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**(2020) 07 PAT CK 0108**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 383 Of 2020

Umrawati Devi

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** July 8, 2020

**Hon'ble Judges:** Rajeev Ranjan Prasad, J

**Bench:** Single Bench

**Advocate:** Alok Kumar, Ashutosh Ranjan Pandey, Rakesh Narayan Singh, Kinkar Kumar

**Final Decision:** Allowed

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### **Judgement**

The present writ application has been preferred seeking the following reliefs:

(a) For issuance of writ in the nature of Mandamus directing and commanding the respondents for rectification in fixation of family pension of the

petitioner as the husband of the petitioner namely Ram Narayan Ojha was working as Readers in History Department of Shri Shankar College,

Sasaram and while he was in service he died on 16.11.2003 and hence the petitioner is entitled to get family pension under death-cum-retiral benefit

and her pension should have been fixed 50% of last salary of her husband but the respondent authority did not fixed the pension at the said rate rather

it was fixed 30% of last salary of her husband and thereafter family pension of the petitioner also be revised on the basis of six pay revision with

effect from 01.04.2007.

(b) For issuance of writ in the nature of mandamus directing and commanding the respondents to pay arrear of pension of Rs. 11,99,571.00 which is

calculated after rectification from 2003 up to October 2019 as well as arrear of salary of Rs. 82,862.00 which was due from 1980 to 1995 and also for

interest at the rate of 12% per annum on account of delayed payment of the said dues.

(c) To grant any other relief or reliefs under which the petitioner is entitle to the facts and circumstances of the case.â€

Learned counsel for the petitioner has submitted that the husband of the petitioner Late Ram Narayan Ojha was appointed as a Lecturer in Shree

Shankar College, Sasaram on 01.07.1979, he was confirmed in service w.e.f. 07.02.1981 and continued to serve the institution since early until his

death on 16.11.2003 in harness. He was promoted to the post of Readers in the Department of History and was serving in the said position till the time

of his death.

The last salary of her husband was Rs. 17,880.00 and as per pension rule in the event of death 50% of last salary i.e. Rs. 8,940.00 should have been

paid to her but the respondent authorities has not calculated the correct family pension amount. It is submitted that instead of 50% of the last salary

the respondents fixed the pension amount at 30% only.

It is further grievance of the petitioner that the respondent authorities having wrongly fixed the pension amount at Rs. 6,321.00 failed to revise the

same in the light of 6th Pay Revision which came into effect from 01.04.2007. It is submitted that after completion of 7 years from the date of death

of the husband of the petitioner the actual family pension amount should be Rs. 12,123.00 per month but the respondents fixed the same at Rs.

9,091.00. She sought rectification in the family pension amount and it is her case that arrear of Rs. 11,99,571.00 has been due on this account.

Another grievance of the petitioner is that her husband was in service from the year 1980 to 1995, the arrears of salary of Rs. 82,862.00 was also due

for payment and even after recommendation letters sent by the Principal as contained in Annexure â€~1â€™™ to the writ application, nothing has been

paid on that account.

It is submitted that the petitioner came to know about the discrepancy in fixation of her family pension only recently whereafter she made an

application dated 29.08.2019 (Annexure â€~2â€™™) and thereafter on 01.10.2019 and 07.11.2019 (Annexure â€~3â€™™ & â€~4â€™™) but the

respondents have not paid heed to that.

In opposition, a counter affidavit has been filed on behalf of Veer Kunwar Singh University, Ara and its authorities (Respondent nos. 2, 3 & 4). It

is the stand of the respondents that the demand of fixation of pension at 50% of the last pay drawn by the husband of the petitioner is not admissible

and the same cannot be acceded to. It is submitted that the husband of the petitioner died after rendering only qualifying service of 22.5 years and in

terms of the resolution as contained in Memo No. 1674 dated 16.08.2012 (Annexure R2-4/A), 50% (full pension) is payable in those cases where the

employee has completed 33 years of service. Reliance in this regard has been placed on Clause 5.2 of the Resolution. It is submitted that the petitioner

has been paid her family pension in terms of the prevailing resolution at the time of death of her husband.

The respondents have further submitted that much after the death of husband of the petitioner the requirement of 33 years of qualifying service for

getting full pension has been abolished w.e.f. 23.09.2009 and since then 20 years of qualifying service has come into force.

It is further submitted that in terms of the relevant provisions of Pension Statute (Part II at page 51) of the Bihar State Universities Act the family

pension of the petitioner was fixed on the basis of prevailing statute provision treating 22.5 years qualifying service of the husband of the petitioner and

hence it was fixed as Rs. 13,929.00 and was paid upto 16.10.2010 which is 7 years after death of the husband of the petitioner. Thereafter, Rs.

9,419.00 is being paid from 17.11.2010. It is also submitted that in similarly situated cases the Finance Officer of the Government has fixed the family

pension as per length of qualifying service. So far as the arrear of salary is concerned, it is stated that University has issued letter No.

A/C/487/Estab./2020 dated 22.02.2020 (Annexure R2-4/C) directing the Principal of S.S. College, Sasaram to make payment of the arrears of

difference of salary to the petitioner immediately. The Respondent no. 1 has also supported the stand of the University.

In reply, learned counsel for the petitioner has submitted that the respondents University has wrongly relied upon the Resolution No. 1674 dated

16.08.2012 (Annexure R2-4/A), as according to the petitioner the said Resolution would not apply in the case of the petitioner. It is submitted that

family pension of the petitioner was required to be fixed as per the Notification dated 05.12.1966 which is still in existence and the same is applicable

in case of the petitioner. The said Notification dated 05.12.1966 has been brought on record as Annexure P/1 with the rejoinder filed on behalf

of the petitioner. Consideration

After hearing learned counsel for the parties and on perusal of the records, this court finds that the husband of the petitioner admittedly died after

rendering 22.5 years of service on 16.11.2003. This Court is thus required to consider as to what were the relevant provisions under the resolutions

and notifications of the government and the Rule in the pension statute (Part II at page 51) of the Bihar State Universities Act with regard to payment

of family pension on the said date.

Learned counsel for the petitioner has brought on record the decision taken by the Government by partially liberalising the Memo no. 103/64-9505 F

dated 03.09.1964. The relevant Notification bearing Memo No. 101/66-9251 F dated 05.12.1966 is quoted hereunder for a ready reference:-

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Since the respondent University has relied upon Clause 5.2 of the Resolution as contained in Memo No. 1674 dated 16.08.2012 it would be relevant to record that the Resolution dated 16.08.2012 has been issued in the light of the Resolution No. 819 dated 23.09.2009 and letter No. 820 dated 23.09.2009 which were applicable to the employees of the State Government and the Resolution states that in the light of the various orders passed by the Honâ€™ble High Court at Patna and the opinions received from the learned Advocate General and Standing Counsel representing the State in the Honâ€™ble Supreme Court of India, decisions have been taken in respect of payment of pension and family pension to the teaching and non-teaching employees of the Colleges under the Universities who were working against the sanctioned post and have retired from service. Clause 5.2 on which reliance has been placed on behalf of the respondents University reads as under:-

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(5.2)

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On perusal of the statutes (Part II) approved by the Chancellor on 20-09-1980 vide letter No. BSU 36/80-5270 GS (1) dated 18.11.1980 governing the

general conditions of service of the employees of the Patna, Bihar, Ranchi, Bhagalpur, Magadh and L.N. Mithila and KSD Sanskrit Universities, it

would appear that Section IV provides for the provisions relating to family pension. Rule 24 under Section IV reads as under:

â€œThe Family Pension Scheme as detailed below will be applicable to regular employees in pensionable service - temporary or permanent and will

be administered as below.â€

Note 2. - Under note 2(a) the rates of family pension applicable in the case of employees who died/retired between 01.04.1972 and 31.12.1977 has been provided and Clause B(I) reads as under:-

â€œB(I). In the case of employees who dies/died in harness after rendering 7 years continuous service prior to their death, the family pension payable will be at the rate of 50% of the basic pay of the employee last drawn, subject to a maximum of twice the amount of family pension admissible under the preceding rule. This pension will be payable for a period of 7 years from the date of death or till the dateâ€™s employee would have reached the normal age of superannuation had he remained alive, whichever period is shorter. The rate of family pension payable thereafter, will be the normal rate as per rule (24A ii) (VII). In the case of those who died/dies while in service on or after 31.12.1972 the family pension at higher rate as stated above will be payable for a period of 7 years or up to the date on which he would, have attained the age of 65 years, whichever period is less.â€

From a bare reading of the scheme of family pension as contained in Section IV of the Statute it appears to this court that the same provides for the manner in which the family pension scheme shall be administered. The present case is not that of a scheme under the family pension scheme and hence the reliance placed by the respondents University on Part II at page 51 of the Statute by simply quoting the table under Note â€" 2(a) is not correct. Clause B(I) of the said part rather toes the line of the notification dated 05.12.1966 and supports the petitioner.

The Notification dated 05.12.1966 which was in vogue provides for payment of 50% of the basic pay as family pension for a period of 7 years or till the date of the superannuation of the deceased employee had he been alive whichever is less.

So far as the reliance placed by the University at Annexure R2/A i.e. the resolution dated 16.08.2012 is concerned, it talks of the pension fixation of the pensioners who retired after 23.09.2009. From Clause 5.2 (II) it appears that the Government decided to abolish the requirement of qualifying service at 33 years for full pension amount and the qualifying service for fixation of pension has been reduced to 20 years. A reading of Clause

5.2(III) would show that those employee who had completed 10 years of service but less than 20 years of service their pension shall be calculated at proportionate basis in accordance with Clause 5.2(A)(II) and it will be reduced accordingly. This Resolution also provides for fixation of pension of those employees who retired between 01.01.2006 to 23.09.2009 and a reading of the provisions would show that during this period those who have retired rendering less than 33 years of service would be entitled for a reduced proportionate pension.

As regards family pension, the Resolution of 2012 provides for family pension @ 30% of the last basic pay of the concerned employee but it would not be less than Rs. 3500/-. Further those employees who dies in harness their family pension would be calculated at increased rate according to earlier provision and the same will be payable for a period of 10 years from the date of death.

On a conjoint reading of the entire materials available on the record, it would appear that even though the Resolution of 2012 as contained in R2/A provides for fixation of family pension @ 30%, in those cases where the employees have died in harness, the calculation of family pension is to be made as per earlier provision at increased rate. This is the bone of contention in the present case. The husband of the petitioner died in harness in the year 2003. It was not a case of fixation of pension of a retired employee with 22.5 years of service.

The Notification brought by the petitioner on record with his rejoinder (Annexure P/1) is a liberalised provision brought by the government whereunder to mitigate the hardships of the family of a deceased employee who dies in harness, for initial some period increased help has been provided by the government and it is with this view that the government came with a decision that for a period of 7 years from the date of death or till such period as the concerned employee would have remained in service had he been alive whichever is less the family pension would be fixed @ 50% on the last basic pay drawn by the employee. This provision has in fact been kept in existence in the 2012 Resolution of the Government with an increased year of 10 years.

This Court, therefore, has no doubt that the respondents authority were not justified in fixing the family pension of the petitioner by taking into consideration the length of service rendered by her husband. The family pension in case of death of the employee while in service was required to be fixed in the light of the liberal approach of the Government duly notified in the Memo dated 05.12.1966 (Annexure P/1) which in fact finds strength from the subsequent Notification contained in Memo No. 1674 dated 16.08.2012 and further support from the statute.

While it is true that the petitioner has moved this Court at this stage but considering that she is a widow old aged lady residing at a distant place after the death of her husband and the matter relates to family pension, this Court is of the view that the principle of delay and laches cannot be applied against the petitioner in the given facts and circumstances of the case.

This Court, therefore, allows this Writ Application to the extent that the petitioner would be entitled for family pension @ 50% of the basic pay drawn by her husband at the time of his death, for a period of 7 years or for the period her husband would have been in service had he been alive whichever is less.

The respondent authorities shall be, therefore obliged to carry out the rectifications in the calculation of family pension of the petitioner for the period stated hereinabove and shall pay the difference amount of arrear of family pension for the aforesaid period with interest @ 6% per annum from the date the difference amount became due to the petitioner till the date of payment. All consequential action shall also be taken by the respondent authorities within a period of three months from the date of receipt/production of a copy of this order.

This Writ Application is allowed to the extent indicated hereinabove.