

(2004) 09 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 7690 of 2004

Smt. Shanti Choubey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 236

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—This writ petition has been filed by the widow of Late Gauri Shankar Choubey, who died in harness on 20.6.1996 while posted as Marketing Officer at Hilsa in Nalanda district. The petitioner is aggrieved by the order of the Government, contained in letter no. 3764 dated 4.9.2001 (Annexure 14), issued by the Deputy Secretary, Food, Supply and Commerce Department, Government of Bihar, wherein it is stated that as per the information received from the District Magistrate, Nalanda, a sum of Rs.31,823/- against the advance given to the deceased while posted at Hajipur Subdivision is recoverable, besides the dues amount as reported by the State Food Corporation against the deceased. The details with respect to advance mentioned in the said letter are of 3.2.1982, 14.9.1983, 19.12.1984, 19.12.1984 and 17.11.1989. The first amount of Rs.200/- is shown as advance for doing Pairvi in the case and the second amount of Rs.250/- is shown as advance for relief work. The remaining three amounts have been shown as advance in connection with election work.

2. The petitioner is also aggrieved by letter no. 2162 dated 5.4.2002 of the Bihar State Food and Civil Supplies Corporation, contained in Annexure 15, wherein it is alleged that during his posting on deputation at Patna as Assistant Godown Manager, there was loss of foodgrains to the tune of Rs. 19,036.45 and is recoverable and besides this he has taken Rs. 1,000/- as advance, about which it is alleged that he neither submitted bill nor returned the said amount and, as

such, the same is also recoverable. Accordingly, a sum of Rs.1,94,264.03 is recoverable on the basis of compound interest calculated up to February, 1999. It is further stated that as per the decision taken by the present Board of Directors, 18% simple interest is to be charged and accordingly a sum of Rs. 62,586.17 paise was found recoverable up to 10.2.1999 and finally by the said letter, a sum of Rs.82,622.62 paise has been found recoverable.

3. Earlier, on 31.8.2004 the matter was adjourned on the request of the learned counsel for the respondents for listing in the next week and meanwhile, the respondents were directed to re-consider the grievance of the petitioner and take appropriate decision afresh keeping in view the law and the facts and circumstances of the case. On 8.9.2004 when the matter was heard and order was reserved, Mr. Pradhan, learned counsel appearing for the Corporation fairly submitted that the Corporation shall recall the impugned order (Annexure 15) with liberty to take any other legal action as permissible in law. Such grievance of the petitioner in so far as against Annexure 15 is concerned, that stands redressed as obviously no action is permissible either under rule 43(b) of the Bihar Pension Rules or even the money suit is barred as the claim obviously relate to the period beyond three years and also in view of the law settled by this Court in the case of Radha Jha Vs. The State of Bihar and Others, .

4. In so far as the grievance against Annexure 14 is concerned, learned counsel for the petitioner contended that the same is also fit to be quashed on the sole ground that the recovery of the alleged outstanding advance taken by the deceased, for which neither any proceeding was initiated nor any action was taken during the lifetime of the deceased Government servant, is not permissible from the death-cum-retiral dues payable to the widow in view of the law settled by this Court in the case of Radha Jha (supra).

5. In the counter affidavit filed on behalf of the State and its officials (respondents no. 3, 4 and 7), the details about the payments made/sanction accorded only in August, 2004 i.e., after eight long years have been furnished and it is stated that as to the revised family pension and revised gratuity, the same have been sent to the appropriate authority for proper sanction. In paragraphs 13 and 14 of the said counter affidavit it is stated that the amount of Rs. 82,622.62 payable to the Corporation has not been deducted so far from the payment made to the petitioner and the petitioner is now receiving family pension sanctioned by the A.G., Bihar, and drawing the same herself from the Treasury and hence if any arrear due to the petitioner on account of family pension, she should approach the Treasury Officer, Patna. However, it is stated that a sum of Rs.31,823/- has been deducted at the time of above mentioned payment as it was an advance taken by the petitioner's husband from the Sub-divisional Nazarat, Hajipur as ordered by the Food, Supply and Commerce Department, Bihar, Patna through the Deputy Secretary's Memo No. 5243 dated 11.12.2001 to which the petitioner agreed to the deduction after Hon'ble Lokayukta's order.

6. In paragraph 5 of the reply affidavit the petitioner has emphatically denied about her agreeing to the deduction of Rs. 31,823/- after Hon''ble Lokayukta's orders. She has asserted that the deponent never agreed to such deduction. In this regard, a reference to the order of Hon''ble Lokayukta, as contained in Annexure 16, has also been referred to in which the Hon''ble Lokayukta in his order specifically mentioned that if the petitioner so wants, she can approach the competent court against such decision.

7. In the supplementary counter affidavit filed on behalf of the State and its officials (respondents no.3, 4 and 7) statements regarding the payments made and are to be made within the time mentioned therein are given besides stating that the advance amounting to Rs.31,823/- has been recovered as Hon''ble Lokayukta in paragraph 8 of his order also was not against set off of Government dues recoverable from the payments to be made. It is, however, admitted that in the said order the Hon''ble Lokayukta had set free the petitioner to approach the competent authority or Court for redressal of such grievance.

8. Further, in the counter affidavit filed on behalf of respondents no.2 on 8.9.2004 it is, however, stated that the application for revision of family pension was received in the deponent's office on 14.8.2004 and the same was sent to the Accountant General, Bihar, Patna vide Department's letter no. 2338 dated 16.8.2004. A photo copy of the said letter has been annexed as Annexure A. Accordingly, this Court directs the Accountant General, Bihar, Patna (respondent no.6) to issue authority, if not already issued, and a copy thereof must be handed over to the learned counsel for the petitioner within a week.

9. Learned counsel for the State, however, submitted that it is true that there has been delay of over eight long years in disposal of the claim of the petitioner but the advance received by the deceased has been deducted from the payments of the death-cum-retiral dues made to the petitioner as it was an advance taken by her husband by Sub-divisional Nazarat, Hajipur pursuant to the direction of the department received through the Deputy Secretary's Memo No. 5243 dated 11.12.2001.

10. I am unable to appreciate the said submission of the learned counsel for the State. In view of the law settled that recovery is not permissible even after the retirement of a Government servant from service except after taking recourse to the provisions, contained in rule 43 (b) of the Bihar Pension Rules and that too only if the case is covered by the rider clause of the said provision, which provides that (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment; (i) shall not be instituted save with the sanction of the State Government; (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings.

11. In the present case, obviously the periods in question relate to the years in between 3.2.1982 and 17.11.1989 whereas the order has been passed on

4.9.2001, i.e. much beyond four years and that too without initiating any action with respect to it while the deceased Government servant was alive. The deceased Government servant died after six and half years even from the last date of alleged advance given to him on 17.11.1989, but nothing has been brought on record to show that any step was taken for realisation of the same from the petitioner during his lifetime and it was only after lapse of ten years that the impugned order, contained in Annexure 14, has been passed for making recovery from the death-cum-retiral dues payable to the widow.

12. I fail to appreciate as to how after the death of the Government servant, the Government expects from the widow to meet such claim of the department when no step at all was taken during the lifetime of the deceased Government servant. It is really shocking that such decision for recovery is taken after the death of the Government servant on the pretext of adjustment sought to be made from the death-cum-retiral dues payable to the widow who obviously cannot meet such claim of the Department that the works for which advances were taken were not executed and vouchers/bills were not produced by the deceased Government servant during his lifetime.

13. In the case of Radha Jha (supra), such recovery was held not permissible and, further, this Court strongly deprecated the sheer callousness on the part of the State authorities in discharging their responsibilities towards the widow of the deceased Government servant and thus awarded penal interest and cost as well. The said decision rendered in the case of Radha Jha (supra) has been upheld in L.P.A. No. 1251 of 2002, disposed of on 27.1.2003, by dismissal of the said appeal by the Division Bench of this Court. In the result, the writ application is allowed. The impugned order, contained in Annexure 14, is quashed. The State respondents are directed accordingly to release the remaining amount within a week, failing which the petitioner will be entitled for penal interest at the rate of 12% per annum on the entire due amount, which has been paid after filing of the writ application and is to be paid under this direction from the due date till the payment has been made, besides a cost of Rs.5,000/-(five thousand), which shall be paid by the State, but shall be recovered from the officer, who is found responsible for not complying with this order within the aforesaid time.