

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.785 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 15259 of 2013**

Most. Devanti Devi, wife of late Ram Prashad Sharma, R/o village - Sahar Chapra,
P.O. - Parsa, P.S. - Derni, District - Saran (Chapra).

.... Petitioner- Appellant/s

Versus

1. The State of Bihar.
2. The Secretary of Secondary cum Primary Education Govt. of Bihar, Patna.
3. The Accountant General (A & E), Bihar, Patna.
4. The District Education Officer cum District Programme Officer (Establishment), Samastipur.
5. The District Provident Fund Officer, Samastipur.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Shashi Shekhar Tiwary, Advocate

For the Respondent/s : Mr. Zaki Haider, A.C. to S.C.-9

**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 24-08-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 2nd of December, 2013 whereby, the claim of the appellant for family pension was not accepted.

The specific stand of the appellant in the writ application is that her husband was appointed as Peon on 16th of November, 1987 at District Resource Center, Samastipur, but lost his life due to electricity shock on 17th of July, 1988 when he was on

official duty. It is thereafter, the appellant refers to a communication dated 29th of July, 1988 whereby a letter was addressed to the father of the deceased with regard to appointment on compassionate ground.

It was on 6th of February, 2012, the appellant was requested to supply service book of the deceased employee before her claim for family pension is considered. The appellant informed that the service book is not available as it should be available with the concerned department. It was on 2nd of May, 2012, vide Annexure-5, the appellant was informed that if she does not have the appointment letter of the deceased, then she should furnish an affidavit giving the entire facts. It is thereafter, the appellant submitted an affidavit on 10th of May, 2012 wherein she asserted that she does not have any access to the appointment letter as the deceased used to keep the documents with him. The appellant was subsequently informed on 2nd of June, 2012 that the appellant has not disclosed about the date of birth of the deceased and the office from which appointment letter was issued, therefore, the claim of the appellant is difficult to be processed. Ultimately, on 13th of October, 2012, the appellant was informed that the appellant is not entitled to any pensionary benefits as the service book of the deceased is not available and that the appellant could not produce the appointment letter.

The appellant has not produced the appointment

letter. It is such an appointment letter which will show whether the deceased was employed on contract basis, daily wages or on regular appointment. In the absence of nature of appointment, the claim for family pension could not have been examined.

The fact remains that though the deceased died in the year 1988, but the appellant asserted right of family pension many years later. Though delay in raising family pension may not be a fatal, but the fact that the deceased was a regular employee of the State was required to be established before the claim of the appellant for family pension could be considered. In the absence of any particulars of the employment, the respondents cannot be directed to pay family pension even without knowing the nature and service particulars of the deceased.

Learned counsel for the appellant refers to Supreme Court judgment reported as S. K. Mastan Bee Versus General Manager, South Central Railway and another, (2003) 1 SCC 184, to contend that delay cannot be a basis to reject the claim of family pension. However, a perusal of the said judgment shows that the claim of the widow of the deceased for family pension was accepted, but not from the date of death of the deceased. It was in these circumstances, the Court held out the request of the appellant for grant of family pension from the date of death of the employee. But in the present case, the very existence of the

right to family pension has not been established.

Learned counsel for the appellant refers to a Circular bearing F.D. Memo No.P.C.2-9-4/83-300 F., dated 29.7.1980 issued by the State Government, contained in Part II of the Bihar Pension Rules, 1950. The said Circular deals with the Family Pension Scheme 1964 for State Government Employees. The Circular contemplates that family pension is admissible after completion of one year of service but such condition will not be applicable if an employee is appointed after medical examination. Since the death has occurred within one year, in the absence of even assertion of medical examination before appointment of the deceased, husband of the appellant, such condition of one year cannot be relaxed.

In view thereof, we do not find any error in the order passed by the learned Single Bench which warrants interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

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CAV DATE	N. A.
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