

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7038 of 2012

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Krishna Devi W/o Late Kishori Lal Deo, Resident of Village-Madhupur, P.S.-
Bahara, District-Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Health Department, Govt. of Bihar, Patna
3. The Director Health Services, Govt. of Bihar, Patna
4. The District Magistrate Madhubani, District-Madhubani
5. The Civil Surgeon-Cum-Chief Medical Officer, Madhubani District-Madhubani
6. The District Malaria Officer, Madhubani, District-Madhubani
7. The Incharge Medical Officer, Primary Health Centre, Raj Nagar, District-Madhubani
8. The Accountant General, Bihar, Patna Null Null
9. Amlesh Devi W/o Kishori Lal Deo R/o Village-Madhepur, P.S.- Bahera, District- Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Saroj Kumar, Advocate.

For the State : Mr. S.P. Singh, G.A.-7

Mr. Binit Kumar, Advocate.

For the Respondent no. 9 : Mr. Jitendra Pd. Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-07-2016

Heard learned counsel for the petitioner, the State, the
Accountant General and the respondent no. 9.

The controversy in the present writ application is to
whether the petitioner, who claims to be the second wife of the
deceased employee namely, Kishori Lal Deo, is entitled to part of
family pension.

The facts relevant for the purpose of considering the
present writ application are that the petitioner and respondent no. 9,

both claiming to be the wife of late Kishori Lal Deo, filed an application before the respondent no. 6, claiming family pension. In view of there being conflicting claims, the respondent no. 9 under Letter No. 91 dated 08.12.2012 wrote to the petitioner as well as respondent no. 9, to obtain succession certificate.

As per the stand of respondent no. 9, she filed a Succession Certificate Case bearing No. 9 of 2012 before the District Judge, Darbhanga. It has further been submitted that on 9th November, 2015, Succession Case No. 9 of 2012 has been allowed in favour of the respondent no. 9 by the Ist Additional District Judge, Darbhanga by which the applicants including respondent no. 9 have been granted succession certificate with regard to the pensionary benefits of late Kishori Lal Deo. It has further been submitted by learned counsel for the respondent no. 9 that pursuant to the same, the Department has paid her the dues.

The Court can only express its dismay and shock at the conduct of the State respondents as well as respondent no. 9. When the respondent no. 9 was aware that the petitioner had also claimed to be the second wife and had filed an application for grant of pensionary benefits to her, and on that basis, the parties were asked to obtain succession certificate, the respondent no. 9 filing a succession certificate without making the petitioner a party speaks



volumes about her conduct. Learned counsel for the respondent no. 9 has produced a copy of the plaint of Succession Certificate Case No. 9 of 2012, which clearly discloses that the petitioner was not made a party and only a statement was made in paragraph no. 5 with regard to the legal heirs and representatives in which the name of the petitioner is at serial no. 9 and it has been written that she has wrongly claimed herself being the second wife of late Kishori Lal Deo. Let all the documents be kept on record. The contention, thus, that she was made a party is totally erroneous. The Court has no hesitation to hold that the judgment dated 9th November, 2015 in Succession Case No. 9 of 2012 passed by the Ist Additional District Judge, Darbhanga in the matter of the respondent no. 9 and others has been obtained on the basis of a fraud and thus unenforceable in law.

The Court is also surprised at the conduct of the official respondents granting all pensionary benefits to the respondent no. 9 without verifying as to whether the order in the Certificate Case No. 9 of 2012 was in the presence of the parties concerned and all necessary parties and most importantly, the petitioner being made a party. At this stage, learned counsel for the respondent no. 9 submits that he is not confirmed as to whether the authorities have made payment.



Be that as it may, if it is found that the official respondents have made payment on the basis of the decision dated 9th November, 2015 in Succession Case No. 9 of 2012 to respondent no. 9, then the concerned may be liable for appropriate action against them for being party to the fraud played by the respondent no. 9. If the same has not been paid, learned counsel for the State shall ensure that no payment is made to respondent no. 9.

Law being that the first wife and children of the second wife are entitled to family pension till they attain the age as prescribed in the relevant Government circulars, the children of the petitioner who may be minor on the date of death of late Kishori Lal Deo, automatically become entitled to 50% of pension till they attain the prescribed age. Thus, it was incumbent on the respondent State authorities to ensure that the case of the petitioner and her minor children be considered in accordance with law.

As has been held hereinabove that the Succession Case No. 9 of 2012 has been filed without making the petitioner or her children party and the judgment being a nullity in law as the same is fraudulent, the authorities shall now wait for a fresh Succession Certificate Case to be produced by either of the parties in which all the claimants are parties. With regard to the payment already made, the Court can only observe that as per the law settled,

the payment made to any one person, and there being other legal claimants also, such payment can be considered to be on behalf of all the claimants and the remaining claimants can get their due after getting a declaration/appointment from the competent Court. In the present case, a properly constituted succession case shall solve the problem where the entitlement of the parties under each head shall be decided.

The writ petition accordingly, stands disposed off with the aforesaid directions to the respondents especially respondents no. 3 to 8. The parties are at liberty to approach the Court of competent jurisdiction in terms of this order and the respondents shall be obliged to act once the matter is decided in accordance with law by a Court of competent jurisdiction in a proceeding in which all the claimants are parties.

(Ahsanuddin Amanullah, J)

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