

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2210 of 2015
IN
Civil Writ Jurisdiction Case No. 7956 of 2015

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Santosh Kumar, son of Late Devi Dayal Sharma @ Devi Dayal Singh, Resident of Village : - Sarva Badsara, P.O. : - Gorkhari, P.S. : - Bikram, District : - Patna, At Present : - 7 Air Force Hospital, Security Section, Kanpur Cant, Nathusingh Road, District : - Kanpur, Pin : - 208004.

.... Respondent No.9/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Director, Secondary Education, Bihar, Patna.
3. The District Magistrate, Patna.
4. The District Provident Fund Officer, Patna.
5. The Head Master, Bhuneshwary Dayal Higher Secondary School, Telpa, Bikram, Patna.
6. The Accountant General, Bihar, Patna
7. The District Program Officer, (Establishment), Patna.
8. The District Education Officer, Patna.
9. Lalsa Devi wife of Late Devi Dayal Sharma @ Devi Dayal Singh Resident of Village : - Sarwan, Bhadsara, P.O. ; Gorakhi, P.S. : - Bikram, District : Patna.
10. Rijhu Kumari W/o Ranjay Kumar, D/o Late Devi Dayal Sharma @ Devi Dayal Singh Resident of Village : - Khandol, P.O. : - Phuladi, P.S. : - Sandesh, District : - Bhojpur (Arrah).
11. Mamta Devi W/o Ranjit Kumar, D/o Late Devi Dayal Sharma @ Devi Dayal Singh Resident of Village : - Mudika, P.S. : - Paliganj, District : - Patna.
12. Ranjana Kumari W/o Amit Kumar, D/o Late Devi Dayal Sharma @ Devi Dayal Singh Resident of Village : - Madhopur, P.O. : - Dhibra, P.S. - Janipur, District : - Patna.

.... Respondents/Respondents

with

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Letters Patent Appeal No. 2271 of 2015
IN
Civil Writ Jurisdiction Case No. 20480 of 2014

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Santosh Kumar, son of late Devi Dayal Sharma Resident of Village : - Sarva, Badsara, P.O. : Gorkhari, P.S. : - Bikram, District - Patna, At present Air Force Hospital, Security Section, Kanpur Cant, Nathusingh Road, District : Kanpur, Pin - 208004.

.... Petitioner/Appellant

Versus

1. The State of Bihar through the Principal Secretary, Education Department, 'Vikas Bhawan', Patna - 15.
2. The Director (Secondary Education), Education Department, Patna.
3. The Dy. Director (Secondary Education), Education Department, Patna.
4. The District Education Officer (in short D.E.O.), Education Department, Patna.
5. The Principal, Education Department, Buneshwari Dayal Higher Secondary School, Telpa, Bikram (Patna).
6. The District Provident Officer, Patna.
7. The District Magistrate, Patna.



8. The Circle Officer (i.e. C.O.), Bikram, Patna.
9. The Accountant General (A & E), Virchand Patel Path, Bihar, Patna - 1.
10. Lalsa Devi W/o late Devi Dayal Sharma R/o Village- Sarwan Bhadsara, PO ; Gorkhari, P.S Bikram, District Patna.

.... Respondents/Respondents

Appearance :

(In LPA No.2210 of 2015)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate with
M/S Manish Sahay, Anil Kr. Sinha, Advocates

For the State : Mr. Md. Nadeem Seraj, G.P.5

For Respondent No.9 : Mr. Arbind Kr. Sinha, Advocate

For Respondents 10-12 : Ms. Prativa Kumari, Advocate

For A.G. Bihar : Mr. Arun Kumar Arun, Advocate

(In LPA No.2271 of 2015)

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate with
M/S Manish Sahay, Anil Kr. Sinha, Advocates

For the State : Mr. Md. Harun Quareshi, AC to S.C.1

For Respondent 10 : Mr. Arbind Kr. Sinha, Advocate

For A.G. Bihar : Mr. Arun Kumar Arun, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 02-12-2016

Heard learned counsel for the appellant and learned counsels for respondent No.9, respondent Nos. 10 to 12, for the State and also for the Accountant General, Bihar.

The appeal is directed against the common judgment and order dated 5.11.2015 passed by a learned Single Judge of this Court in CWJC No. 7956 of 2015 and CWJC No. 20480 of 2014 by which the writ petitions have been disposed of with the direction that respondent No.9 Lalsa Devi, who had filed one of the two writ petitions, apart from the appellant, was entitled to family pension and her share in all the death-cum-retiral benefits of Late Devi Dayal Sharma @ Devi Dayal Singh and to ensure that all the post retiral dues were to be paid within a period of two months and further held



that the order was restricted for the purpose of grant of family pension and death-cum-retiral benefits of the said late employee and any finding/observation shall have no effect on any other proceeding, either pending or in future, between the parties.

CWJC No. 20480 of 2014 was filed by the appellant for a direction to pay the entire death-cum-retiral benefits of Late Devi Dayal Sharma in favour of the said writ petitioner claiming to be the son and sole heir of Late Devi Dayal Sharma. CWJC No. 7956 of 2015 was filed by respondent No.9 Lalsa Devi (respondent No.10 in LPA No. 2271 of 2015) for a direction to the authorities to pay the death-cum-retiral benefits, including family pension to the petitioner, widow of the deceased employee. Both the writ petitions were heard together and disposed of by a common order which is under appeal.

The stand of Lalsa Devi was that she was married to Late Devi Dayal Sharma on 6.5.1992 at Sri Gauri Shankar Dham Temple, Baikathpur, Patna. The said Devi Dayal Sharma was at that time a widower having one son and four daughters, who were all minors. The stand of the appellant Santosh Kumar, on the other hand, was that respondent Lalsa Devi was never married to his father, rather after the death of his mother she had been brought into the house as a caretaker. Upon the death of Devi Dayal Sharma on 30.8.2014 while still in service both the appellant and the respondent Lalsa Devi filed their applications making claim for payment of post retiral benefits as also family pension in the case of Lalsa Devi. The District Programme



Officer by his letter dated 17.11.2015, however, in view of the said dispute, directed the parties to produce the succession certificate from the competent court. Aggrieved by the same the parties had come up before this Court.

The learned Single Judge in the impugned judgment and order dated 5.11.2015 has considered a large number of documents filed on behalf of respondent Lalsa Devi, including marriage certificate dated 6.5.1992, the family list certificate issued by the Circle Officer, Bikram dated 5.12.2014 in which Lalsa Devi has been shown as second wife, copy of voters identity card issued by the Election Commission of India in the year 2004 in which she has been shown as wife of Late Devi Dayal Sharma with the same address, copy of declaration of assets and liabilities submitted by Late Devi Dayal Sharma in the year 2014 in which he has stated the name of his spouse as Lalsa Devi and has shown a sale deed regarding her immovable assets of agricultural land of 21 ¼ decimals belonging to her, which land had been bought in the name of Lalsa Devi by registered sale deed of the year 1999, which is also brought on the record, copy of receipt of Life Insurance Corporation of India of the year 2007 in which Lalsa Devi has been shown as wife and nominee of Devi Dayal Sharma and other such documents and came to the conclusion that it was not a case that she deserved to be asked to fight out a succession case and in the meantime remained succourless and issued the aforesaid direction. It was further observed that any



finding/observation in the said order should have no effect in any other proceedings either pending or in future between the parties. Learned counsels for the parties have vehemently made their submissions before the learned Single Judge which have been recorded in detail in the impugned order.

It is again sought to be emphasized by learned counsel for the State that specific statement has been made by the appellant that Lalsa Devi was earlier married to Muller Singh which was not dissolved and she was again married to his father Devi Dayal Sharma in the year 1992 during subsistence of earlier marriage. It is further sought to be argued that the said fact has not been specifically denied in the counter affidavit, rather statement has been made that the same is abusive.

Learned Single Judge in the impugned order after having considered the same has referred to the fact that apart from stating that the statement was abusive it was reiterated that she was the legally wedded second wife and thus there was an effective denial and on mere technicality she cannot be denied the relief. It has also come on the record that three out of four daughters have supported the fact that respondent Lalsa Devi was legally married to their father.

In our view, although such assertion has been made by the appellant but such an important assertion on affidavit without any evidence to back up the same could not have such effect that in the absence of specific denial the same has to be accepted as correct. Not



an iota of evidence in the form of document has been produced by the appellant in support of his stand. Thus, if there was no specific denial to the same it could not have been held against the respondent Lalsa Devi. It is a well settled proposition that in a writ petition the statements made on affidavit have to be supported by documents annexed to it, unlike the pleadings in a civil suit in support of which oral and documentary evidence has to be produced during trial. Thus in writ proceedings a mere statement on affidavit without being backed up by any document may not be sufficient. There is absolutely nothing to support the assertion of the appellant in the present matter. Thus, the want of evidence can go in favour of respondent Lalsa Devi, for an order of the nature that has been passed by the learned Single Judge in her favour.

As a matter of fact, the failure of the respondent authorities to exercise their jurisdiction in cases of such dispute, straightaway referring the parties to the civil courts for production of succession certificate, itself is contrary to the proposition of law laid down by the Apex Court and this Court in such matters. It is the duty of the competent authority to sanction the death-cum-retiral dues by settling the dispute after giving opportunity of hearing to the parties, including production of evidence, etc. in support of their respective claims and decide the matter, prima facie, on one way or the other and thereafter it is for the party aggrieved to take recourse to appropriate proceedings. Any such order of the type as has been passed in the



present matter by the District Programme Officer is clearly an attempt to shirk his responsibility and the heirs and successors of the deceased employee were made to suffer and left to the mercy of protracted litigation. Such practice is to be deprecated.

From the order impugned it is also evident that the right of the appellant to challenge the status of Lalsa Devi as the widow of the deceased employee has not been disturbed and it shall be open to him to take recourse to appropriate legal proceedings in the matter. However, it has rightly been decided that the claim for death-cum-post retiral benefits of the deceased employee cannot be denied in such manner.

Thus, for the aforesaid discussions we see no reason to interfere with the order of learned Single Judge. The appeals are, accordingly, dismissed with the aforesaid observations.

(Ramesh Kumar Datta, J)

spal/-

(Birendra Kumar, J)

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