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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 932/2010**

ANITA DEVI & ORS. Petitioner
Through Mr. Sanjeev Kumar, Advocate.

versus

STATE OF BIHAR & ORS. Respondents
Through None.

% Reserved on : 2nd May, 2014
Date of Decision : 19th May, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

CM Appl, 5755/2014 (restoration) in W.P.(C) 932/2010

Keeping in view the averments made in the application along with the personal affidavit of the counsel, present application is allowed and the order dated 15th April, 2014 dismissing the writ petition is recalled.

W.P.(C) 932/2010 & CM Appl. 1936/2010

1. Present writ petition has been filed with the following prayers:-

- “i) *Call for the records relating to late Girdhari Rai lying with the Respondent Authorities;*
- ii) *issue writ of mandamus or any other appropriate writ/direction to quash the order/decision dated 23.12.2009 passed by the 2nd respondent Resident*

Commissioner, Bihar Bhawan, New Delhi;

- iii) issue writ of mandamus or any other appropriate writ/direction directing the Respondent Authorities to release the monetary benefits arising due to the death of the deceased employee late Girdhari Rai to the Petitioners herein; and*
- iv) Pass such other and further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. The facts of the present writ petition are that petitioner No.1, who claims to be the second wife of late Mr. Girdhari Rai who worked in respondent No.1-Bihar Bhawan, seeks pension and insurance benefits.

3. This is the second round of litigation as the petitioner had earlier filed a writ petition being W.P.(C) 1868/2008 which was disposed of with a direction to respondent No.1 to conduct a 'Fact Finding Enquiry' to adjudicate the claim and locus of the petitioner No.1 and her children.

4. In pursuance to the direction of this Court, personal hearing to all concerned parties was given and impugned order was passed whereby all claims of petitioner No.1 and her children were rejected.

5. Mr. Sanjeev Kumar, learned counsel for petitioners stated that the petitioner No.1 married Mr. Girdhari Rai in the year 1986 and had been living together since then and therefore, her five children (four sons and one daughter) were entitled to claim pension and insurance benefits.

6. The learned counsel for the petitioner relied on the Finance Department Notification no.10059/(-sic) dated 6.9.96 which provided for insurance/pension benefits to the minor children of the second wife.

7. Learned counsel for the petitioners further contended that respondent no.1 had categorically acknowledged the wedding between the deceased and petitioner no.1 in its reply filed in the first round of litigation.

8. Learned counsel of the petitioners also stated that the late Girdhari Rai had informed petitioner no.1 that he had made no nomination for insurance/pension benefits and the name/names as nominee had been subsequently added with the connivance of respondent officials.

9. Mr. Sanjeev Kumar lastly submitted that respondent no.1 with malafide intention paid the entire claim for pension/insurance to the first wife and her children. He stated that the first wife did not provide any relationship proof in support of her claim, whereas the petitioner no.1 had submitted various documents such as Central Bank account, LIC Policy, Ration Card and affidavits prepared by late Girdhari Rai.

10. During the course of arguments, learned counsel for the petitioners also relied on ***Rameshwari Devi v State of Bihar and Others (2000) 2 SCC 431*** wherein the Supreme Court has upheld the entitlement of minor children of the second wife to insurance and pension benefits.

11. This Court on a reading of the Impugned Order of respondent No.1 is of the view that action of the respondent no.1 cannot be termed as unfair or arbitrary. The respondent no.1 in the impugned order has stated that as they were never informed by the late Girdhari Rai of his second marriage, therefore the Finance Department Notification no.10059/(-sic) dated 6.9.96 providing for payment of family pension to minor children born out of second wife will not apply.

12. Respondent no.1 in the impugned order also pointed out that in their records the first wife and her children were the petitioner's nominee in

pension and group insurance account. In fact, in the present proceedings this Court cannot reach a conclusion that the alleged nomination by the late Girdhari Rai of his late wife and children has been done fraudulently or subsequently. Further as the present writ petition consists of various disputed questions of facts, a writ petition is not maintainable.

13. The petitioners also cannot rely on ***Rameshwari case (supra)*** since in that case the deceased employee had not nominated anyone for his insurance and pension benefits.

14. It is pertinent to mention that the Apex Court in ***Smt. Sarbati Devi and another vs. Smt. Usha Devi, AIR 1984 SC 346*** has held that a mere nomination does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

15. The Supreme Court in ***Vishin N. Khanchandani and Another vs. Vidya Lachmandas Khanchandani and Another, (2000) 6 SCC 724*** has also held as under:-

"14. Under the circumstances, this appeal is allowed with a direction that the succession certificates shall be issued in favour of the respondents in respect of debts detailed in Annexures A and B to the application filed in the Court of Civil Judge, Senior Division, Thane subject to their payment of necessary court fees and estate duty certificate. The respondents would, however, not be entitled to directly receive the amounts payable on account of debts payable under

National Savings Certificates at Sl. Nos. 17 to 26 in Annexure A and Sl. Nos. 1 to 4 in Annexure B. The appellants are held entitled to receive the sum due on the aforesaid National Savings Certificates in which they are the nominees upon furnishing the undertaking in terms of sub-section (2) of Section 8 to the Court of Civil Judge, Senior Division, Thane. The amount received by the appellants on account of the National Savings Certificates in which they are nominees shall be payable to the respondents after deduction of the amounts of debts or other demands lawfully paid or discharged, if any. Costs made easy."

(emphasis supplied)

16. In view of the aforesaid, this Court is of the opinion that if the petitioners have any claim, it should be directed against Mr. Girdhari Rai's alleged nominee.

17. Keeping in view the aforesaid observations, present writ petition is disposed of with liberty to petitioners to file appropriate legal proceedings against legal heirs of Mr. Girdhari Rai's first wife.

18. It is clarified that this Court has not expressed any opinion on merits of the case and all rights and contentions of the parties are left open.

MANMOHAN, J

MAY 19, 2014

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