

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.180 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 18746 of 2013
Along with
Interlocutory Application No. 853 of 2015**

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Nirmala Devi, Wife of late Yogendra Tiwary, Resident of Village- Rampur Balha,
Post- Rahuan, Police Station- Kurhani, District- Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Collector, Vaishali at Hajipur.
3. The District Land Acquisition Officer, Vaishali at Hajipur.
4. The District Provident Fund Officer, Vaishali at Hajipur.
5. The Account General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhakar Jha, Advocate.
For the State : Mr. AC to SC 23
For the A.G. : Mr. J.P.Karn, Sr. Advocate.

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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: 07-04-2016

Re.: Interlocutory Application No. 853 of 2015

The application is for condonation of delay of 15 days
in filing of the appeal.

For the reasons mentioned in the application, we are
satisfied that sufficient cause is made out for condonation of delay of
15 days in filing of the appeal. Consequently, the delay is condoned.

Interlocutory Application stands disposed off

accordingly.

Re.: Letters Patent Appeal No. 180 of 2015

The appellant is the second wife of late Yogendra Tiwari, who died on 2nd of August, 2006. She married Yogendra Tiwari after the death of his first wife, Raj Kumari Devi.

The claim of the appellant is that she is entitled to family pension, but such claim has been denied on the basis of succession certificate obtained by Bibha Devi, daughter of late Yogendra Tiwari from his first wife.

The question as to whether Bibha Devi has been declared to be a sole legal heir of the estates of Late Yogendra Tiwari needs to be examined from the reading of the order granting succession certificate. A perusal of the succession certificate (Annexure-B) shows that Bibha Devi has sought succession certificate to get the amount of Gratuity, Provident Fund, Group Insurance and arrears of salary only as one of the legal heirs. Such petition was allowed by the court, when it was observed to the following effect:

“From the evidence and the facts, it is evident that the petitioner is the daughter of late Yogendra Tiwari from his first wife and after death of his wife, Yogendra Tiwari married with Nirmala Devi. Petitioner has stated that Yogendra Tiwari had no other legal heirs and petitioner is one of the legal heirs who is entitled to get the amounts deposited by late Yogendra Tiwari and the amounts which are dues

against the Government after his death as Yogendra Tiwari was working as Amin in Land Acquisition Department, Government of Bihar. O.P. Nirmala Devi who is the second wife of late Yogendra Tiwari stated that she has got no objection if the succession certificate is issued in favour of the petitioner. Therefore, I find that the petitioner is entitled for grant of succession certificate.

In the result, application filed u/s 372 of the Indian Succession Act is allowed. Let a succession certificate be issued in favour of the petitioner with regard to the amount mentioned in schedule 1 & 2 of the petition subject to the condition that petitioner shall execute an indemnity bond of Rs. 10,60,000/- to indemnify, if any dispute arises between the legal heirs of late Yogendra Tiwari."

In view of the order granting succession certificate, as referred above, the marital status of the appellant is not in dispute. She is the wife of the deceased Yogendra Tiwari. The legal status of the daughter of late Yogendra Tiwari is also not in dispute, as her step-mother has conceded her entitlement for withdrawal of the benefits claimed in the succession certificate such as amount of Gratuity, Provident Fund, Group Insurance and arrears of salary.

In view of the aforesaid fact, the appellant, as a wife of deceased Yogendra Tiwari, would be entitled to family pension, and that such claim has been wrongly rejected by the respondents.

Consequently, we set aside the order passed by the

learned single Bench and allow the appeal and the writ application and direct the respondents to grant family pension to the appellant as wife of late Yogendra Tiwari.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/P.Kumar

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