IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.647 of 2021
In
Civil Writ Jurisdiction Case No.22625 of 2019

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Seema Kumari, Daughter of Jailal Singh and wife of Late Vijay Kumar Toodu, Resident of Mohalla - New Colony No. 2, Police Station - Katihar, District- Katihar.

... ... Appellant/s

Versus

1. The State of Bihar through the Joint Secretary, Finance Department Bihar, Patna.
2. The Deputy Secretary, Home (Police) Department, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Patna.
5. The Deputy Inspector General of Police (personnel/Administration), Bihar, Patna.
6. The Deputy Inspector General of Police, Shahabad Range, Dehri-On-Sone.
7. The Superintendent of Police Rohtas at Sasaram.
8. The Accountant General, Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Navendu Kumar, Advocate
For the Respondent/s : Mr.Prabhat Kr. Verma, AAG 3

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 20-04-2026

Heard leaned counsel for the parties.

2. The present intra court appeal has been preferred against the order dated 10.01.2020 passed by the learned Single Judge in CWJC No. 22625 of 2019, whereby the writ petition preferred by the writ petitioner/appellant was dismissed.

3. CWJC No. 22625 of 2019 was filed by the appellant seeking the following reliefs:

> *"(i) To issue a writ in the nature of Certiorari for quashing the letter as contained in memo no. 8471 dated 17.07.2017 whereby the prayer for giving benefit of extraordinary family pension has been rejected and consequent upon quashing the same, issuance of writ in the nature of Mandamus commanding the respondents to extend the benefit of extraordinary family pension till the date of retirement of her deceased husband in terms of Gazette Notification dated 14.11.2005 published by the State Government by holding that the said notification is also applicable in the case of the petitioner.*
> *(ii) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case."*

4. The brief facts of the case are that the appellant's husband, born on 05.05.1969, was appointed as Sub- Inspector on 05.09.1994 and was to retire on 31.05.2027. While posted at Tilathou Police Station, Rohtas, he died on 08.09.2003 in a naxalite bomb blast during the course of duty. In connection therewith, Nauhata P.S. Case No. 36/2003 was registered and, upon investigation, Charge-sheet No. 41/2003 dated 09.12.2003 recorded death due to a naxalite bomb attack.

5. On the recommendation of the Superintendent of Police, Rohtas and the Deputy Inspector General of Police,

Shahabad Range, an *ex gratia* amount of Rs. 10 lakhs was granted to the appellant vide Memo No. 2650 dated 21.11.2003. Further, on recommendation of the S.P., extraordinary family pension was sanctioned for a period of seven years, i.e., from 09.09.2003 to 08.09.2010, vide Memo No. 11578 dated 29.10.2004 under Finance Department Letter No. 7584 dated 24.07.1979.

6. The appellant received pension till 08.09.2010, after which it was stopped. Claiming extension till the date of retirement under the Resolution dated 12.11.2005, she filed CWJC No. 15832/2011, which was withdrawn on 03.11.2014 with liberty to approach the competent authority. Thereafter, her representations were rejected vide Memo No. 8471 dated 17.07.2017. Challenging the same, she filed CWJC No. 22625/2019, which was dismissed on 10.01.2020 holding that the Resolution dated 12.11.2005 was not applicable to her case.

7. The learned Single Judge, while dismissing the writ petition, observed as follows:

> *"It is clear that the decision to allow benefits, as contained in resolution dated 12.11.2005, was taken in the light of deliberations of the meeting dated 15.06.2005, while dealing with the case of some of the deceased Government servants, who had died while discharging their official duties. Learned counsel appearing on behalf of the petitioner has submitted that*

the petitioner's case ought to have been placed before the same Committee, which had held its meeting on 15.06.2005. He contends that the petitioner cannot be blamed for her case being not placed before the said Committee headed by the Chief Secretary of Bihar. I do not find any force in the submission made on behalf of the petitioner for the reason that the ex-gratia amount was already paid to her in 2003 itself and, therefore, there was no question of placing her case before the said Committee, which had held its meeting on 15.06.2005. The impugned order rightly points out that subsequent decision of 12.11.2005 cannot be made applicable in case of the petitioner.

I do not find any merit in this writ application. It is accordingly dismissed."

8. Learned counsel for the appellant submits that the learned Single Judge failed to appreciate the true scope of the Finance Department Resolution dated 12.11.2005. It is submitted that the said Resolution, issued in continuation of the letter dated 12.10.1984, extended the benefit of extraordinary family pension to all government employees dying in harness due to violence and removed the earlier cap of seven years, thereby making it payable till the date of retirement.

9. It is further submitted that though the Resolution mentions applicability to cases approved by the Ex-Gratia Committee on 15.06.2005, such restriction defeats its object. Once benefit has been extended to similarly situated persons,

even whose husbands died prior to 12.11.2005, denial of the same to the appellant violates Articles 14 and 16 of the Constitution.

10. Per contra, learned counsel for the respondents submits that the appellant's claim is untenable, as the Resolution dated 12.11.2005 is not applicable to her case. Clause 7 of the Resolution clearly restricts its applicability to only those cases which were considered and approved by the Ex-Gratia Grant Committee in its meeting dated 15.06.2005. The appellant's case was neither placed before nor approved by the said Committee, and therefore she is not entitled to the extended benefit.

11. It is further submitted that the appellant has already received all admissible benefits under the earlier policy, including ex gratia payment and extraordinary family pension for seven years, and no further entitlement exists. Learned counsel further submits that there is no violation of Articles 14 or 16, as the classification under Clause 7 is reasonable and accordingly, it is submitted that the impugned order warrants no interference.

12. In the backdrop of the facts and submissions noticed hereinabove, the following issues arise for

consideration:

1. *Whether the Finance Department Resolution dated 12.11.2005 is prospective in operation or can be applied retrospectively, in the absence of any express provision, to a case where the death of the appellant's husband occurred on 08.09.2003?*
2. *Whether, upon the Resolution dated 12.11.2005 superseding/replacing the earlier scheme contained in the Finance Department Resolution dated 12.10.1984, the appellant who has already been granted benefits under the earlier scheme is entitled to claim extension of extraordinary family pension till the date of notional retirement of her deceased husband under the 2005 Resolution?*

Re. Issue No. (i)

13. At the outset, it is necessary to examine the nature and scope of the Resolution dated 12.11.2005. The said Resolution is an executive policy decision, whereby the State extended the benefit of special/extraordinary family pension earlier confined to police personnel to all government employees dying in harness due to violent acts, and removed the upper cap of seven years by extending the benefit till the date of retirement.

14. However, two features of the Resolution are

significant. Firstly, it expressly provides that it shall be effective from the date of its issuance. Secondly, Clause 7 limits its applicability to those cases which were considered and approved by the Ex-Gratia Grant Committee in its meeting dated 15.06.2005. These stipulations indicate a conscious policy choice to confer the benefit prospectively and in a restricted manner.

15. It is a settled principle that every statute, rule, or executive instruction is presumed to be prospective unless the contrary intention appears. In ***CIT v. Vatika Township (P) Ltd. reported in (2015) 1 SCC 1***, it has been held that legislation which modifies substantive rights is presumed to be prospective unless a contrary intention is manifest. The relevant part of the said order reads as follows:

> ***"General principles concerning retrospectivity***
>
> ***27.*** *A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of*

"interpretation of statutes". Vis-à-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. *Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre [(1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."*

16. Similarly, in ***State of Punjab and Ors. vs. Bhajan Kaur and Ors. reported in (2008) 12 SCC 112***, the Hon'ble Supreme Court has observed the following:

*"**9.** A statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary*

implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law."

17. Applying the aforesaid principles, the rights of the appellant crystallized on 08.09.2003, when her husband died in harness. The benefits flowing from such unfortunate event were governed by the then existing policy framework, under which she was granted ex gratia compensation and extraordinary family pension for a period of seven years.

18. The contention of the appellant that the Resolution dated 12.11.2005 should be applied retrospectively on account of its beneficial nature cannot be accepted. While beneficial schemes are to be interpreted liberally, such interpretation cannot override the express terms of the policy or extend its operation beyond what has been consciously provided by the State.

19. This Court also finds merit in the reasoning of the learned Single Judge, who has categorically held that the subsequent decision dated 12.11.2005 cannot be made applicable in the case of the appellant. The said view is in consonance with settled principles governing retrospective applicability of executive instructions.

20. In view of the aforesaid discussion, Issue No. 1 is answered in the negative, holding that the Resolution dated

12.11.2005 is prospective in nature and cannot be applied to retrospectively to cases where the cause of action arose prior to its issuance.

Re. Issue No. 2

21. The appellant was admittedly granted all benefits admissible under the policy prevailing at the relevant time, including ex gratia compensation and extraordinary family pension for seven years. The present claim is essentially for enhancement/extension of such benefit by invoking the subsequent Resolution dated 12.11.2005.

22. At this juncture, it is important to note that although the Resolution of 2005 may be construed as a progressive or liberalized scheme, the same is not unconditional. The benefit under the Resolution is circumscribed by specific eligibility criteria, including the requirement under Clause 7 that the case must have been considered by the Ex-Gratia Grant Committee in its meeting dated 15.06.2005.

23. Admittedly, the appellant's case was neither placed before nor considered by the said Committee. The submission that the appellant cannot be prejudiced for non-placement of her case before the Committee, though attractive at first glance, does not withstand scrutiny, inasmuch as the

Committee itself was constituted to consider a specific set of cases arising at a particular point of time. The appellant's case, having already been settled in 2003–2004, did not fall within the zone of consideration of the said Committee.

24. In ***Union of India v. P.N. Menon reported in (1994) 4 SCC 68***, the Hon'ble Supreme Court has held that fixation of a cut-off date and extension of benefits to a specified class of employees based on a rational policy decision cannot be termed arbitrary merely because some persons fall outside its ambit. It was further observed that financial and administrative considerations constitute a valid basis for such classification. The relevant part of the said order reads as follows:

> *"8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to 'picking out a date from the hat', as was said by this Court in the case of D.R. Nim v. Union of India, in connection with fixation of seniority. Whenever a revision takes place, a cut off date becomes imperative, because the benefit has to be allowed within the financial resources available with the Government."*

25. The plea of discrimination based on extension of

benefit in certain other cases is also misconceived. In ***Chandigarh Administration & Ors. v. Jagjit Singh & Ors. reported in (1995) 1 SCC 745***, it has been held that Article 14 does not envisage negative equality, and a benefit erroneously or exceptionally granted in another case cannot be claimed as a matter of right. The relevant part of the said order reads as follows:

> ***"8.*** *We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law — indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law — but even if it cannot be corrected, it is difficult to see how it can be made a*

basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course —barring exceptional situations — would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)"

26. This Court also concurs with the observation of the learned Single Judge that since ex gratia and pensionary benefits had already been extended to the appellant in the year

2003 itself, there was no occasion for her case to be placed before the Committee constituted in 2005. The reasoning so assigned is logical, consistent with the policy framework, and does not call for interference.

27. Issue No. (ii) is answered in the negative, holding that although the Resolution dated 12.11.2005 may have replaced or expanded the earlier scheme, the appellant, having already availed benefits under the earlier policy and not satisfying the conditions prescribed under the 2005 Resolution, is not entitled to claim extension of extraordinary family pension thereunder. The finding of the learned Single Judge is accordingly upheld.

28. Before parting, this Court deems it appropriate to observe that the Resolution dated 12.11.2005 is undoubtedly a beneficial policy intended to extend greater financial security to the families of government employees who die in harness due to violent acts. However, the same has been structured with specific conditions and a defined class of beneficiaries.

29. The Court cannot, under the guise of interpretation, expand the scope of the policy so as to include cases which the State, in its wisdom, chose not to cover. Any such exercise would amount to rewriting the policy, which is

impermissible in law.

30. Accordingly, the present intra court appeal, being devoid of merit, stands dismissed.

31. If so advised, the appellant may approach the competent authority by way of representation.

32. Interlocutory application(s), if any, shall also stand disposed of.

(Sudhir Singh, J)

(Shailendra Singh, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.04.2026
Transmission Date	