

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.240 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 1456 of 2011**

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Pyare Sah Son of late Kailash Sao, Resident of Village- Saidabad PS Pali Kako,
District Jahanabad (Respondent no. 4)

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department,
Govt. of Bihar, Patna
2. The Superintending Engineer, Rural Works Department, Works Anchal -2,
Chapra.
3. The Accountant General Bihar Patna.
4. The Treasury Officer, Jahanabad.
5. Kanti Devi Wife of Pyare Sah, Resident of Village-Saidabad, Pali (Kako),
District Jahanabad. (Petitioner)

.... Respondents

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Appearance:

For the Appellant/s : None.

For the Respondent/s : Dr. Anshuman, SC 14.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 25-04-2017

None appears for the appellant. None has been appearing
for the last two dates also. Dr. Anshuman, learned SC 14, appears for
the State Government.

Seeking exception to certain observations made by the
Writ Court on 24.09.2014 while deciding Civil Writ Jurisdiction Case
No. 1456 of 2011 and contending that the observations are adverse to
the interest of the appellant and has effected of curtailing the
jurisdiction of a criminal court where certain criminal proceedings



between the petitioner and the private respondents are pending, this appeal has been filed seeking setting aside of the observations.

Facts in nutshell go to show that the appellant herein was a government employee and has contracted two marriages. The respondent (petitioner in the Writ Petition) was one of the wives of the appellant. However, as she was unable to maintain herself and family pension and other benefits were not being granted to her, she filed the Writ Petition. The Writ Court examined the issue and found that the Judicial Magistrate, Jahanabad in G.O. Case No. 124 of 2011 has already directed for payment of 50% pension to the respondent-petitioner and therefore as she is getting the aforesaid amount, no further order shall be passed or can be passed in the Writ Petition. However, after having held so, the Writ Court went further and observed that irrespective of any order passed in the criminal case and irrespective of the order passed by the Judicial Magistrate having been set aside in appeal filed by the appellant in Cr. Misc. No. 33813 of 2013, 50% amount, directed to be paid by the Judicial Magistrate, shall continue to be paid for all times to come and therefore this part of the order, which the petitioner says, was beyond the jurisdiction of the learned Writ Court.

We are of the considered view that the order passed by the Writ Court granting that 50% amount is proper and to that effect



no interference is called for. However, the direction that the respondent-petitioner irrespective of the order passed in Cr. Misc. No. 33813 of 2013 shall receive the amount has the effect of deciding the criminal appeal itself to that the order of the Writ Court is clearly beyond the jurisdiction and therefore, to that effect, the impugned order has to be and is accordingly quashed. The direction issued for continuing 50% pension even after Cr. Misc. No. 33813 of 2013 is decided is quashed. That apart, after the criminal appeal is decided and payment of 50% pension to the petitioner respondent is adversely effected, she shall have remedy to seek payment of pension or other monetary benefits either by approaching this Court again or by taking recourse to such remedy as may be permissible under the law.

With the aforesaid, the appeal stands disposed of.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Dilip, AR

AFR/NAFR	NAFR
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