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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on :04.08.2015

Judgment Pronounced on :12.08.2015

+ **LPA 572/2014**

ANITA DEVI & ORS.

..... Appellants

Through: Mr.Sanjeev Kumar, Advocate.

versus

STATE OF BIHAR THR ITS LOCAL

RESIDENT COMMISSIONER & ORS.

..... Respondents

Through: Mr.Rudreshwar Singh with

Ms.Divya Singh and Mr. Krishna

Kant Dubey, Advocates for R-1 to 5.

None for respondents No. 7 to 10

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J

CM No. 14344/2014 (delay)

For the reasons stated in the application, the delay of 57 days in filing the appeal is condoned.

LPA 572/2014

1. The present appeal is filed seeking to impugn the order dated 19.05.2014 of the learned Single Judge.
2. The writ petition was filed seeking a writ of mandamus to quash the

order/decision dated 23.12.2009 passed by the Resident Commissioner, Bihar Bhawan, New Delhi and for appropriate directions to the respondent authorities to release monetary benefits arising due to the death of the deceased employee-late Sh.Girdhari Rai to the appellants.

3. The brief facts are that in 1975, late Sh.Girdhari Rai was appointed as a Cook with the State of Bihar and posted at Bihar Bhawan, New Delhi. It appears that the said Sh. Girdhari Rai was first married to Smt. Hira Devi. From the said marriage, he had four children. In 1986 while the first marriage was in subsistence, the said Girdhari Rai got married to the first appellant. They had five children i.e. four sons and one daughter (Appellant No. 2 to 6). It is stated by the appellant that after her marriage with late Sh.Girdhari Rai, she came to Delhi along with him and has been staying together with him since then. The said Girdhari Rai suffered a brain tumor and died on 25.07.2007. The dispute centers around the service benefits pursuant to the death of Sh.Girdhari Rai with the first wife and her children.

4. The appellants herein first filed writ petition No. 1868/2008. The said writ petition was disposed of on 23.09.2009 with a direction to the respondent to conduct a fact finding enquiry into the matter and after giving hearing to the appellant and the first wife of Sh.Girdhari Rai, namely, Smt. Hira Devi, to decide as to who would be entitled to receive the pensionary benefits.

5. The said exercise was carried out by the respondent-State of Bihar and an order dated 23.12.2009 i.e. the order impugned in the writ petition was passed. As per the said order, late Sh. Girdhari Rai had nominated his two sons, namely, Mr.Pramod Kumar Rai and Mr. Manoj Kumar Rai who were born from the marriage with Smt. Hira Devi as nominees for the

Group Insurance Policy dated 19.08.1981. It is further noted that the Directorate of Provident Fund has passed an order for release of the money lying in the provident fund account to Smt. Hira Devi, the first wife though the payment has not been actually released. The enquiry concluded that late Sh.Girdhari Rai at no stage gave any intimation to the respondents' office about his marriage with appellant No.1. Hence, relying upon a notification from the Finance Department dated 06.09.1996, the impugned order concludes that the amount from the Group Insurance Policy, provident fund, earned leave and the family pension shall be payable to the first wife i.e. Smt. Hira Devi. A proposal to the said effect was sent to the Accountant General Bihar.

6. By the impugned order the learned Single Judge dismissed the Writ Petition. The impugned order holds that the order dated 23.12.2009 of the State of Bihar cannot be termed to be unfair or arbitrary. The impugned order also notes that the first wife and children were the nominees in the pension and group insurance account and as to whether this was validly done or not was a disputed question of fact that cannot be decided in a writ petition. The petition was disposed off with liberty to the petitioner to file appropriate legal proceedings against the legal heirs of the first wife.

7. We have heard the learned counsel for the appellants and the State-respondents No.1 to 5. Respondents No. 6 to 10, namely, the first wife and the children from the said marriage though served but none appeared for them.

8. Learned counsel appearing for the appellant has submitted that as of today the first wife Smt. Hira Devi has expired in 2010. Reliance is placed on the judgments of the Supreme Court in the case of ***Rameshwari Devi vs.***

State of Bihar & Ors., 2000(2) SCC 431 and *Vidhyadhari & Ors. vs. Sukhrana Bai & Ors., 2008 (2) SCC 238* to contend that the impugned order is erroneous and the appellants would be entitled to a share of the service benefits of the deceased Sh.Girdhari Rai.

9. Learned counsel appearing for the State-respondent Nos. 1 to 5 has pointed out that the proceeds of Group Insurance Policy and leave encashment have already been released to the two sons of Smt. Hira Devi, the only payments that survive to be paid are the provident fund, gratuity and family pension.

10. Though none has appeared for respondents No. 6 to 10, namely, the first wife and her children, we have perused the counter affidavit filed by them before the learned Single Judge. In the counter affidavit it has been stated that respondent No.6-Smt. Hira Devi was the legally wedded wife of Sh.Girdhari Rai. It is urged that in the office record at Bihar Bhawan, New Delhi Sh.Girdhari Rai has nominated his sons Sh.Pramod Kumar Rai and Manoj Kumar Rai. It is also stated that late Sh.Girdhari Rai had been taking care of his children and his first wife, Smt. Hira Devi and to that effect, he had taken a loan for the marriage of her daughter and for medical expenses. They have pleaded ignorance about any marriage of late Sh.Girdhari Rai with appellant No.1.

11. It is noteworthy that the stand of respondents No.1 to 5, the State of Bihar has changed over time. Earlier in the first round of litigation in CWP 1868/2008 which was first filed by the appellant, the State of Bihar had taken the stand that Sh.Girdhari Rai had got married in 1986 to appellant No.1 and the family lived at Bihar Bhawan. They have also pointed out that on the death of Sh. Girdhar Rai, the family living at Bihar Bhawan (i.e.

appellant) was given a sum of Rs.3,000/-. The counter affidavit further states that as appellant No. 1's marriage with late Sh.Girdhari Rai is the second marriage during the lifetime of his first wife, appellant No.1 being the second wife would not be entitled to family pension and other benefits. However, the children born from the second marriage would be entitled to such benefits along with the heirs of the first marriage, which the deponent i.e. the State of Bihar is ready and willing to pay.

This stand appears to have changed when the report dated 23.12.2009 was prepared. The stand taken in the said order is that late Sh. Girdhari Rai had not given any intimation about his marriage to appellant No.1 to the office and hence, the appellants are not entitled to any share from the Group Insurance Policy, provident fund, earned leave and family pension in view of Finance Department Notification dated 6.9.1996.

12. We may have a look at the judgment of the Supreme Court in the case of *Rameshwari Devi vs. State of Bihar & Ors.(supra)*. That was also a case where an employee of Rural Development Authority belonging to the State of Bihar had married two times. On the issue of succession to the estate by the second wife and the children from the said marriage, the Supreme Court held as follows:-

“14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of Clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in Clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain

Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which is governed by the relevant rules, It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.”

13. In view of the above legal position, the Supreme Court upheld the judgment of the Single Judge and the Division Bench which had directed that the children born to the respondent from the wedlock with the second wife were entitled to a share of the family pension and death-cum-retirement gratuity but the second wife would not be entitled to anything.

14. The legal position regarding the rights of children born from the second marriage during the subsistence of the first marriage was also discussed by the Supreme Court in the case of ***Bharatha Matha vs. R.Vijaya Renganathan AIR 2010 SC 2685***. The relevant portion reads as follows:-

19. Be that as it may, Section 5 (1) of the Act lays down conditions for a Hindu marriage. It provides that marriage may be solemnized between any two Hindus if neither of them has a spouse living at the time of marriage. Section 11 provides that any marriage which is in contravention of Section 5 (1) of the Act, would be void. Section 16 of the Act stood amended vide Amendment Act of 1976 and the amended provisions read as under:-

“Legitimacy of children of void and voidable marriages –

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.”

20. Thus, it is evident that Section 16 of the Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object.

23. In Smt. P.E.K. Kalliani Amma & Ors. vs. K. Devi & Ors. AIR 1996 SC 1963 : (1996 AIR SCW 2337), this Court held that Section 16 of the Act is not ultra vires of the Constitution of India. In view of the legal fiction contained in Section 16, the illegitimate children, for all practical purposes, including succession to the properties of their parents, have to be treated as legitimate. They cannot, however, succeed to the properties of any other relation on the basis of this rule, which in its operation, is limited to the properties of the parents.”

15. Similarly, reference in the above context may also be had to

judgment of the Supreme Court in *Revanasiddappa and Anr. vs. Mallikarjun and Ors.*, (2011) 1 SCC 1 ALR 450, MANU/SC/0299/2011 where the Supreme Court in paragraph 26 held as follows:-

“26. On a careful reading of Section 16(3) of the Act we are of the view that the amended Section postulates that such children would not be entitled to any rights in the property of any person who is not his parent if he was not entitled to them, by virtue of his illegitimacy, before the passing of the amendment. However, the said prohibition does not apply to the property of his parents. Clauses (1) and (2) of Section 16 expressly declare that such children shall be legitimate. If they have been declared legitimate, then they cannot be discriminated against and they will be at par with other legitimate children, and be entitled to all the rights in the property of their parents, both self-acquired and ancestral. The prohibition contained in Section 16(3) will apply to such children with respect to property of any person other than their parents.”

16. Hence children from the second marriage, performed during the subsistence of the first marriage of any spouse will also have all rights in the property of their parents. Appellant No.2 to 6, the children of Shri Girdhari Rai from the second marriage with Appellant No.1 will hence have such rights to the property of their father along with respondent Nos. 6 to 10.

17. The facts stated hereinabove show that Sh.Girdhari Rai has left a nomination only for the Group Insurance Policy which payment has already been released. The leave encashment appears to have already been released to the first wife and her children. Learned counsel for the appellant has made no submission regarding these payments already released. We do not

pass any directions on the same. For the other payments which remain to be paid including the provident fund, gratuity and family pension etc., there is no nomination left by late Sh. Girdhari Rai. Keeping in view the legal position as stated above, the appellants No. 2 to 6 i.e. the children from the second marriage would be entitled to an equal share along with respondents No. 7 to 10 (Respondent No.6 is said to have died on 29.7.2010) in the pending service dues of Shri Girdhari Lal as per law.

18. The present appeal is disposed of with the above directions. The impugned order of the learned Single Judge dated 19.5.2014 is set aside.

CM No.14343/2014 (stay)

In view of the orders passed in the appeal, this application for stay also stands disposed of.

**(JAYANT NATH)
JUDGE**

CHIEF JUSTICE

AUGUST 12, 2015

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