

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11086 of 2012

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1. The Union Of India Through The General Manager, Eastern Railway, Netaji Subhash Road, Kolkata
 2. The Financial Advisor & Chief Accounts Officer, Eastern Railway, Kolkata
 3. The Deputy Chief Accounts Officer (Workshop), Eastern Railway, Jamalpur
 4. The Workshop Accounts Officer (Incharge), Eastern Railway, Jamalpur
- Petitioner/s

Versus

Smt. Laxmi Khalko Wife Of Late Sanjay Felix Khalko Resident Of Quarter No. 366 Gh, Rampur Colony, Jamalpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 8226 of 2013

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Nili Khalkho W/O Late Leopold Khalkho R/O R/O Purana Lowadih, P.S.- Namkum, District- Ranchi (Jharkhand)

.... Petitioner/s

Versus

1. The Union Of India Through The General Manager Eastern Railway, Netaji Subhash Road, Kolkataa
 2. The Financial Advisor And Chief Accounts Officer Eastern Railway, Kolkata
 3. The Deputy Chief Accounts Officer (Workshop) Eastern Railway, Jamalpur
 4. The Workshop Accounts Officer (In-Charge) Eastern Railway, Jamalpur
 5. Smt. Laxmi Khalkho W/O Late Sanjay Felix Khalko R/O Qr. No. 366 Gh, Ramapur Colony, Jamalpur
- Respondent/s
- =====

Appearance :

(In CWJC No. 11086 of 2012)

For the Petitioner/s :
For the Respondent/s :

Mr. Anil Singh
Mr. Ram Suresh Rai, Sr. Advocate
M/s M P Dixit and Sanjay Kr. Choubey

(InC No. 8226 of 2013)

For the Petitioner/s :

Mr. Rajiv Verma, Sr. Advocate

For Respondent nos. 1 to 4 : Mr. K N Sahay
For Respondent no.5 : Mr. Anil Kumar Singh
Mr. Ram Suresh Rai, Sr. Advocate
M/s M P Dixit and Sanjay Kr. Choubey

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 21-01-2015

These two writ petitions are filed challenging the order dated 23.2.2012 passed by the Patna Bench of the Central Administrative Tribunal in OA No. 251 of 2011.

For the sake of convenience, parties are referred to as arrayed in CWJC No. 8226 of 2013. The facts relevant for the purpose of disposal of the writ petitions are as under.

The petitioner is the mother of one Sanjay Felix Khalko. Sanjay was employed as an Accounts Clerk, in the Jamalpur Workshop of Eastern Railways. He died on 21.3.2008. The petitioner submitted an application to the concerned authorities of the Railways for grant of the death-cum-retirement benefits of her son. The 5th respondent by name Laxmi Khalko, has also submitted an application for the very benefit, stating that she is legally wedded wife of late Sanjay Khalko. The department got the matter enquired into and passed an order dated 25.11.2008 (Annexure 2) requiring the 5th respondent to approach the competent court of law and to obtain succession certificate.

The 5th respondent filed the O.A. with a prayer to direct the Railway Administration to grant her the death-cum-retirement benefits of late Sanjay. She pleaded that Sanjay married her on 19.1.1997. It was also pleaded that her daughter whom she begot through another person, was adopted by Sanjay. She stated that in the

service record a declaration was made by Sanjay to the effect that the writ petitioner is his mother, she is his wife and Deepa is his adopted daughter; and the three are his legal heirs and benefits ought to have been paid to them.

The O.A. was opposed by the Railways. They pleaded that there is a serious dispute as to the very marital status of the 5th respondent and that she cannot be extended the benefits. The O.A. was disposed of through order dated 23.2.2012 directing that the entire benefits shall be paid to the 5th respondent and she in turn, shall be under obligation to maintain the writ petitioner. It was also directed that in case the 5th respondent fails to maintain the petitioner the family pension shall be stopped forthwith.

The petitioner challenges the said order, by raising several grounds. It is pleaded that though she is the mother of the deceased employee, and claim is made regarding the death-cum-retirement benefits; she was not impleaded as a party. Secondly, it is pleaded that late Sanjay died as bachelor and as a matter of fact the 5th respondent was married to another person. It is pleaded that when there is a subsisting marriage between the 5th respondent and another person, the question of that lady marrying Sanjay does not arise. Another contention is that the 5th respondent filed O.P. Case No. 15 of 2010 for succession certificate as required by the Railway Administration and even when that was pending the O.A. was filed; and once the O.A. was allowed the succession case was withdrawn on 30th November, 2012

The Railway Administration has also challenged the order passed by the Tribunal on the grounds referred to above as well as other grounds by filing another writ petition. According to them, the 5th respondent is not entitled to be extended the benefits as per the

relevant provisions of law.

Heard Mr. Rajiv Verma, learned counsel for the petitioner, Mr. Anil Singh, learned counsel for the Railways and Mr. Ram Suresh Rai, learned senior counsel for respondent no.5.

The dispute is about the entitlement to receive the death-cum-retirement benefits of Sanjay Felix Khalko. The petitioner is the mother of the deceased employee. She pleads that her son did not marry at all. If that were to be true, she alone is entitled to be paid the entire benefits. However, the 5th respondent laid claims for those amounts stating that she was married to the deceased employee on 19.1.1987. The Railway Administration got the matter enquired into through their own mechanism. On noticing that the 5th respondent was married to another person and had a daughter from that marriage, they refused to entertain the claim.

There may be every justification for the 5th respondent to pursue the claim. When she was informed that she must obtain a succession certificate, she rightly filed O.P. for the succession. Once she filed the O.P. she was supposed to pursue the matter, till its logical conclusion and laid claim, if she was declared as legal heir of Sanjay. However, she filed the O.A. halfway through. The same is impermissible in law. Added to that, she did not implead the petitioner herein, i.e. mother of the employee in the O.A. The Tribunal ought not to have entertained the OP with so many defects.

The Tribunal did not record any finding, and in fact, it could have recorded; as regards the legality of the marriage between the 5th respondent and the deceased employee. Still the entire benefits were extended to her, relegating an unquestionable legal heir, i.e. mother of the employee to the level of dependence, if not mercy, of the 5th respondent. Even if the 5th respondent is to be treated as the

legally wedded wife of the deceased employee, the petitioner herein would be entitled to at least 50% of the benefits being his mother. The Tribunal however did not allot any portion of the benefits at all, to the petitioner. We find it difficult to sustain the order passed by the Tribunal.

Strictly speaking, the order deserves to be set aside and it must be left open to the parties to work out their remedies in civil court. However, noticing that the writ petitioner herself is fairly very old and the 5th respondent claims to be the widow of the deceased, we made an effort to give quietus to the matter here itself. We add a caveat, here itself, that the solution we are providing herein cannot be said to be hundred per cent correct or totally perfect in accordance with law. The only fact that persuades us to come forward with the solution is to putting an end to this litigation, which otherwise it is likely to take at least one or two decades, to assume finality.

Though there is serious dispute as to marital status of the 5th respondent and the deceased employee, we find from the record that the employee himself recognized her to be his wife and her daughter to be his step-daughter. Once there is an agreement between a man and woman as being spouses, one of them cannot be required to go to court of law. On the other hand, it is for the person who doubts or challenges that status, to approach the court of law. Viewed in that context, the petitioner would be under such obligation. Secondly, it will be in the interest of the petitioner, that the 5th respondent gets the family pension, so that she would also stand to benefit.

We therefore allow the writ petition to the extent of modifying the order passed by the Tribunal as under.

- (1) Death-cum-retirement benefits of late Sanjay Felix Khalko shall be distributed in the ratio of 60%:40%

- between the writ petitioner and the 5th respondent.
- (2) So far as the family pension is concerned, the same shall be released to the 5th respondent and out of that she shall be under obligation to pay 50% of the same to the petitioner.
- (3) In case the 5th respondent fails to pay 50% of the family pension to the petitioner for consecutive two months, it shall be open to the petitioner to bring it to the notice of the pension-paying authority who, in turn, shall be entitled to cancel the family pension on that ground.

Both the writ petitions are accordingly disposed of.
There shall be no order as to costs.
Interlocutory Applications, if any, shall stand disposed of.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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