

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.342 of 2017

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1. Madina Ansari, Son of Late Md. Dali Ansari, Resident of Village- Kadwan, P.O. Maudihan, P.S.- Nokha, District- Rohtas, Sasaram.
 2. Tabassum Parveen, Wife of Mainuddin Ansari and daughter of Md. Sayed Ali (deemed to be dead), Resident of Village & Post- Amaon, P.S.- Karamchat (Sabar), District- Kaimur at Bhabhua.
 3. Tarannam Parveen, wife of Arman Alam and daughter of Md. Sayed Ali (deemed to be dead), Resident of Village, Post and P.S.- Chenari, District- Kaimur at Bhabua.
 4. Imran Alam, Son of Md. Sayed Ali (deemed to be dead), Resident of Village & Post- Belwain, P.S.- Karakat, District- Rohtas, At present Residing at Village- Kadwan, P.O.- Maudihan, P.S.- Nokha, District- Rohtas at Sasaram.
 5. Tamanna Parveen, minor daughter of Md. Sayed Ali (deemed to be dead),
 6. Gufran Alam, minor son of Md. Sayed Ali (deemed to be dead).

Both Sl. No. 5 and 6 through and under the guardianship of their legal guardian namely Madina Ansari, and resident of Village & Post- Belwain, P.S.- Karakat, District- Rohtas, At present resident of Village- Kadwan, P.O.- Maudihan, P.S.- Nokha, District- Rohtas at Sasaram.

.... Petitioner/s

Versus

1. The State of Bihar, through Collector -cum- District Magistrate, Kaimur at Bhabua.
2. The District Collector -cum- District Magistrate, Kaimur at Bhabua.
3. The Superintendent of Police, Kaimur, District- Kaimur at Bhabua.
4. The Deputy Superintendent of Police, Bhabua, District- Kaimur at Bhabua.
5. South Bihar Power Distribution Company Limited, Patna, through its Managing Director, Patna, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Superintending Engineer, Electric Supply Circle, Sasaram, District- Rohtas at Sasaram.
7. The Electrical Executive Engineer, Electric Supply Division, Bhabua, District Kaimur at Bhabua.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sinha No-1, Adv.
For the Respondent-State : Mr. Ghanshyam Sharan, AC to GA-3
For the Respondent-SBPDCL: Mr. Ranjit Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-11-2017

Heard Mr. Anjani Kumar Sinha No.1, learned counsel
appearing for the petitioners, Mr. Ranjit Sinha, learned counsel
appearing for the South Bihar Power Distribution Company



Limited and learned counsel for the State.

This is an unfortunate case in which the children (i.e. petitioner nos. 2 to 6) of an employee of the Electrical Energy Sub-station, Adhaura in the district of Kaimur at Bhabhua under the South Bihar Power Distribution Company Limited, who had gone missing since the year 2007 and despite attempt by the police authorities the State, has not been traced out, are striving for getting possession of the justful dues admissible to them. The mother of petitioner nos.2 to 6 had pre-deceased, before the disappearance of their father on 21.9.2005.

While the petitioner nos.2 to 6 are children of the missing employee, the petitioner no.1 is stated to be lawful guardian appointed by the Court.

According Mr. Sinha, learned counsel appearing for the petitioners, the father of these petitioners, due to his alcoholic nature, was staying away from home and thus the children had no knowledge about his missing until they received a letter dated 5.10.2012 issued under the signature of the Electrical Executive Engineer, Supply Division, Bhabhua, district- Kaimur, a copy of which is at Annexure-1 whereby a notice was purportedly issued to the father of the petitioner nos.2 to 6, on his absence since 16.4.2007. A second letter was issued by the same authority i.e.



respondent no.7 addressed to the petitioner no.2 seeking information on the steps taken by them for tracing out their father and whether any police case had been instituted.

According to the petitioners, since the police refused to register a case that they were forced to file an informatory petition before the Chief Judicial Magistrate, Kaimur giving rise to Informatory Case No.638 of 2013 with a prayer to refer the matter to the concerned police station for registering an FIR and accordingly the learned Chief Judicial Magistrate, Kaimur vide order passed on 28.6.2013 forwarded the petition to the police station concerned for submission of their report. A report was submitted by the Assistant Sub-Inspector of Police, Adhaura Police Station addressed to the Sub-divisional Police Officer, Bhabhua on 14.10.2013, a copy of which is placed at Annexure-5 and in which he has confirmed that the father of petitioner nos.2 to 6 namely, Syed Ali had gone traceless.

It is thereafter that an application was filed before the respondent no.7 by the petitioner no.1 on behalf of petitioner nos.2 to 6 for payment of admissible dues to the children, a copy of which is at Annexure 6 and following which a direction was issued by the Senior Manager (Personnel) directing the Electrical Superintending Engineer, Electric Supply Circle, Sasaram to obtain certain



documents from the dependants of the missing employee for payment of the admissible dues. It is thereafter that the petitioners are before this Court.

Mr. Ranjit Sinha, learned counsel appearing for the South Bihar Power Distribution Company in reference to the counter affidavit while defending the demand of documents vide Annexure 7 has submitted that since it is a case of missing employee, the petitioners have to satisfy on the missing status as well as on the fact that there are no third party interest. He submits that in this regard the dependants were directed to submit the following documents:

- (1) Informatory report;
- (2) An affidavit sworn before the Judicial Magistrate 1st Class regarding the receiving of the payment of arrear pension, provident fund and gratuity;
- (3) Certification from the District Magistrate as regarding the traceless status of their father;
- (4) An indemnity bond; and
- (5) The family details.

Mr. Sinha, learned counsel for the respondents has placed reliance on the judgment of the Supreme Court reported in **(2004) 10 SCC 131 (LIC of India vs. Anuradha)** in support of his



submissions.

Mr. Anjani Kumar Sinha, learned counsel appearing for the petitioners has referred to an affidavit filed on behalf of the Deputy Superintendent of Police, Kaimur to submit that paragraphs 6 and 7 thereof would fulfill the requirement at item nos.1 and 3 of Annexure 7 inasmuch as a copy of the report submitted by the Assistant Sub-Inspector of Police, Adhaura before the Sub-Divisional Police Officer at Annexure 'A' a copy of which is also enclosed at Annexure-5 to the writ petition confirms the investigation on the issue and also the fact that the father of petitioner nos.2 to 6 is traceless now for a period of over 10 years. In so far as the affidavit of receiving of admissible dues and indemnity bond is concerned he submits that the petitioners shall be filing the same before the Electrical Executive Engineer, Respondent no.7 together with the family details present at Annexure 8.

I have heard learned counsel for the parties and I have perused the records.

There is no dispute that the father of petitioner nos.2 to 6 had gone missing since 16.4.2007 and a period of more than 10 years has since lapsed but he has not returned. The situation thus would stand covered by the provisions underlying section 108 of



the Evidence Act. The family tree at Annexure '8' issued by the Circle Office, Karakat confirms that the petitioner nos.2 to 6 are children of the missing employee with the mother of the children having deceased much before, on 29.1.2005. As regarding the requirement of submission of a copy of the FIR in terms of item nos.1 of the letter dated 29.4.2014 of the Senior Manager as well as the certification of the District Magistrate as to the conformity of his missing status in my opinion, the report of the Assistant Sub-Inspector of Police at Annexure 5 dated 14.10.2013 submitted in compliance of the direction of the Chief Judicial Magistrate, Bhabhua as contained in the order dated 28.6.2013 at Annexure 3/1 passed on an application filed by the petitioners herein is sufficient to fulfill the requirement inasmuch as the report has been submitted after holding investigation on the missing status of the father of petitioner nos.2 to 6 and confirms his missing status as well.

The counter affidavit filed on behalf of the State more particularly the statements made in paragraph 6 and 7 thereof would complete the requirement of item nos. 1 and 3 of the letter dated 29.4.2014. The family tree is already there at Annexure 8 and Mr. Sinha, learned counsel appearing for the petitioners has undertaken to file an affidavit in terms of item nos. 2 and 4 as required under the law.



In the circumstances, let the petitioner nos.2 to 6 file an appropriate application for payment of the death cum terminal benefits relatable to their father, as found admissible to them together with the order of the learned Chief Judicial Magistrate dated 28.6.2013, the report of Assistant Sub-Inspector of Police, Adhaura dated 14.10.2013 at Annexure 5, the family tree at Annexure 8, the affidavits in terms of item nos.2 and 4 and a copy of this judgment. It goes without saying that no sooner such application is filed by the petitioners that the respondent no.7 shall take steps for payment of the dues found admissible to these petitioners in accordance with law within a period of six weeks from the date of filing of such application.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-12-2017
Transmission Date	NA

