

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3838 of 2015

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1. Narayan Kumar son of late Mahendra Prasad sah
2. Gurucharan sah son of late Mahendra Prasad sah
3. Kabita sah D/o late Mahendra prasad sah
All are resident of village- Rautabaran, P.S. Bansi, District- Banka.
..... Petitioners

Versus

1. The State of Bihar through the commissioner cum secretary, Deptt of Human resources, Bihar Patna.
2. The Director Primary education, Bihar, Patna.
3. The District Magistrate cum chairman, District education establishment committee, Banka
4. The District programme officer, Banka
5. The District programme officer (Establishment), Banka.
6. The Treasury officer, Banka.
7. Pramila Devi wife of late Mahendra Prasad sah resident of village/Mohalla- Baniya Tola lane, Barari, p.s.- Barari, Distt- Bhagalpur.
..... Respondents

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Appearance :

For the Petitioner/s : Mr. Swapnil Kumar Singh, Adv.
For the Respondent/s : Mr. Kuber Pathak, AC to SC14

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

2 23-03-2015 Heard learned counsel for the parties.

The petitioners claim to be the sons and daughters of late Mahendra Prasad Sah and want this Court to issue a direction for making payment of equal portion of death cum retirement benefit including family pension, gratuity, G.P.F., amount of leave encashment and group insurance payable to late Mahendra Prasad Sah.

In this regard learned counsel for the petitioners relies on a communication dated 9.7.2013 of the District Programme Officer (Establishment), Banka to show that the department was well aware of the fact that Mahendra Prasad Sah in his life had

also performed second marriage with some lady and therefore, the marriage of the mother of the petitioners with the father is an admitted fact and since the petitioners are the offspring from that marriage, the petitioners will be entitled for payment of equal share in the entire retirement benefit of late Mahendra Prasad Sah.

This Court however has great difficulty in accepting such submission. Neither Annexure 3 the order dated 09.07.2013 names even the mother of the petitioners nor the name of the petitioners have been shown therein. Annexure 3 in fact is a communication by way of show cause notice to Mahendra Prasad Sah that he must pay a sum of Rs.2,000/- to the first wife Pramila Devi. Thus, that document cannot be the admission of either the petitioners being the sons and daughter of late Mahendra Prasad Sah and being offspring of second marriage of late Mahendra Prasad Sah.

In that view of the matter, this Court is not in a position to direct for payment of half of the retirement benefit of late Mahendra Prasad Sah in favour of the petitioners. If the petitioners want to establish such a claim they will have to file a civil suit and get firstly declared in presence of Pramila Devi and other respondents named in this writ application that they were the children from the second marriage of late Mahendra Prasad Sah and would be entitled for half of the share of late Mahendra Prasad Sah including his death cum retirement benefit. If such a decree

upon impleadment of all the Respondents in this writ petition is passed in favour of the petitioners in the civil suit to be filed by the petitioners, then and then alone they can claim any share in the death cum retirement benefit of late Mahendra Prasad Sah.

This Court must make it clear that there is no dispute in the proposition of law that the children from the second marriage are entitled to their shares in the family property including pension and gratuity but the question is as to whether the petitioners are those children from the second marriage? There being no declaration of the employee late Mahendra Prasad Sah in the department that the petitioners are his sons and daughters from the second marriage, the department cannot make payment of the amount of death cum retirement benefit of late Mahendra Prasad Sah till such a declaration is given by the civil court. It is this aspect of the matter which has to be decided in civil suit before the competent civil court.

This application is, accordingly, dismissed.

The dismissal of this application, however, will not come in the way of the petitioners in filing the civil suit and if it is done nothing said in this order will come in their way to get the relief, as prayed for, before the civil court.

(Mihir Kumar Jha, J)

surendra/-

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