

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10087 of 2016

Shobha Srivastava Wife of Late Vijay Kumar Sinha Resident of Village + P.O-
Betauna, P.S.-Patahi, District-East Champaran, At present reident of Village and
P.O Kabir chak, P.S. Sadar, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Govt of Bihar, Road Construction
Department, Technical Secretariat, Patna.
2. The Superintending Engineer, Road Construction Department Gandhi Maidan,
Patna.
3. The Executive Engineer, Road Construction Division R. Block, Patna.
4. The Assistant Engineer, Road Construction Sub-Division, R Block, Patna

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Pankaj Kumar
Mr. Ranjan Kumar
For the State AC to GA 12

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 22-10-2016

Heard the counsel for the petitioner and the State.

The petitioner being the first wife of the deceased employee has
filed the present writ application to make payment of the retiral dues including the
family pension. The case was considered on 09.09.2016 and while directing the
State respondent to file counter affidavit the Court observed as under:-

“.....This Court finds such stands to be untenable for
the simple reason that as per the Government Circular
itself, the first wife is entitled to 50% of the family pension
and the rest 50% is to be divided amongst the children
from the second wife till they attain the age of majority in
terms of the said Circular. However, there is no dispute
with regard to, at least, 50% amount of the family pension
going to the first wife.

In the present case, it is not in dispute that the

petitioner is the first wife. Thus, to the extent of paying her 50% of family pension, the authorities had no valid or justifiable reason not to do so.

Thus, the Court has no hesitation to draw adverse inference for such conduct, which makes them liable to be proceeded against them. The Court was, thus, of the opinion that strict orders were required to be passed.

However, on the prayer made by the learned counsel for the State seeking one last indulgence to ensure that admitted legal dues of the petitioner, as of now, are paid to her, the matter be listed on 17.10.2016 to enable him to file supplementary counter affidavit bringing on record materials to show that the admitted dues of the petitioner, for the time being, have been paid, failing which the Court may be constrained to direct for the personal appearance of the officer(s) concerned.”

Mr. Sunil Kumar, AC to GA today produced a written instruction received by him including the copy of the order from which it appears that in the light of the said order payment of 50% of the pension/family pension has been sanctioned and made to the petitioner through a demand draft which was received by her on 13.09.2016.

The counsel for the petitioner submits that the petitioner would also be entitled to pension of remaining 50% of the family pension as the children from the second wife have already grown into adult and they are not entitled to receive family pension according to the provision of the Rule/Act. If that be the case, the petitioner would be entitled to receive the remaining 50% of the revised pension/family pension.

Learned counsel for the State having appreciated the said stand taken by the petitioner submits that if a representation is filed to this effect along with

all documents the respondents would examine the claim of the petitioner and pass appropriate order in accordance with law.

Having heard the parties, the writ application is disposed of permitting the petitioner to represent the matter before the Executive Engineer Road Construction Division (respondent no.3). If any such representation is filed within 03 weeks for payment of the remaining pension/family pension amount, the said respondent will consider the application and pass an appropriate order thereon in accordance with law as quickly as possible preferably within 06 weeks from the date of filing of the application together with a copy of the present order.

(Kishore Kumar Mandal, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.10.2016
Transmission Date	