

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6833 of 2015

Along with
Interlocutory Application No. 8105 of 2015

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Smt. Phool Kumari Devi, Widow of Late Radhey Shyam Rai, Resident of Village-Borvara, P.S. Bochahan, District: Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Department, Bihar, Patna.
2. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur.
3. The District Programme Officer, Muzaffarpur.
4. The District Education Officer, Muzaffarpur.
5. The District Provident Fund Officer, Muzaffarpur.
6. Rajbanshi Devi W/o Late Radhey Shyam Rai Resident of Village-Borbara, P.O.-Unsar, P.S.-Bochahan, District-Muzaffarpur.

.... 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 JUDGMENT

Date: 05-10-2015

Heard learned counsel for the parties.

Re: Interlocutory Application No. 8105 of 2015

The applicant Rajbanshi Devi has filed the present Interlocutory Application for intervening in opposition to the present writ petition.

Learned counsel for the petitioner submits that she is the first wife of the deceased Radhey Shyam Rai and thus was entitled to the post retiral benefits including family pension.

Considering the facts and circumstances of the case, without recording a finding that the intervenor is the first wife of late Radhey Shyam Rai, she is allowed to be impleaded as respondent no. 6.

Interlocutory Application No. 8105 of 2015 stands disposed off.

Re: Civil Writ Jurisdiction Case No. 6833 of 2015

Learned counsel for the writ petitioner submits that there is nothing on record before the department to prove the fact that the intervenor is the first wife and still the department has gone ahead and granted full family pension and gratuity to the intervenor which is illegal.

Learned counsel for the State submits that only on the basis of information from the Drawing and Disbursing Officer, the intervenor has been granted full family pension and gratuity. However, as far as GPF is concerned, due to there being nomination in favour of the writ petitioner, the same has now been directed to be paid to her. Learned counsel for the petitioner has also filed an affidavit praying for making her children, details of whom have been given in paragraph-4 of the affidavit, party and it is prayed that they may be given half the family pension in terms of the provisions relating to such payment. Learned counsel for the writ petitioner has also submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **M. Govindaraju v. K. Munisami Gounder** reported in **AIR 1997 SC 10**, where it has been held that in the case of persons belonging to the caste to which the present writ petitioner belongs, a woman abandoning the husband and the husband not pursuing or bringing back wife would be deemed to be divorced under the



Hindu Law, the so called first wife does not have any locus standi to claim any family pension or post retiral benefits having left the petitioner in the year 1963 itself after marriage as she was 20 years old whereas the husband of the petitioner was aged about 13-14 years. It is further submitted that before the department there was no material to show that the other woman was the wife whereas in the case of the writ petitioner, there was a record with the department to show her as the wife.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the writ petition stands disposed off with a direction to the Principal Secretary, Human Resources Department, Government of Bihar, Patna to decide the matter relating to family pension, gratuity and other post retiral benefits, except GPF, among the heirs taking into account the records maintained by the department and the law which may be relied upon by the parties to canvass their case. It is made clear that the Principal Secretary would go by the present legal position in view of the decisions of the Courts as well as the statutes/notifications/circulars issued by the State Government in this connection. If he comes to the conclusion that there are areas which he cannot go into or decide, the parties shall be required to produce appropriate order/direction/declaration from the competent Civil Court in the matter of their rights and entitlement to receive family pension and other post retiral dues of late Radhey Shyam Rai.

In view of the controversy as detailed above, this Court directs that till the matter is decided by the Principal Secretary, payment of family pension to any person shall remain suspended. Even the apportionment of gratuity already paid to Rajbanshi Devi, shall also be appropriately adjusted or recovery made, as may be the case, in terms of the decision of the Principal Secretary. The parties including the children of the writ petitioner shall appear before the Principal Secretary of the department within two weeks from today along with a copy of this order. The Principal Secretary shall thereafter decide the issue after hearing all concerned in terms of the directions given hereinabove within two months from the parties appearing before him.

(Ahsanuddin Amanullah, J.)

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