

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1169 of 2013
IN
Civil Writ Jurisdiction Case No. 5882 of 2012

1. Siya Devi W/O Late Baldeo Pandit Resident Of Village - Rupnee (Karua), P.O. +
P.S. - Chautham, District - Khagaria

.... Appellant/s

Versus

1. The Union Of India, The Secretary Ministry Of Home Affairs, Govt. Of India
Lok Nayak Bhawan Khan Market, New Delhi - 110003
2. Director-Cum-Deputy Secretary Govt. Of Bihar, Ministry Of Home Affairs,
Freedom Fighter Division, New Delhi
3. Additional Secretary Swantantrta Sainik Division, Ministry Of Home Affairs,
Lok Nayak Bhawan, Khan Market, New Delhi - 110003
4. The State Of Bihar Through The Secretary To The Government , Ministry Of
Home (Special) Bihar
5. Joint Secretary, Home (Special) Department Of Bihar, Patna
6. District Magistrate, Khagaria
7. Sub-Divisional Officer, Khagaria

.... Respondent/s

Appearance :

For the Appellant/s : Mr. RAJESH KUMAR
For Union of India : Mr. Awadesh Kumar Pandey
Mr. Ravinder Kumar Sharma
For State Mr. Parth Sarathi (S.C. 10)

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 06-05-2015

Heard learned counsel for the appellant, State of Bihar
and Union of India.

2. This Letters Patent appeal has been filed assailing order
no.2 dated 17-01-2013 passed by the learned Single Judge of this
court in CWJC No. 5882/2012 whereunder the said writ petition has

been dismissed holding that the question raised in the writ petition with respect to the factum of re-marriage of the writ petitioner is disputed question of fact, can not be adjudicated in the writ jurisdiction of the High Court.

3. Learned counsel while assailing the said order, submitted that in the writ petition appellant had challenged the order bearing Memo no. 160 dated 09.2.2012 passed by the Secretary to the Government of Bihar in the Home (Special) Department, (Annexure-9 to the said writ petition) whereunder the family pension payable to the appellant as a widow of the freedom fighter late Baldeo Pandit , was stopped with direction to recover the pension received, as according to the Home Secretary, appellant after the death of her husband in 1942, married her brother-in-law from whom she gave birth to two sons, one of whom, died as infant but the other born in the year 1966, survived.

4. It is submitted on behalf of the appellant that her husband, late Baldeo Pandit succumbed to the bullet of the British Police in 1942 while participating in Quit India movement whereafter, the appellant stepped into the shoes of her late husband and continued the freedom struggle and in recognition of her contribution as a freedom fighter made an application for grant of pension in the year, 1980 after Freedom Fighter Scheme was notified as widow of late

Baldeo pandit, though in weaker moments of life she developed connections with her brother-in-law, from whom two sons were born but she never married him.

5. It is further submitted on behalf of the appellant that her daughter Satni Devi, after being persuaded by others that she is entitled to get Freedom Fighter family Pension on behalf of her late father Baldeo pandit, filed CWJC No. 9080/2011 in which direction was issued and in compliance of those directions, the impugned order have been passed only to deprive the appellant of her family pension for the lapses committed by her in the weaker moments of life after demise of her late husband in 1942.

6. Learned counsel for the State and the Union of India on the other hand submitted that daughter of the appellant brought the fact of second marriage of the appellant to the notice of the authorities as fact having been one of her step brother is even presently alive, as such there can not be any opinion that it was the appellant, who delivered child while being in live in relationship with her brother-in-law. Live in relationship is also marriage for all practical purposes and in appreciation of such fact the family pension has rightly been withheld.

7. Having heard the learned counsel for the parties, it is evident that the appellant who was legally wedded wife of late Baldeo

Pandit was allowed family pension, but the appellant while being in company of her brother-in-law, gave birth to two sons as such, there can not be two opinion that she is in live in relationship with her brother-in-law which is akin to marriage. In the circumstances, we may not be in a position to find any error either in the order of the learned Single Judge or the impugned order dated 09.02.2012 (Annexure-9) to the writ petition. However, the order dated 09.02.2012 is modified to the extent that no recovery will be made from the appellant and with the aforesaid modification in the impugned order dated 09.02.2012 (Annexure-9) to the writ petition, this appeal is dismissed. We further quash the certificate Case no. 01 of 2013-14, pending in the Court of Priyanka Kumari, District Certificate Officer, Khagaria for recovery of the paid pension amount.

(V.N. Sinha, J)

(Nilu Agrawal, J)

Sudha/-

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