IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10608 of 2015

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Heera Kumar Raut S/o Late Moti Ram Resident of Ward No. 25, Supaul, P.O. + P.S. + District - Supaul

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna
2. Finance Commissioner, Old Secretariat Pension Cell, Bihar, Patna
3. Accountant General, Veer Chand Patel Path, Bihar, Patna
4. Collector, Supaul
5. Anchal Adhikari, Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Mallika Mazumdar Mr. Prem Kumar, Advocates
For the Respondent/s	:	Mr. Ravish Chandra, AC to SC-6
For the Acct.Gen,Bihar	:	Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL ORDER

4 23-09-2016 Heard learned counsel for the petitioner and learned counsels for the State and for the Accountant General, Bihar.

The petitioner seeks quashing of the order dated 9.4.2015 by which the Accountant General, Bihar has disallowed the family pension to the petitioner on the ground that being a married person he is not entitled to family pension.

The facts of this case may briefly be noted. The father of the petitioner while employed as Revenue Karmchari, Anchal Adhikari Office, Supaul died on 25.3.2009. The mother of the petitioner had predeceased his father. The petitioner at the time of death of his father was 18 years old. The petitioner was also married at the time the application for family pension was forwarded to the Accountant General, Bihar and the same has been rejected by the impugned order dated 9.4.2015 stating that the petitioner was married and in such circumstances he was not entitled to family pension.

Learned counsel for the petitioner relies upon the resolution No. 11556/F-P dated 22.12.1999 of the Government of Bihar in the Finance Department, in para-5(iv) (kha) of which it is provided in the definition of family that son/daughter including a widowed and divorced daughter are also included, who would also be entitled to family pension until they complete the age of 25 years or in the case of the daughter till the date of marriage/remarriage. It is further provided that other procedures and conditions for the grant of family pension shall remain the same.

Learned counsel for the petitioner submits on the basis of the said resolution that the bar of marriage/remarriage applies only in the case of the daughter and not in the case of the son as is evident from the rule itself and thus, the Accountant General, Bihar has wrongly rejected the case of the petitioner merely on the ground that the petitioner was married at the time of death of his father.

It is further submitted that the Office of the Accountant General, Bihar itself appears to be in some doubt about the situation and has accordingly by letter dated 24.7.2015 sought guidelines from the Finance Department.

Learned counsel for the State on the other hand, seeks to rely upon the last part of the said resolution which states that the procedures and other conditions for grant of family pension shall remain unchanged and earlier the married son was not allowed the family pension.

On a consideration of the resolution dated 22.11.1999 it is evident that a clear distinction has been made between the married son and a daughter therein. In the first part of the provisions cited by learned counsel for the petitioner, it is evident that the son as well as daughter and the widowed or divorced daughter have been included in the definition of family until they attain the age of 25 years. Thereafter only in the case of the daughter, if there is a marriage/remarriage the benefit would cease to be available and upon such marriage or remarriage she would cease to be included in the definition of 'family' for pension. No such distinction has been made in the case of the son.

In view of the above position, it is not open to the respondents to deny the benefit of family pension to the petitioner as he is clearly covered by the definition of family until attainment of the age of 25 years for the grant of family pension.

The writ application is accordingly allowed. The impugned order dated 9.4.2016 is quashed and the matter is remanded to the respondent-authorities to consider the claim of family pension of the petitioner in accordance with the provisions of the Resolution Dated 22.11.1999 as interpreted by this Court in this order.

Learned counsel for the petitioner at this stage also refers to the provision that in case of death during service the higher rate of family pension is permissible. It would be for the respondent-authorities to consider the same while sanctioning the family pension of the petitioner.

(Ramesh Kumar Datta, J)

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