

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11707 of 2008

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Lalmoti Devi, wife of late Shiv Prasad Gupta, resident of village-Khajuri, P.S. Karpi, District-Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Water Resources Department, Govt. of Bihar, Patna.
2. The Engineer-in-Chief, Water Resources Department, Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Bihar, Patna.
4. The Superintending Engineer (Mechanical), Irrigation Mechanical Division, Mithapur, Patna.
5. The Executive Engineer (Mechanical) Region Mechanical Division, Digha, Patna.
6. The Accountant General, Bihar, Patna.
7. Parvati Devi, wife of late Shiv Prasad Gupta (Engineer), resident of Mohalla-Raja Bazar, Daulatpur Road, Jehanabad, P.S. Jehanabad, District-Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madanjeet Kumar, Advocate
For the Respondents 1 to 5 : Mr. Anjani KUMar, A.A.G.-6
Mr. Shailendra Kumar, A.C. to A.A.G.-6
For the respondent no.6 : Mr. Raj Nandan Prasad, Advocate
For the respondent no.7 : Mr. Bijay Bihari Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 27-03-2015

One Mr. Shiv Prasad Gupta was employed as Junior Engineer in Mechanical Division, Water Resources Department, Government of Bihar. He retired from service on 31.07.2007 and was sanctioned pension. He died on 28.11.2007. The petitioner, on the one hand, and the 7th respondent, on the other, submitted application for family pension. While the petitioner stated that she is the first wife of the deceased employee, the 7th respondent pleaded that she is the legally wedded wife and she was nominated as the

person to receive the death cum-retiral benefits of the deceased employee. This writ petition is filed, with a prayer to direct the respondents to release the family pension to the petitioner.

The 7th respondent filed a detailed counter affidavit and supplementary counter affidavit. She stated that the petitioner herself filed the Succession Certificate Case No.9 of 2008 for grant of succession certificate to enable her to withdraw the pension of late Shiv Prasad Gupta, but she has withdrawn the same. It is also pleaded that the petitioner filed Matrimonial Suit No.120 of 2014 in the Court of Principal Judge, Family Court, Jehanabad and unless a decree is passed therein, recognizing the petitioner as the person entitled to receive the family pension, the question of her claiming the amount does not arise.

Heard Sri Madanjeet Kumar, learned counsel for the petitioner, Sri Anjani Kumar, learned Additional Advocate General-6 for the State, and Sri Rajnandan Prasad, learned counsel for the respondent no.6 and Sri Bijay Bihari Sinha, learned counsel for the respondent no.7.

The employee died after he retired from service and naturally his legally wedded wife is entitled to be paid the family pension. However, in the instant case, there is a claim from the petitioner, on the one hand, and the 7th respondent on the other, for

payment of family pension. Incidentally, the deceased employee named the 7th respondent as the person, eligible to receive the pensionary benefits. The petitioner has, in fact, approached the Civil Courts for issuance of succession certificate as well as for declaration. Having instituted those proceedings, she is stated to have withdrawn the same. Unless there is a valid declaration or decree from a competent court of law that enables the petitioner to receive the family pension, there is hardly anything which the department can do.

Therefore, the writ petition is disposed of leaving it open to the petitioner to obtain a decree from a competent court of law, and then to submit her claim.

(L. Narasimha Reddy, CJ)

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