

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11826 of 2015

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Smt. Sihanta Devi, wife of Late Din Dayal Singh (the then Executive Engineer, Water Resources Department, Katihar) resident of village - Pandey Gangaut, P.O. - Phuldih, P.S. - Rupau, District - Nawada.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Bihar, Patna.
3. The Deputy Secretary (Management) Water Resources Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Purnea.
5. The Superintending Engineer, Nahar Anchal, Purnea.
6. The Executive Engineer Irrigation Pramandal, Katihar.
7. The Chief Election Officer, Bihar 7 Sadar Patel Marg, (Manglas Road) Bihar, Patna.
8. The District Magistrate - cum District Election Officer, Banka.
9. The Accountant General, Birchand Patel Path, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Gajendra Pratap Singh, Advocate
For the State : Mr. Vivek Prasad, G.P. 7
For Accountant General : Mr. Satyendra Kr. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 22-10-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the Accountant General, Bihar.

The petitioner has approached this Court for a direction to the respondents to pay the admitted death-cum-retiral dues of her late husband, Din Dayal Singh, as also the compensation on account of his death on 31.10.2010 while he was on election duty.

The husband of the petitioner was appointed as Assistant Engineer on 30.1.1979 in the Water Resources Department, Government of Bihar and in the normal situation he had to superannuate from service on 31.5.2012 but while he was on election duty in the year 2010 during the Election to the Bihar Legislative Assembly he died on 31.10.2010 due to cardiac arrest



leaving behind his widow, the petitioner, three sons and five daughters, out of whom four of the daughters are unmarried.

It is submitted by learned counsel for the petitioner that the petitioner has filed all necessary pension papers and other applications for receiving death-cum-retiral dues of her late husband and the recommendation in that regard was also made by the Chief Election Commissioner, Bihar for ex gratia payment of Rs.10 lacs to the petitioner on account of death of her husband while he was on election duty, after verifying the identity of the petitioner. It is stated that one Babuni Devi appeared before the District Magistrate-cum-District Election Officer, Banka claiming to be the first wife of the deceased employee and requested for payment of the ex gratia amount.

In the counter affidavit also a stand has been taken that on account of the claim made by the said Babuni Devi, who had made an application on 23.12.2010 as the first wife of the deceased employee, and therefore entitled to the death-cum-retiral dues, she was initially directed to produce the documentary proof in support of her claim which she failed to do and ultimately by notice both were asked to appear before the Chief Engineer, Water Resources Department on 21.9.2011 along with the required documents. On the said date Babuni Devi appeared but the petitioner did not. On the next date also neither the petitioner nor the said Babuni Devi appeared.

It is also admitted in the counter affidavit that in the departmental records itself the petitioner has been shown as the wife and nominated by the deceased employee and there is no reference to the said Babuni Devi. However, instead of deciding the matter at their level the respondent by letter dated 7.5.2012



directed both the claimants to produce succession certificate issued by the civil court of competent jurisdiction so as to make payment of the death-cum-retiral dues of the deceased employee, which is based upon the legal opinion of the Government Pleader of Katihar.

From the aforesaid narration of facts it is evident that the respondents have very conveniently acted upon the legal opinion of the Government Pleader, Katihar, which is contrary to the law laid down by the Apex Court and of this Court that in such matters of claim for death-cum-retiral dues it is the duty of the departmental authorities to decide the issue at their level after hearing the parties and considering the evidences submitted by them and pass a speaking order in the matter.

In this case again an attempt of shirking responsibility has been made by the respondents, as they are bound to perform their duty when such issue arises before them. It has been laid down by this Court in several decisions and also by the Apex Court that the authorities must at the first instance decide any such claim, as it is they who have to make the payment. It is not open to the respondents to leave the matter to be decided by getting succession certificate, which dispute may go on for an indefinite period during which the real claimant of the deceased employee has to suffer and in such a situation the real claimant may even have to beg on the streets due to poverty. It has come on the record that the deceased employee has left behind four unmarried daughters and in the said circumstances the decision of the respondents directing the petitioner and the other claimant to produce succession certificate appears to be shameful for not realizing the condition of the dependents of the deceased



employee who died in an unfortunate situation while conducting election.

The writ application is, accordingly, disposed of with the direction to the Principal Secretary, Water Resources Department to decide the claim of the petitioner and the said Babuni Devi, who claims to be the first wife of the deceased employee, Din Dayal Singh, after issuing notice to them and giving them an opportunity of being heard and producing whatever evidence they have in favour of their respective stands. Let the said decision be taken within a period of three months from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

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