

CASE NO.:
Appeal (civil) 5106 of 2002

PETITIONER:
ANWARUN NISHA KHATOON

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT: 19/08/2002

BENCH:
Syed Shah Mohammed Quadri & S. N. Variava.

JUDGMENT:

S. N. VARIAVA, J.

Leave granted.

Heard parties.

This Appeal is against a Judgment dated 27th July, 2001 by which the Letters Patent Appeal filed by the Appellant has been dismissed.

Briefly stated the facts are as follows:

The Appellant's husband was working as an Assistant in the State Co-operative Society Department of the 1st Respondent. On 4th August, 1967 he was placed under suspension. He ultimately died on 25th July, 1990. It is admitted that the services of the Appellant's husband were not terminated and he was kept under suspension for the entire period between 4th August, 1967 and 25th July, 1990. The Appellant's husband was not paid any amounts including subsistence allowance during this period.

After the death of her husband, the Appellant claimed payments of all amounts due and payable to her husband during employment. As no payment was made she filed C.W.J.C. No. 9517 of 1998 in the Patna High Court. During the pendency of the Writ Petition the Registrar, Co-operative Society granted family pension. The High Court by, an Order dated 30th August, 1999, directed the Joint Registrar, Co-operative Society to examine the claim. The High Court also directed release of the family pension. The family pension was then paid to the Appellant.

The Registrar, Co-operative Society by a Memo No. 7252 dated 30th October, 1999 rejected the claim for subsistence allowance. The Appellant then filed C.W.J.C. 9095 of 2000 challenging the Order of the Registrar. The High Court by an Order dated 26th April, 2001 dismissed the Writ Petition. The Appellant then filed a Letters Patent Appeal. This was dismissed by the impugned Order dated 27th July, 2001 on the ground that the Appellant's husband was absent for 23 years and he was present for only one day. In our view, for reasons set out hereafter, the decision of the High Court cannot be sustained. The relevant portion of Rule 96 of the Bihar Service Code reads as follows:

"96 (1) A Government servant under suspension shall be entitled to the following payments, namely :-

(a) Substance grant at an amount equal to the leave which the Government servant would have drawn, if he had been on leave, on half average pay, or on half pay and in addition cost of living allowance based on such leave salary :

xxx

xxx

xxx"

Thus, under this Rule subsistence allowance has to be paid for the period a Government servant is under suspension.

Mr. B. B. Singh relied upon Rule 96(2) which says that no payment under sub-rule (1) shall be paid unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation. Mr. B. B. Singh submits that such a certificate was never submitted. He submits that for this reason the Appellant's husband was not entitled to subsistence allowance. Mr. B. B. Singh also submits that the Appellant's husband only reported at the Headquarter assigned to him on 3rd June, 1968 and did not report at the Headquarter on any other day during the period 4th August, 1967 to 25th July, 1990. Mr. B. B. Singh submitted that as he was not reporting at the Headquarter, he was not entitled to subsistence allowance.

Mr. B. B. Singh relied upon the authority of the Patna High Court in the case of Ganesh Ram v. State of Bihar reported in 1995 (2) PLJR 690, wherein, after considering the above mentioned rules, it has been held that after suspension it is not necessary that the employee must attend work. It is held that a suspended employee cannot be compelled to mark attendance. It has been held that the authority is, however, entitled to ensure itself about the presence of the suspended employee at the headquarter before making payment of subsistence allowance. It is held that in the event of a dispute it will be for the employee to establish his presence at the headquarter. In our view, this authority, far from assisting the Respondents, is against them. This authority shows that there is no requirement to mark attendance. To us also no rule could be shown which required a suspended employee to mark attendance. The Respondents can at the most ask for a certificate that the Appellant's husband was not engaged in any other employment, business, profession or vocation. The Appellant's husband having died, he could not have furnished such a certificate. At no stage have the Respondents asked the Appellant to give such a certificate. Thus the grant of subsistence allowance cannot be denied on the ground that such a certificate is not given. This view of ours is supported by an authority of this Court in the case of Jagdamba Prasad Shukla v. State of U.P. reported in (2000) 7 SCC 90. In this case, on identical facts, it has been held that if the State requires a certificate they should ask for it. It has been held that without asking for such a certificate the State cannot reject a claim for subsistence allowance.

In the case of M. Paul Anthony v. Bharat Gold Mines Ltd. reported in (1999) 3 SCC 679, this Court has held that a suspended employee is entitled to subsistence allowance as a relationship of employer-employee subsists.

For the above reasons, we hold that the Appellant is entitled to receive subsistence allowance, which should have been paid to her husband. As the only ground for not paying the subsistence allowance is that a certificate required by Rule 96(2) has not been furnished, we direct the Appellant to file an affidavit stating therein that her husband was not engaged in any other employment, business, profession or

vocation. The subsistence allowance as per Rule 96 shall be released to the Appellant within 4 weeks of receipt of such an affidavit. With these directions, the Appeal stands disposed of. There will be no Order as to costs.

JUDIS