deposited in the account of the Principal of the College remained unadjusted were not spent by the petitioner''s husband, It was further submitted that the said amount was spent by another Centre Superintendents, but since the advance was received in the account of the Principal of the College, it was the responsibility of the petitioner''s husband to furnish the account and submit vouchers.

7. This Court fails to appreciate the said stand taken on behalf of the University. When it is admitted that the amount was not spent by the petitioner''s husband and it was spent by other Centre Superintendents how the adjustment of the said amount is permissible from the death-cum-retiral dues payable to the petitioner after the death of her husband. This only depicts the attitude of the

Respondent-University-authority to harass the petitioner who is widow and to avoid taking action against those Centre Superintendents, who admittedly spent the amount.

8. This Court in the facts and circumstances aforementioned finds that the Vice-Chancellor has deliberately withheld the payment of the death-cum-retiral dues payable to the petitioner now for over eight long years and only an attempt has been made to cover up the lapses on the part of the University-authorities for withholding the payment for such a long time by taking aforementioned untenable, plea of non-adjustment of advance given to the petitioner''s deceased husband.

9. This Court, in the case of Chandri Devi v. State of Bihar and Ors. reported in 1999 (2) P.L.J.R. 372, while dealing with the claim of the widow for grant of pensionary benefits held that in case there is any disputed claim based on mis-conduct, etc. against the employee, the State like an ordinary person will obtain decree from a competent Court to its dues. It cannot usurp to itself the power of deciding its own claim against the deceased employee or his family.

10. In the present case, the Principal of the College vide Annexure- 5, which has been endorsed by the Bursar also wrote to the Registrar of the University on 20th August, 1999 about the different claim statements of the deceased husband of the petitioner. According to him, a sum of Rs. 4,380/- was payable on account of interim relief from 1-6-1983 to 31-3-1986, out of the leave salary of 180 days already sanctioned by the University accounting to Rs. 51,480/- only a sum of Rs. 20,121.83 was paid vide Bank Draft No. 720275 dated 20-7-1993 and the remaining Rs. 31,358.17 is still to be paid. Out of the claim statement of difference of pay in old pay-scale and now U.G.C. scale payable from 1-1-1986 to 31-12-1989 amounting to Rs. 55,615/-, a sum of Rs: 6,000/- has been paid by the University and the remaining amount of Rs. 49,615/- is due to be paid. vide Annexure-7, the Principal wrote to the Registrar of the University, which has again been endorsed by the Bursar on 25-8-1999 that out of a sum of Rs. 1,42,900/- which stood advanced against the deceased husband of the petitioner a sum of Rs, 72,303.13 only was paid to the deceased''s wife and Rs. 70,596.87 was withheld by the University with a plea that this amount was not adjusted against the different advances. He informed that the petitioner thereupon again submitted different bills and details of advance of Rs. 70,596.87, but the said amount has not been paid to her as yet. Vide Annexure-8 which is signed by the Bursar and the Principal both of the College, no college, dues certificate was granted against the deceased husband of the petitioner on 25-8-1999. The Principal also vide letter dated 14-5-1992 (Annexure-10) informed the Registrar of the University that on the basis of the records available with the examination Department of the College, it was found that late husband of the petitioner did not remain Centre Superintendent from 1982 to 1988 Intermediate Examinations. Vide Annexure-11, petitioner''s husband long back on 8-12-1991 had informed the Finance Officer of the University that he did not spend the

money because the University appointed other persons as Centre Superintendent at different times and the amount was spent by them. Therefore, the money advanced to the Principal was utilised by those Superintendent and, therefore, the dues should be on them and not on him. He also mentioned about the details of the amount spent by different Centre Superintendent and requested him to transfer it in the names of those persons as he did not do anything. As I have already mentioned above, this fact has not been disputed by the Respondents and the learned Counsel for the University rather admitted that the amount was not spent by the petitioner''s husband.

11. The abovementioned facts clearly demonstrate that the respondents including the Vice-Chancellor have deliberately tried to circumvent the order of the Court by not paying the remaining dues of the petitioner on flimsy ground with respect to the alleged advance received by her husband over 10 years earlier, only after the lapse of long time of the death of petitioner''s husband.

12. Accordingly, this writ petition is allowed. The Respondents are directed to release the payment of the remaining dues of the petitioner within two weeks of the receipt/production of a copy of this order. In the facts and circumstances aforementioned, this Court finds it to be a fit case for awarding penal interest @ 18% per annum for the due date till the payment is made on account of delayed payment of the admitted dues and also cost of Rs. 10,000/- (Rupees ten thousand), which shall be calculated and paid within two weeks of the receipt/ production of a copy of this order. The amount of cost shall be realised from the Vice-Chancellor of Baba Saheb Bhim Rao Ambedkar University, Muzaffarpur.