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**(2010) 02 PAT CK 0081**

**Patna High Court**

**Case No:** CWJC No. 5528 of 2005

Ram Chandra Kamat

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Feb. 11, 2010

**Citation:** (2011) 129 FLR 854 : (2011) 1 PLJR 772

**Hon'ble Judges:** Jyoti Saran, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Jyoti Saran, J.

Heard Mr. Vishwanath Ram, learned Counsel appearing on behalf of the Petitioner and Mr. Shailendra Kumar Jha, Assistant Counsel to S.C. 9 for the State.

2. The Petitioner, who is the Son of Late Guneshwar Kamat, has filed the writ petition for payment of the balance amount of the provident fund of his late father, together with up-to-date statutory interest calculated from the date the same became due until the date of its payment.

3. The father of the Petitioner died-in-harness on 23.1.1988 while working on a substantive post of Assistant Fitter-2. It is admitted that the Petitioner was paid an amount of Rs. 18,640/- on 12.2.1998 said to be towards the provident fund dues of his late father together with statutory interest accrued thereon.

4. Learned Counsel appearing on behalf of the Petitioner submits that he was entitled to further amount for the reason that although the said dues became payable to the dependants of late Guneshwar Kamat, consequent upon his death on 23.1.1988 but the same was paid after a lapse of more than 10 years on 12.2.1998 and thus he was entitled to interest from the date of death of his father on 23.1.1988 until the date of payment. A calculation chart has been placed at

Annexure-3 of the writ application and whereby the Petitioner claims to a further payment of Rs. 57,423/- which is said to be the interest amount for the delay period.

5. A counter affidavit has been filed on behalf of the State in opposition of the contentions raised by the Petitioner. It is stated that the matter relating to payment of interest on delayed disbursement is pending before a Division Bench in L.P.A. No. 1316 of 2002\* and in view of the interim order passed on 8.9.2004 the Petitioner was not entitled for payment of interest for that period. It is submitted that the withdrawal application was submitted by the Petitioner only in June, 1997 and soon thereafter the payment was made to him on 12.2.1998 and thus the Petitioner was not entitled for payment of interest for the gap period, i.e., from August, 1988 to May, 1997. It is further stated that interest for the period, i.e., 1.6.1997 to 31.1.1998 has already been paid to the Petitioner.

6. Learned Counsel appearing on behalf of the Petitioner, in response to the averments made in the counter-affidavit submits that whereas the subject matter of L.P.A. No. 1316 of 2002\* is in relation to a living employee, the case of the Petitioner is a case of an employee dying-in-harness and thus is distinct. Learned Counsel places reliance on a State Government's decision dated 4.5.1960 reproduced also in the Bihar General Provident Fund Rules, 1948 and submits that the onus for filling up the withdrawal form has been put on the head of the office. He submits that the Respondents themselves being a defaulter for the delay in disposal of the case relating to person dying-in-harness cannot shirk away from the responsibility of payment of interest for the delay. He submits that the State Government itself has taken a decision that in the cases of death of a subscriber to a provident fund, the Head Office, shall fill up the necessary items of the form of application and forward that to the Head of the Department. The said decision further requires that the Head of the office will simultaneously send direct and immediate intimation, of the death of the subscriber together with his Provident Fund to Accountant-General, Bihar, so that the Accountant General can send the necessary advice in the matter to the Head of the Department. It is further provided that if this information is received timely by the Accountant General, the details of the nominee(s) in cases where nominations are available in his office can be furnished, otherwise, necessary advice for obtaining the particulars of the surviving members of the family can be sent promptly to the Head of the Department, which will enable him to get the application properly filled in and sent to the office of Accountant General, Bihar, without much loss of time.

7. It thus can be seen that in cases of employees dying-in-harness the onus and responsibility has been put up on the head of the office and the head of the department to complete the formalities of filling up the withdrawal form.

8. It is in this background that learned Counsel for the Petitioner submits that whereas the subject matter of L.P.A. is in relation to a living employee who is expected to be prompt in filling up his withdrawal form soon after his retirement,

the case of the present Petitioner is distinguishable and is fully governed by the decision of the State Government dated 4.5.1960 requiring the concerned departmental heads to act in prompt manner. It is thus stated that the delay is absolutely attributable to the head of the department in completing the process of payment of the provident fund amount and for which the Petitioner cannot be allowed to suffer.

9. Having regard to the submissions made by the counsel appearing on behalf of the Petitioner and learned Counsel for the State one thing is clear that the case of the present Petitioner is on a different footing than the case which is the subject matter of L.P.A. 1316 of 2002\*. The distinguishing feature between the two cases is that whereas in the case of a living employee the delay could be attributed to the laches on his part in filling up the withdrawal application but in case of a deceased subscriber, the situation become different and it is these circumstance that onus has been cast at the level of the head of the department to carry out the responsibility and who in the present case have delayed the same for a period of more than 12 years.

10. In that view of the matter, the Petitioner is fully justified in claiming the interest for the entire delayed period i.e. with effect from 23.1.1988 till the date of payment on 12.2.1998. The writ petition is allowed and the Petitioner would be entitled to the statutory interest on the G.P.F. from 23.1.1988, i.e., the date of death of the father of the Petitioner until the date on which the disbursements were made, i.e., 12.2.1998. The Respondents would recalculate the interest and after adjusting the interest already paid to the Petitioner would pay the balance interest within a period of three months from the date of receipt/production of a copy of this order.

11. The writ petition is allowed with the directions, aforesaid.