

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14698 of 2011

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1. Pawan Kumar Choudhary Son of Late Dr. Hare Ram Choudhary, (Ex. Assistant Director) from Second Wife Smt. Karuna Devi, Resident of Mohalla- Chchotti Keshopur, Near Tar Gach Kali No.2, At & P.O.- Jamalpur - 811214, District- Munger.
 2. Ragini Kumari Daughter of Late Dr. Hare Ram Choudhary, (Ex. Assistant Director) from Second Wife Smt. Karuna Devi, Resident of Mohalla- Chchotti Keshopur, Near Tar Gach Kali No.2, At & P.O.- Jamalpur - 811214, District- Munger.
 3. Preeti Kumari Daughter of Late Dr. Hare Ram Choudhary, (Ex. Assistant Director) From Second Wife Smt. Karuna Devi, Resident of Mohalla- Chchotti Keshopur, Near Tar Gach Kali No.2, At & P.O.- Jamalpur - 811214, District- Munger.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary to Government, Department of Animal Husbandary and Fisheries, Bihar, Vikas Bhawan (New Secretariat), Patna.
2. The Special Secretary to Government Department of Animal Husbandary and Fisheries, Bihar, Vikas Bhawan (New Secretariat), Patna.
3. The Director, Animal Husbandary Department, Bihar Vikas Bhawan (New Secretariat), Patna.
4. The Regional Director, Animal Husbandary Area, Bhagalpur.
5. The District Animal Husbandary Officer, Bhagalpur.
6. The Treasury Officer, Bhagalpur.
7. The Accountant General (A& E), Birchand Patel Marg, Patna.

----- Respondent/s

8. Smt. Sheela Devi, first Wife of Late Hare Ram Choudhary (Ex. Assistant Director) Residing in Durga Bhavan, Opposite Baba Complex, Jail Road, Tilka Manjhi, District- Bhagalpur.

.... Private 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: 21-09-2015

Heard learned counsel for the parties.

Pursuant to order dated 03.09.2015, the
Secretary, Department of Animal Husbandry, Government of
Bihar, Patna is present in Court.

The controversy in the present writ application is



that the petitioners are the children of the second wife of deceased Hareram Choudhary, an employee of the State of Bihar. Upon his death sometime in the year 2010, the respondent no. 8, who is the first wife of the deceased employee was paid the family pension whereas the petitioners who are the children from the second wife and were eligible to get a portion of the family pension as per the circular of the State Government of the year 1964 as modified in the year 1996 have been denied the benefit. From the materials brought on record and submissions of learned counsel for the parties, this Court is of the opinion that as per the law existing, if an employee leaves behind more than one living spouse and children from the wedlock, only the first wife who is alive alongwith the children of the other wife, till they attain the age of 25 years or in case of daughter till they are married, are entitled to division of the family pension among themselves.

Learned counsel for the petitioners submits that their father died in the year 2010 and thereafter they had objected before the department as well as the Accountant General that part of the family pension should also be paid to them as they were entitled under the relevant circulars for such payment. However, according to learned counsel, the full family pension was paid to the first wife i.e., respondent no. 8 due to which they were forced to move the Court in the present writ petition.

As per the stand of the State, it is fairly admitted that there has been some error in interpretation of the relevant circulars of the State Government due to which a query from the

Accountant General with regard to the entitlement of the petitioners for part of family pension has been turned down on the premise that till the first wife is alive, even children from the second wife, who may otherwise be entitled, shall not be paid any family pension or part thereof.

Learned counsel for the State submits that in light of the existing provisions, the petitioners, subject to verification, were entitled to apportionment of family pension alongwith the respondent no. 8, who is the first wife.

Learned counsel for respondent no. 8 submits that there was no misrepresentation or fraud committed by her leading to the department paying full family pension to her and further there cannot be any recovery for the reason that the Courts have held that if excess payment of pension/family pension has been made without there being any laches, misrepresentation or fraud on the part of the recipient, there cannot be any recovery.

From the pleadings it further appears that initially in the form filled up by the late employee, only the name of the respondent no. 8 i.e., his first wife was mentioned though it also mentioned the name of all the children including the petitioners. Thus, because the petitioners were not shown as off-springs of the second wife, the department was not aware that the family pension has to be apportioned between the respondent no. 8 and the eligible off-springs from the second marriage. Thus, strictly speaking, the action of the department at the initial stage cannot be faulted because from their record the name of only one wife



and children had been entered and family pension has been paid to the wife. At this stage, the confusion starts. The petitioners filed representation before the department and the Accountant General asked for apportionment of the family pension as there were off-springs of the second wife but such representation having been referred by the Accountant General to the State got an erroneous reply that till the first wife is alive even the off-springs of the second wife are not eligible.

At this juncture, learned counsel for the respondent no. 8 produces a copy of order dated 01.09.2005 in C.W.J.C. No. 8174 of 2002, which was filed by the father of the petitioners, who is the deceased employee. In the said order, the Court had directed payment of pension and retiral dues to the writ petitioner (Dr. Hareram Choudhary 'Hira') i.e., the father of the petitioners and husband of the respondent no. 8 and had also held that the respondent no. 8 (respondent no. 9 therein) being the legally wedded wife of the petitioner is entitled for family pension in case of the death of the petitioner.

Learned counsel for the petitioners does not deny being aware of the order dated 01.09.2005. In view of the aforesaid, this Court cannot hold the State responsible for what they have done i.e., payment of entire family pension to the respondent no. 8 as that was the order of the Court also in C.W.J.C. No. 8174 of 2002 which has neither been reviewed nor modified. This Court being aware of such position, also does not find any contradiction in passing an order henceforth for

apportionment of the family pension in favour of the petitioners also as the earlier Bench while passing the order dated 01.09.2005 was not made aware that there may be other claimants also.

Taking into consideration the overall picture and balancing the equities and to secure the ends of justice, this Court directs that henceforth i.e., from October, 2015, the family pension shall be apportioned between the petitioners and the respondent no. 8 in accordance with the circulars of the State Government of the year 1964 read with amendment of the year 1996. It is made clear that such arrangement would continue till the petitioners are eligible i.e., in the case of the petitioner no. 1, till he attains the age of 25 years and with regard to the petitioners no. 2 and 3, they attaining the age of 25 years or being married, if already not married, whichever is earlier. Thereafter, it would only be the respondent no. 8 who shall be entitled to family pension, if still alive.

Accordingly, the State shall send a fresh sanction order to the Accountant General, Bihar in terms of the directions hereinabove.

The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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