IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1191 of 2010
IN
Civil Writ Jurisdiction Case No. 4774 of 2006

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1. Most. Bhagawani Devi Widow Of Late Chandra Shekhar Bharti R/O Vill.- Dhanchhuha, P.O. Dhanchhuaha, Anchal Sahar, Distt.- Bhojpur (Ara), At Present Residing With Her Brother Namely Kamta Giri, At Vill. Irki, P.S. Belaganj, Distt.- Gaya

.... Appellant/s

Versus

1. The State Of Bihar
2. Accountant General, Bihar, Patna
3. Accountants Officer Cum Asstt. Accountant General, Bihar, Patna
4. The A.G. (A And E)II, Bihar And Jharkhand, Bihar, Patna
5. The Senior Accounts Officer (A.G. Officer), Bihar, Patna
6. The Director General, Information And Public Relation Department, Bihar, Patna
7. The Director Public Relation Department, Bihar, Patna
8. The Director, Information And Public Relation Department, Jharkhand, Ranchi
9. The Joint Director, Pramandal Public Relation Office, Ranchi
10. The Treasury Officer, Gaya
11. Abhishek Bharti Claiming To Be S/O Late Chandra Shekhar Bharti R/O Old Commissioner Compound, S.N.Ganguli Road, Ranchi, Jharkhand
12. Supriya Bharti Claiming To Be D/O Late Chandra Shekhar Bharti R/O Old Commissioner Compound, S.N.Ganguli Road, Ranchi, Jharkhand

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Dinu Kumar
For the Accountant General: Mr. J.P. Karn
For the State of Jharkhand : Mr. Satyabrat Verma

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 10-11-2015

The appellant was unsuccessful writ petitioner. She had come to this Court, claiming full family pension, which claim has been denied by the learned Single Judge. Hence, this intra-court appeal. There are two contesting respondents, who had appeared during the writ proceeding, but in spite of notice and in spite of appearance, today no one is present on their behalf.

2. Heard learned counsel for the appellant, learned counsel for the Accountant General and learned counsel for the State of Jharkhand.

3. The facts are not in dispute. There was one Chandra Shekhar Bharti, a permanent resident of District-Bhojpur, but he was a Receptionist(Clerk) in the Divisional Public Relation Office, Ranchi, now in the State of Jharkhand. He was undisputedly in the State Government Service. He contracted two marriages-one with the appellant Most Bhagawani Devi and two with Renu Sinha @ Renu Bharti. From the first marriage there was a daughter, who died prematurely without being married. That left the two wives and two children from the second wife, namely, Abhishek Bharti(respondent no.11) and Supriya Bharti(respondent no.12). All of a sudden on 18-8-1989 Chandra Shekhar Bharti died in harness. Thus, the family became entitled to family pension. At that time, the second wife Renu Sinha @ Renu Bharti was also a Government servant as an Assistant Teacher. She hardly needed any support. It appears that for the benefit of her minor children, the parties had agreed that the family pension, which was liable to be paid by the State Government, be paid half and half, being half to the appellant and half for the benefit of two minor

children of the second wife. Let it be noted that even if the second marriage be treated as void, the children from the second marriage cannot be deprived of financial protection from the estate of their father. No one had problem with this division of family pension till Renu Sinha @ Renu Bharti, the second wife, died in the year 2003. She also died in harness and, accordingly, her son i.e., respondent no.11 Abhishek Bharti having become major, got compassionate appointment. Thereafter, respondent no.12 Supriya Bharti also became major. During the pendency of these proceedings, she (respondent no.12) had crossed the age of twenty five also. The claim of the writ petitioner-appellant was that now the two children from the second wife of Chandra Shekhar Bharti not being entitled to family pension, the entire family pension should be paid to the writ petitioner. The learned Single Judge held that once the family pension was split, as noted above, there is no question of restoration of the same to one person alone in any event. This is what is under challenge.

4. We have considered the matter, and in our view, we cannot accept the judgment of the learned Single Judge. Firstly, it must be remembered that the family pension is neither a gratuitous payment by the State to the dependants of an employee nor is a bounty. It is a right earned by an employee by dint of his service to

receive pension and his dependants to receive family pension upon his demise. This right can only be taken away by law, and not by any Executive Circular. Unless there is a law which provides for forfeiture of right to receive family pension or part thereof, the Government would be bound to pay full family pension without any curtailment.

5. In the present case, upon demise of the employee Chandra Shekhar Bharti, the State Government was liable to pay family pension to the dependants. Ordinarily, the mother being there, she would receive the entire family pension for the benefit of herself and her family, which would include her minor children. In the present case, as noticed above, the family pension that was to be paid would be for the benefit of first widow and the minor children from the second wife. If there was no dispute amongst the beneficiaries, then the entire family pension would be paid to the first wife, who would share it with others, but there being a discomfort between the two branches¸ it was agreed that the family pension be divided half and half, half to be paid to the writ petitioner-appellant(first wife) and the other half for the benefit of two minor children from the second wife. This fact does not deter from the fact that the liability of the Government to pay family pension as a whole remained and subsisted. It cannot be said that the liability was curtailed. Now, once some of the beneficiaries became not entitled to family pension, may be by

reason of death or attaining majority or otherwise, does not absolve the State from its liability to pay full family pension, and not part thereof. The view taken by the learned Single Judge that part of family pension being paid to the writ petitioner-appellant being half of the entitlement would remain as such, even if the minor children became major and not entitled to it, cannot be said to be correct law. The liability to pay family pension and full amount being there on the Government, the question of apportionment arose only when there was a dispute. Otherwise, had there never been a dispute, then the guardian surviving would have received the entire amount of family pension. Can it be said that if a person died leaving behind his widow and minor children, the widow would get full family pension so long the children were minor, and once the children became major or picked up in service, their share of family pension would cease, and thus the widow would get only half family pension? There is no such provision nor can there be such provision. Our attention is drawn to various Circulars issued by the State Government, which is contained in Appendix-5 to the Bihar Pension Rules, 1950. The first thing we would like to notice is that these are not statutory Circulars. We have not been shown anything in the Bihar Pension Rules, which deprives the widow of the full family pension even after initial apportionment. One of the Circulars does talk, in terms, in the following manner:

"[Note(i)- Where an officer is survived by more than one widow, the pension will be paid to them in equal share. On the death of a widow her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease."

6. The State emphasizes on the last part of this Note, and specially the expression " the payment of her share of the pension will cease". In our view, what is important is "her share". All that is conveyed is that upon the death of the second wife, her share would not be paid to her beneficiaries, but that does not mean that the family pension payable by the State would stand reduced or the liability to make payment family pension by the State would be reduced. This cannot be so, because the right to receive full family pension is earned by the employee for his dependants as a matter of his employment. As noted in the very beginning, it is not a bounty or gratuitous payment.

7. Thus, in the facts of the case above, once the two children from the second wife became ineligible to be the beneficiaries under the family pension, the entire family pension that is payable by the Government would now be payable to the appellant alone without any apportionment or deduction.

8. In view of the aforesaid, we set aside the order of the learned Single Judge dated 7-5-2010 and allow this appeal with the directions and observations, as above, to be complied forthwith by restoration of full family pension to the writ petitioner-appellant, specially considering the fact that she would be above seventy years old and having no other source of income. It may be noted here that as the full pension had never been released, only 90 percent being paid, the arrear would also be required to be paid forthwith. It shall be the responsibility of the Accountant General to ensure full compliance of the orders of this Court at the earliest, not later than six months.

(Navaniti Prasad Singh, J)

B.K.Roy/-

(Nilu Agrawal, J)

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