

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1137 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 8351 of 2011**

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Mosemat Shila Devi, W/o Late Bhutta Rai r/o vill- Virsinghour, P.S.- Kalyanpur,
Distt.- Samastipur, at Present Bihar, State Electricity Board, Colon..

.... Appellant

Versus

1. The State of Bihar, through Principal Secretary, Department of Energy, Govt. of Bihar, Patna.
2. The Chairman, Bihar State Electricity Board, Vidyut Bhawan, Patna.
3. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna.
4. The Joint Secretary, Bihar State Electricity Board, Vidyut Bhawan, Patna.
5. The Director (Personal), Bihar State Electricity Board, Vidyut Bhawan, Patna.
6. The Account/Claim Officer, Bihar State Electricity Board, Vidyut Bhawan, Patna.
7. The Chief Engineer (Civil), Bihar, State Electricity Board, Vidyut Bhawan, Patna.
8. The Superintending Engineer (Civil), Bihar State Electricity Board, Vidyut Bhawan, Patna.
9. The Executive Engineer, (Civil), Civil Division, New Punaichak, Patna.

.... Respondents

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Appearance:

For the Appellant/s : Mr. Amresh Kumar Sinha, Advocate.
For the Respondent/s : Mr. Madanjeet Kumar, GP-20.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-10-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Judge on 26.11.2014 in C.W.J.C. No. 8351 of 2011, whereby the claim of the petitioner for payment of pension and gratuity consequent upon death of Late Bhutta Rai was declined with liberty to the parties to seek their remedy before an appropriate forum.

2. The appellant claims to be the second wife of Late

Bhutta Rai, who died on 04.03.2010. The appellant claims that Late Bhutta Rai changed the appellant as his nominee in view of the fact that Sonia Devi, first wife deserted Late Bhutta Rai, which is evident from communication, dated 29.06.2014 produced by the respondents in the counter affidavit. The said communication is on behalf of the Bhutta Rai to the effect that his first wife Sonia Devi has left him about 15-16 years ago and married somebody else.

3. The fact remains that the parties were not legally divorced in terms of the provisions of the Hindi Marriage Act, 1955. In absence of divorce under the Hindu Marriage Act, 1955, the parties could dissolve their marriage, only if the custom permits. Whether there is any such custom exists or not is a question of fact.

4. Therefore, the finding recorded by the learned Single Bench relegating the parties to seek their remedy before an appropriate forum cannot be said to be unwarranted or unjustified in any manner.

5. The present Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra

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