

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12709 of 2011

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Manoj Sah, Son of Late Rajendra Sah, resident of Village + P.O. - Dhariah
Ashadhar, P.S.- Angarghar, District Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Executive Engineer, Rural Works Department (Gramin Karya Vibhag) Works Division No. 2, Supaul.
3. The Superintending Engineer, Rural Works Department, Works Division No. 2 Supaul.
4. The Chief Engineer, Rural Works Department, Saharsa.
5. The Secretary, Rural Department, Government of Bihar, Patna.
6. The Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

9 08-04-2015 Heard learned counsel for the petitioner, learned
A.C. to G.P.-15 for the State and Mr. Sanjay Kumar, learned
A.S.G. for the Central Government.

The petitioner has moved the Court seeking a
direction to the respondents to make payment of the death-
cum-retiral benefits according to 6th pay revision and A.C.P.
along with statutory interest and 15% penal interest as also
Rs. 25,000/- litigation cost which is claimed due as payable to
his late father who died in harness on 07.01.2009.

According to learned counsel for the petitioner,
upon the death of his father, he had moved before the
authorities for payment of the aforesaid dues but due to some
controversy he was asked to produce succession certificate



which was also produced by him before the authorities. Not only this, he has produced family list and also a dis-claimer from the grandmother. Learned counsel submits that unnecessary controversy has been created due to which the authorities have taken a view that the petitioner was the nephew (son of the brother of late Rajendra Sah) and not his son.

Learned counsel for the petitioner submits that initially on the death of Rajendra Sah, one Sukumari Devi had filed an application before the authorities on 01.03.2009 claiming the retiral benefits which was followed by the mother of late Rajendra Sah namely Most. Dularia Devi filing an application on 13.05.2009 seeking payment of death-cum-retiral benefits. Thereafter, the petitioner claiming to be the son of the deceased employee also filed an application before the authorities concerned. The petitioner moved before the Court for succession certificate which was granted to him on 06.03.2010.

Learned counsel for the State submits that in view of the three conflicting claims and further the application by the wife for not disclosing that there was any son of late Rajendra Sah, the authorities were justified in seeking clarification as to whether the petitioner was actually the son of late Rajendra Sah. According to them, on the basis of preliminary enquiry, it was revealed that the petitioner was in



reality the son of the brother of late Rajendra Sah and thus he became disentitled to the payment of death-cum-retiral benefits due to the heirs of the late Rajendra Sah. Learned counsel has also pointed out the fact that the succession certificate shows that the petitioner had filed the same against his grandmother i.e., Most. Dularia Devi without making the other claimant i.e., wife of late Rajendra Sah, Sukumari Devi as a party and thus without there being any objection from the grandmother, the succession certificate was issued in his favour moreso, in view of the fact that in any case the parties had the relationship of grandmother and grandson but the real question being whether the petitioner was the son of deceased Rajendra Sah or the other son of Most. Dularia Devi, was not gone into by the Court as the other claimant i.e., wife of the deceased had not been made party in the succession proceeding. Learned counsel submits that even the disclaimer filed by the grandmother later on coupled with the fact that after the institution of the succession case, she had filed her claim seeking payment clearly shows that either the succession case was collusive or the order was passed without Most. Dularia Devi actually participating in the proceeding or being aware of the nature of the proceeding since she had crossed the age of 90 years by that time.

Learned counsel for the petitioner, by way of reply, submits that Sukumari Devi was not the wife of late

Rajendra Sah and the mother of the petitioner being Pavitry Devi was the only wife who had died when the petitioner was an infant and thus he was not required to make Sukumari Devi party in the succession certificate.

This Court, in view of the controversy, on 16.01.2015, had directed the State through the Vigilance Department to get the matter enquired into as to whether the petitioner is the son or nephew of late Rajendra Sah. Pursuant to the same, a report has been submitted by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna dated 13.02.2015, in which, the categorical finding is that the petitioner was the nephew (son of the brother) of late Rajendra Sah.

Learned counsel for the petitioner, again by way of reply, submits that the report of the Police cannot be a finding for the purposes of relying on the same as it is based on oral evidence which is rebuttable whereas he has an order of a Court of law in his favour i.e., the succession certificate.

Having considered the rival contentions, this Court while exercising its prerogative writ jurisdiction under Article 226 of the Constitution of India is restrained from giving a finding of fact relating to the controversy. However, one thing is clear that once the succession certificate case was filed after there were three claimants before the authorities, it was incumbent upon the petitioner to implead all the parties

so that the Court could arrive at a finding after considering the case of all the parties. Further, the investigation by the Vigilance Investigation Bureau showing that on the basis of their enquiry, it has been found that the petitioner was the nephew of late Rajendra Sah, this Court is not in a position to come to a conclusion that the petitioner is entitled to the death-cum-retiral benefits of late Rajendra Sah, being the son as the very fact of him being the son of late Rajendra Sah has not been established conclusively.

In that view of the matter, the Court is not inclined to interfere in the matter and accordingly the writ application stands disposed off. The parties are at liberty to take appropriate steps as may be deemed necessary in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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